WESTERN AUSTRALIAN
LOCAL GOVERNMENT ASSOCIATION

MWAC Submission on the Waste Avoidance and Resource Recovery (WARR) Bill and the Waste Avoidance and Resource Recovery Levy (WARRL) Bill

PREPARED BY THE

MUNICIPAL WASTE ADVISORY COUNCIL
"Getting the Environment Right"

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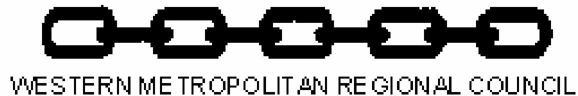
Status of this Submission

This submission has been prepared by the Municipal Waste Advisory Council and adopted by the Western Australian Local Government Association. The Municipal Waste Advisory Council is a standing committee of the WA Local Government Association with delegated authority to represent the Association in all matters relating to solid waste management.

The Municipal Waste Advisory Council has been formed through collaboration with Regional Councils who are not ordinary members of the WA Local Government Association. The resulting body effectively represents the views of all Local Government bodies responsible for waste management in Western Australia.

Positions adopted by the WA Local Government Association represent a consolidated viewpoint from Local Government and may differ from the positions adopted by individual member organisations. The Municipal Waste Advisory Council and the WA Local Government Association will strive to promote the positions contained within this submission and to act consistently with its contents. Individual Local Governments are encouraged to support them in this but are not bound by the document.

The Municipal Waste Advisory Council's member organisations are:



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Section 1

General Comments on the Waste Avoidance and Resource Recovery (WARR) Bill 2006 and Waste Avoidance and Resource Recovery Levy Bill (WARRL) 2006

The Western Australian Local Government Association (the Association) strongly supports the intent of the WARR Bill to consolidate existing provisions relating to waste management under one piece of legislation which, in the context of existing powers in other acts, has the necessary powers to drive waste management in Western Australia towards the Zero Waste 2020 vision. The Association congratulates the State Government on its commitment to this process and appreciates the opportunity to comment on and contribute to this important legislation. In particular, the Association would like to recognize the State Government for its support of consultation workshops for Local Governments and other stakeholders held across the State and the consultation process in general with regard to the development of this Bill.

The Association has reviewed comments gathered from the workshop process in detail, and specific comments on each section of the Bills have been provided in the tables below. In general, with the inclusion of some amendments, the Association supports most aspects of the WARR Bill. However, notwithstanding this general support, the Association considers there are a number of areas of the WARR Bill, and one issue in respect of the WARRL Bill, that are of considerable concern to Local Government in that they apparently fail to:

1. Effectively carry over powers created by the provisions of the Health Act that are to be repealed;

2. Enable Local Government to exercise autonomy in meeting the needs and representing the views of their community;

3. Provide clarity on important issues of waste ownership and responsibilities;

4. Provide an avenue for appeal on a number of the directives that can be made with respect to the waste management services provided by Local Government and the evaluation of those services;

5. Provide a balance in the focus of the regulations with regard to Local Government and other major stakeholders; and

6. Effectively transfer provisions for the application of the landfill levy to premises only used for the disposal of waste to landfill.

These aspects are discussed with reference to relevant provisions of the Bills in detail below.

1. Powers provided to Local Government under the Health Act 1911

a. Provision of Services

The newly drafted s112(2) of the Health Act 1911 prohibits other collectors from collecting residential or trade waste from a Local Government District if a Local Government or Local Government contractor provides that service. It appears that s53, s66 and the definition of municipal solid waste are intended to provide equivalent powers under the WARR Bill. However, for reasons discussed in more detail under Responsibilities and Waste Ownership, the Association questions whether those powers are indeed carried. It is considered that the WARR Act provisions rather create a great deal of confusion over whether Local Government has the first right or the responsibility to collect different streams of waste. As such, it is suggested that greater surety would be created if the powers created by 112(2) of the Health Act were explicitly provided in the WARR Bill by using a similar construction, whilst having regard for the potential for changes to the definition of municipal solid waste ((MSW) - see comments later in submission regarding the definition of MSW).

General Recommendation 1 – *That the powers provided to Local Government establishing first right to collect domestic and trade refuse in its district by the newly drafted s112(2) of the Health Act be transferred to the WARR Bill by way of an explicit provision or equivalent drafting mechanism.*

b. Setting Fees and Charges

The power under s51 for a Local Government to set fees and charges for waste management services was sought by the Association and is fully supported. Notwithstanding this, there are a number of concerns with respect to the provisions that could Act to limit its effective functioning –

i. The definitions for the terms house, owner and occupier are not included in the Bill. These definitions under the Health Act provide Local Government with the power to ensure all premises are charged appropriately for a service. For instance, these definitions empower a Local Government to charge the owner or the occupier of a premise, which is extremely important to provide sufficient scope to charge with regard to rental and holiday properties; charge the occupier(s) of a commercial premise rather than the owner when this is appropriate; and charge strata title and other properties as individual premises, essential for properties which contain multiple dwelling units.

General Recommendation 2 – *That the Health Act 1911 provisions enabling Local Government to appropriately charge the owner or occupier of a premise for a waste management service be transferred into the WARR Bill either by way of an explicit provision or equivalent drafting mechanism.*

ii. The definition of waste management services is very prescriptive but excludes certain important aspects involved in providing effective waste management; for example strategic planning and waste education. Given the detailed description of those services that are included in the definition, a Local Government may find itself challenged if it sets fees or charges for any service not specifically detailed.

General Recommendation 3 – *That the definition of waste management service be amended to ensure a Local Government can set a charge or fees for all services it undertakes for effectively managing waste in accordance with the provisions of the Bill.*

iii. The effect of s51(3) of the WARR Bill to treat a Local Government's decision to fix a charge as a regulation is out-of-line with the setting of fees and charges for other provisions under the Local Government Act 1995. This is not the current case under the Health Act 1911 and it is considered this provision could enable unintended parliamentary influence on the independence of the Local Government charging process.

General Recommendation 4 – *That the WARR Bill charging provisions for the setting of fees and charges be consistent with the provisions for charging for other services under the Local Government Act 1995. That is, that the resolution not be treated as if it was a regulation; and that any fees and charges set by a Local Government under these provisions require an 'absolute majority' as per the Local Government Act 1995.*

c. Disposal of Waste

Section 115 of the Health Act states that all refuse collected by a Local Government or its contractor may be sold or otherwise disposed of and the profits retained in the municipal fund. Whilst it is clear that s52 of the Bill has a similar effect, legal advice obtained by the Association suggests that it would be desirable to have the matter of waste ownership put beyond doubt by expressly stating that Local Government owns the waste it collects.

General Recommendation 5 – *That the effect of s115 of the Health Act 1911 be transferred to the WARR Bill by way of an explicit provision or equivalent drafting mechanism.*

d. Prescribing districts

Under the Health Act 1911, "Prescribed" means prescribed by this Act or by any regulation of Local Law thereunder. This definition is not carried over into the WARR Bill. There is considerable concern regarding the impact of this omission on the ability of a Local Government to create a prescribed district through Local Law. It is considered essential that this power be carried across and explicitly provided for under the WARR Bill; in particular to enable rural Local Governments with very low population densities to limit the area to which they provide a service. Given the tyranny of distance and physical and seasonal limitations faced by many rural Local Governments, retaining the power to limit a service area is considered of paramount importance. The power to limit waste management services is considered reasonable as it is in-line with limits placed by other Government services such as water, gas and electricity provision.

General Recommendation 6 – *That Local Government be explicitly empowered to make Local Laws to prescribe areas of the district in which they will provide a waste management service.*

e. **Local Laws**

Many of Local Government's powers to make Local Laws under the Health Act 1911, with respect to a number of aspects of household waste services, will be repealed when the WARR Bill comes into force. At the same time, existing Local Laws made under these provisions will also be repealed. It is apparent that new powers to deal with such matters will be managed by way of the regulatory powers provided for under Division 2 of Schedule 3. This puts Local Government in the difficult position of not being able to determine what the impact of the WARR Bill will be on their ability to make locally binding provisions with regard to waste management. This concern is discussed further under 'Enabling Local Government'.

It is considered that, as a minimum, the enabling powers Local Government has to make Local Laws with regard to waste management currently under the Health Act 1911 must be carried through to the WARR Bill. The Association has been advised that, to avoid the loss of existing Local Laws, the transfer of power would best be achieved through provisions for Local Laws to be made in the Bill itself rather than through regulations. The 'En-bloc' loss and subsequent replacement of existing Local Laws would be an extremely expensive and time-consuming process for 144 Local Governments to undertake.

General Recommendation 7 – *That provision be added to the WARR Bill to enable Local Government to make Local Laws with regard to the waste management services it provides or is required to control.*

2. Enabling Local Government

It is of concern to the Association that the Bill provides the CEO with extensive powers to give notice to require Local Governments to undertake a wide range of requirements covering all aspects of waste management services in a manner that could be highly prescriptive and at the expensive of Local Government; in numerous instances without recourse to appeal. It is accepted that in some instances this power may be necessary and acceptable to protect human health and the environment; but currently appears to be virtually unlimited, contains unacceptable potential for cost shifting onto Local Government, contains no regard for the financial, social and geographical constraints of different communities and lacks regard for Local Government autonomy in representing the wishes and needs of their community.

a. **Waste Management Plans**

The Association agrees that it is reasonable and appropriate for **all** Local Governments to produce, implement and report on a waste management plan that demonstrates how they will manage the waste they collect to ensure consistency with the waste strategy. However, the Association **does not** support the prescriptive powers provided to the CEO to direct and charge Local Government with regard to the formation of plans under provisions s38(3), 39 and 40 and strongly considers that these provisions should be removed wholly from the Bill on the basis that:

- It is the role of Local Government to consult with its community with regard to their views and needs and to then represent that consultation in its Plan for the Future under the Local Government Act 1995. Plans for the Future were endorsed by this State Government in the place of overly prescriptive plans, such as Principle Activity Plans, as a means of enabling Local Government to better represent its community and as being more workable on the ground. S38(3) in particular is clearly a throw-back to the type of inappropriate State interference that the Plans for the Future were intended to eliminate. Whilst it is acceptable to expect a Local Government to have regard for the Waste Strategy in developing a waste management plan as a part of its Plan for the Future; it is entirely unacceptable to enable the CEO to direct specifically what should be contained in a waste management plan or to direct the Waste Authority to develop a plan for that Local Government. Such prescriptive directions from the State make it impossible for Local Government to appropriately and autonomously represent their communities;

    - It is noted that under s40, the waste authority is required to 'take all such steps and prepare all such documents' as is necessary to prepare a waste management plan for a Local Government 'as if it were the Local Government'. In acting as if it were a Local Government, it is reasonable then to expect that the Waste Authority would undertake a level of community consultation equal to that which would be expected of a Local Government in developing their own waste management plan. That is, equal to the community consultation involved in making a Plan for the Future. It is questioned whether the Waste Authority is genuinely better placed than a Local Government to undertake such a consultation with a community. It is also questioned whether it is possible for such a consultation to achieve an equitable level of community involvement as if the waste management plan were developed by a Local Government for their community.

- There is no regard for natural justice built into these provisions. A Local Government cannot appeal a requirement from the CEO to include something in a waste management plan; or appeal a request to alter a plan; or appeal an instruction for a plan to be written for it by the Waste Authority. Further a Local Government could be required to meet the costs of fulfilling any given requirement of the CEO with regard to developing a waste management plan, despite having no avenue of appeal against any notice made against under these provisions; and

- Section 41(2) requires that a government must perform its functions according to a waste management plan. Consideration must therefore be given as to how a Local Government will afford to carry out an aspect of its plan, which it may have been required to include by the CEO or Waste Authority. This is considered particularly important since these requirements can not be appealed against. However, no such consideration is given in these provisions.

General Recommendation 8 – *That* ***all*** *Local Governments be required to produce, implement and report on a waste management plan as a part of its Plan for the Future, that demonstrates how they will manage the waste they collect consistently with the waste strategy; but that plan be made in consultation with, and with regard to, the requirements of the community.*

General Recommendation 9 – *Without limiting any of the above comments, if a Local Government is required by the CEO or the Waste Authority to undertake any action with regard to a waste management plan that is beyond the protection of human health or the environment, then the cost of meeting that instruction must be covered by the WMR Fund or alternative State funding. Further, the cost of implementing that action must be similarly covered.*

General Recommendation 10 –*Without limiting any of the above comments, consideration must be given to the ability of Local Government to fulfil the information requirements outlined under s38(3) unless provision is also made to empower Local Government to gather trade waste information in its district.*

b. Waste management services a Local Government may be required to undertake

The Association understands that the power of the CEO under s47(3) to direct Local Government to undertake a waste management service is drawn directly from the powers provided to the EDPH under section 112 of the Health Act. It is also understood that a notice given under this provision is subject to appeal; an entitlement that did not exist under the Health Act. The inclusion of a right to appeal is supported by the Association.

However, whilst the appeal provision is appreciated, it is considered that the Bill would be made more workable and less likely to be appealed if greater definition was provided on which aspects of waste management service(s) the CEO may instruct a Local Government to undertake for the following reasons:

- If no limitation is placed on the type of waste management services a Local Government may be required to undertake, then it leaves Local Government in the untenable position of raising funds for potentially significant unknowns. Although it may not be intented to use this power for large scale programmes, the CEO is clearly empowered to make such an instruction. This could include, for example, the establishment of a kerbside recycling service or the construction of a MRF. In any case, the breadth of power provided by this provision clearly impinges once again on the ability of a Local Government to autonomously represent their community.
- In issuing a notice, the CEO is not required to consider how, or even if, a Local Government will be able to meet the costs of providing such a service, with the exception of considering how costs will be divided between two Local Governments as necessary. This clearly presents an unacceptable risk for cost shifting on the part of the State Government and is inconsistent with the recently signed intergovernmental agreement.
- The power under s47(9) to divide costs between Local Governments indicates that the CEO is even empowered to direct a Local Government to perform a service outside its prescribed district. This is of concern to rural communities, as they may be financially or practically (for example due to flooding) unable to service remote communities.

The Association accepts that there are valid reasons for the CEO to be able to direct a Local Government to undertake a waste management service for the protection of human health. In fact, it is considered that the EDPH was in fact effectively restricted by the Objects of the Health Act 1911 from using this power for anything other than protecting human health. It is considered that the power of the CEO under the WARR Bill should be similarly, but explicitly, limited to only giving notice on the basis of the protection of human health. Further, consideration must be given to the ability of a Local Government to reasonably fulfil that notice, financially and practically.

General Recommendation 11 – *That the protection of human health be added to the Objects of the Act to ensure that this is explicitly considered when there is cause to consider the intent of any provision(s) that may be ambiguous or contradictory.*

General Recommendation 12 – *That a provision be added with regard s47(3) to limit the scope of the CEOs powers to instruct a Local Government to undertake a waste management service within its prescribed district for the purposes of protecting human health in the event of an emergency or temporary service disruption; but that this does not empower the CEO to instruct a Local Government to undertake services of an ongoing nature .*

General Recommendation 13 – *That the CEO have regard for a Local Government's limitations (financial, social, geographical) in issuing a notice. It is noted that this consideration should be inherent; if the three tier bottom line of the principle of sustainable development outlined in Objects of the Act 5(a) is taken into consideration.*

General Recommendation 14 – *That, notwithstanding any other recommendations, a provision be added to clarify that if a notice requires Local Government to perform a service outside its prescribed district or it is not made in respect to the protection of human health within its prescribed district, then any costs incurred by that Local Government in carrying out that service must be recoverable from the WMR Fund or alternative State funding to avoid cost shifting on the part of the State.*

c. Matters in respect of which regulations may be made – Waste collection and facilities

The Association has particular concerns with the breadth of the matters in respect to which regulations can be made under Division 2 of Schedule 3. The Association is not directly opposed to these provisions as such, but considers that greater clarity is required to ensure they are intended to create enabling, non-presecriptive regulations with regard to Local Government waste management services; particularly given they could clearly be used in any way the State sees fit. This is again severely limiting to a Local Government's ability to plan for the future, as they cannot predict what regulations will be made.

As with s47(3), the Association accepts that the power to make prescriptive regulations with regard to Local Government waste management services is necessary for the purposes of protecting human health. However, beyond these considerations, any prescriptive regulations made with regard to how a Local Government is to carry out a service would unavoidably impinge on the ability of

Local Government to represent its community. For instance, a regulation requiring all Local Governments to provide a recycling service to all households in its district is likely to be impractical; not necessarily in the interest of the community; and in conflict with the sustainability principle for many isolated communities.

The Association considers that the Bill would be more effective and immeasurably more workable if it were made to empower a Local Government to make Local Laws to ensure consistency with the Waste Strategy in a manner suitable to the individual requirements of their district. For instance, empowering Local Government to make Local Laws to ban recyclables from general waste bins, but only in such districts where such a scheme was practicable.

General Recommendation 15 – *That a provision be made to ensure that, in making a regulation with regard to a matter outlined under Division 2 of Schedule 3, consideration must be given as to whether that regulation is necessary to protect human health or, if not, acts to enable Local Government to better comply with the Waste Strategy through the creation of Local Laws.*

3. Responsibilities and Waste Ownership

The intent of s66 appears to be, amongst other things, to ensure all waste collectors are known to the Department of Environment and Conservation (DEC) by virtue of being a Local Government, a Local Government authorised collector or an EP Authorised collector. This intent is supported in theory by the Association as being essential for the Waste Authority and the DEC to effectively develop, implement and enforce the Waste Strategy. However, it is considered that the various provisions in the Bill that should achieve this actually cause confusion and may not in fact achieve their purpose. The Association is still pursuing avenues to clarify its position on this, but below outlines the general issues and possible solutions considered appropriate at this juncture.

a. Confusion over the intended scope of the definition of municipal solid waste

The definition of municipal solid waste is unclear concerning which wastes will be encompassed within it. This is a key concern, as it is this definition, combined with s53(1) and s66, which appears to be intended to create a situation where-by Local Government is empowered to have the first right to collect municipal solid waste in its prescribed district. However, it is unclear whether this definition will incorporate industrial waste, construction and demolition waste, agricultural waste, waste generated by Local Government or waste generated by State Departments.

It is understood that further refinement of the definition of municipal solid waste may be made, subject to regulations made under s87(1) . However, without further clarity on the intent of these regulations, it is difficult for Local Government to assess the implications of this provision on the waste management services it provides. Similarly, it is difficult to assess what the impact of defining a waste as a 'problematic waste' would have on the ability of Local Government to deal with that waste.

It also lacks clarity on when a waste comes under the ownership of the collector rather than the waste producer; thereby creating confusion over ownership of wastes that are not placed in a bin, such as green-waste or kerbside bulk waste. By contrast, s112 of the Health Act clearly defines which wastes a Local Government could undertake to remove. Also of concern is that the definition of municipal solid waste used in this Bill is not used anywhere else in Australia.

The Association considers that to create clarity in the Bill with regard to collection rights and waste ownership, it is essential that separate definitions be provided in 'the meaning of terms used in the Act' for municipal solid waste (including waste generated by Local Governments), commercial waste (including industrial waste), construction and demolition waste, agricultural wastes and institutional wastes (possibly including State Department waste) and that, where possible, the definitions used should be taken from the National Waste Classifications with minimal amendment. Following this, throughout the Bill wherever municipal solid waste is currently used as a catch-all, the individual terms will have to be used to clearly identify which of the waste types are to be incorporated into the provision. Such clarity is considered essential to avoid a situation where a non-licensed contractor could argue the waste they are collecting is not municipal solid waste.

General Recommendation 16 – *That separate definitions be provided for municipal solid waste (to include waste generated by Local Governments), commercial waste (to include industrial waste), construction and demolition waste, agricultural waste and institutional waste (to include State Department waste) and that, where possible, the definitions used should be taken from the National Waste Classifications with minimal amendment.*

General Recommendation 17 – *Wherever municipal solid waste is currently used as a catch-all in the Bill, individual terms be used to clearly identify which of the waste types are to be covered by the provision.*

b. EP Authorisations

It appears that a key to the functioning of the Bill with respect to waste management service provision is that s47(1)(2), s 53(1) and s66 work in concert to make it an offence for anyone to collect municipal solid waste unless they are a Local Government, a Local Government contractor or have an EP Authorisation. This raises a number of questions concerning the intent and equity of this provision.

i. **Applicability of a EP Authorisations**

Under current EP provisions, a collector does not need an EP Authorisation to collect, transport or dispose of waste unless that waste is considered a 'controlled waste'. It is questioned therefore whether the CEO is actually able to provide EP Authorisations for wastes which, under the provisions of the EP Act, do not legitimately require an EP Authorisation. The Association has been advised that Part IV of the EP Act 1986 could be used to give effect to an approval requirement, but that the waste collection would have to be shown to have a 'significant effect on the environment'; which is questionable for most house and trade collections. If the CEO can

not give an EP Authorisation, it seems that a very large grey area is created.

In the instance of an entity wanting to provide a service that a Local Government or a Local Government contractor does not provide, then it seems s66 may indirectly place an onus Local Government to approve, or refuse to approve, the given collection. The Association does not consider this unreasonable in theory, providing that the approval does not then place the same requirements for tendering and monitoring as a written contract with a contractor would. That is, the Association considers it reasonable for a Local Government to keep a list of collectors in its district with approval to collect; but it **does not** consider it reasonable for a Local Government to then be responsible for those collectors as if they were contracted to the Local Government or for Local Government to have regard to whether the collector is continually acting in accordance with all laws and codes of practice as may be relevant.

Many Local Governments, in particular large metropolitan ones, have clearly stated that the sheer number of collectors operating in their district would make it impossible to establish and monitor approvals with each. However, if by regulation the onus was placed on the collector to seek a simple approval (not a contract) from a Local Government to collect in that district, then the Association considers that the situation could be workable.

By contrast, the Association is very unclear how s53(2) would operate if the CEO can not give an EP Authorisation. This is an extremely grey area which really needs to be focussed on by the DEC. It is suggested that an amendment may be required to the EP Act to clearly empower the CEO to provide EP Authorisation under this Act or additional provisions for a different licensing method may be required under this Act.

General Recommendation 18– *That a clear approvals process be established either by provision or regulation that requires a Local Government to approve and register a waste collector to collect waste in its district if Local Government or a Local Government contractor does not collect that waste and an EP Authorisation is not required. The approvals process should explicitly state that –*

- *The approved collector is **not** contracted to Local Government and therefore Local Government has no further responsibilities to the collector beyond registering their approval;*
- *The onus is on the collector to seek the approval of a Local Government and the expense of carrying out the approval be met by the collector (i.e. through an approval fee);*
- *Local Government has no responsibility to ensure the collector is carrying out the approved service; and*
- *The DEC retains responsibility for ensuring that the collector is carrying out their services appropriately in relation to this Bill and all other laws and codes of practice as may be relevant.*

General Recommendation 19 – *That the DEC undertake steps as required to ensure the intended power of the CEO to issue EP Authorisations is in fact provided by the provisions of the WARR Bill.*

ii. **Existing Contracts**

The Association is concerned about the potential repercussions of this Bill on the viability of established waste collection businesses that are not currently in competition with Local Government or Local Government contractors and the viability of the existing contracts these operators have with commercial premises and institutions. That is, a contractor that currently collects waste that a Local Government or Local Government contractor does not will suddenly be committing an offence when the Bill comes into force unless they seek to meet the requirements of s66. This is situation will apply equally to collectors who service State Institutions and general collectors. Although it may not happen in all districts, it is clearly conceivable that a Local Government may seek to take over some of these contracts when the Bill comes into force. As such, with regard to fairness, it is considered essential that some surety be given to allow existing contracts to be completed before the provisions of s66 impact on them. This window may also be used to give a collector time to re-negotiate the existing contract through the Local Government.

General Recommendation 20 – *That provision be made to make existing contracts exempt from the provisions of s66 until they reach the end of the contract period or until such a time as the contract requires renewal or review.*

iii. **Modern Practice**

Notwithstanding any other issues with EP Authorisations, the Association is very concerned with the lack of guidance given with regard to the term 'modern practice' in s53(2)(b) for the following reasons:

- The meaning of this term is highly ambiguous and open to interpretation. The linking of the EP Authorisation process to 'regard for codes of practice' or 'the advice of the Waste Authority' does little to assist the Association, and individual Local Governments, to understand in what situations the CEO may grant an EP Authorisation.

- It is unclear what mechanism might be used to rescind an EP Authorisation if at a later date a Local Government was able to meet the 'modern practice' requirement;

- The consultation process with regard to making a code of practice under s48(2) is inadequate to provide any assurance that Local Government would be fully involved in the development of a code; and

- No appeal rights are given to Local Government for this provision.

To provide a reasonable example of the Association's concerns, the draft Organics Strategy favours source separation of organics. However, a number of the Regional Councils have spent considerable money on systems that deal with organics based on a mixed bin system. As such, the introduction of a separate bin for organics is unlikely to be in the interests of their community. However, if the draft Organics Strategy (as it stands) were incorporated into a code of practice, it is quite conceivable that, if the

Regional Council continued to use a mixed bin system for organics, they could loose their right to collect based on an interpretation of 'modern practice'. This clearly creates an extremely undesirable situation where Local Government will be very resistant to developing any long-term waste recovery infrastructure on the grounds that 'modern practice' will always be a shifting target. Without greater guidance on what 'modern practice' is considered to be, the Association is concerned that this provision could be very damaging for Local Government; even those pursuing actions that are consistent with the waste strategy.

The Association is also concerned that as the provision stands, there is particular risk with regard to residential services, which are considered a core service of Local Government. There is concern that the EP Authorisation system may enable 'cherry picking' to occur; leaving Local Government with the least valuable components of the residential collection. For instance, using the above example, a compost marketer could perhaps offer a specialist 'modern practice' service only for organics. Local Government could find itself in a position where it still has to run a residential service, but without the valuable organic component included to help off-set costs. If such 'cherry picking' were able to occur, Local Government would not be able to realistically provide an economic general residential service to its rate-payers.

General Recommendation 21 – *That a definition of 'modern practice' be added to the Bill that provides greater guidance on what 'modern practice' is considered to be. In the interest of providing surety to Local Governments, it is considered that the intent of the definition must bind 'modern practice' to the objectives and targets of the Waste Strategy rather than codes of practice.*

General Recommendation 22– *That a provision be added to prohibit an EP Authorisation being given for the collection of municipal solid waste from residential premises in a prescribed district.*

General Recommendation 23 – *That Local Government be provided with an avenue to appeal a decision on whether a service was being carried out according to 'modern practice'.*

General Recommendation 24 – *That provision be put in place to limit the length of an EP Authorisation to carry out a given waste management services and to enable Local Government to regain a right to carry out that service if it can do so in accordance with 'modern practice' at the completion of the EP Authorisation period.*

4. Appeals processes

It is acknowledged and appreciated that the WARR Bill does provide a greater avenue to appeal instructions made to a Local Government than the Health Act 1911 provided. However, it is considered by the Association that the provisions that can be appealed on are still fairly limited, covering only s47(3), s49(4) and s 47(9). There are numerous other instances in the Bill where the CEO can require a Local Government to undertake a significant activity, potentially at the expense of that Local Government, that has no

avenue of appeal. The most significant of these requirements are 'power to request report on waste strategy' s34; 'waste management plans' s38, s39, s40 and s42; 'expenses of evaluation' s50; 'waste collection authorisation' s53; and 'investigation and obtaining information' s69, s70, s72. The lack of appeal provisions on these significant aspects of the Bill is considered clearly and directly in conflict with the principle of natural justice.

Further, little guidance is provided in the Bill as to what criteria an appeal will be judged against. It is considered that such guidance must be provided through either regulation or through the addition of a schedule to the Bill to ensure consistency and openness in the appeals process. The Association considers that criteria should include, but not necessarily be limited to, consideration of the objectives for the Bill as they appear in the explanatory notes for the Bill. Also considered of paramount importance is the inclusion of criteria allowing a Local Government to appeal on the basis of its financial or practical inability to fulfil a notice.

General Recommendation 25 – *That the right of a Local Government to appeal any requirement of the CEO to undertake an activity be applied to every relevant provision in the Bill.*

General Recommendation 26 – *That the appeals process be made standardised and transparent through the provision of guiding appeals criteria.*

General Recommendation 27 – *That the right of appeal, either to the Minister or the State Appeals Tribunal (SAT) be at the discretion of the appellant; but that once chosen, only one course of appeal can be pursued.*

5. Unbalanced Focus of the Bill

Notwithstanding any other discussion concerning clauses favoured or disfavoured in the Bill, the Association is extremely concerned that the Bill unfairly focuses the responsibility for waste recovery on Local Government. The Bill is explicit in empowering the CEO to direct Local Government to undertake actions with regard to fulfilling the waste strategy, but is considerably less explicit on how other stakeholders will be involved. The power to direct a report on compliance under s34 and the EPR powers of Part 5 are both acknowledged and supported by the Association. However, these provisions pale in comparison to the prescriptive nature of the provisions that the CEO can make with regard to Local Government waste management services. That Local Government is the only entity required to produce a waste management plan or can be instructed by the CEO to perform a service is illustrative of this. It is difficult to understand why these requirements can be made of Local Government, but not of other significant waste collectors or significant waste producers, such as State Government departments. The Association considers that it is fair and reasonable to expect the balance to be redressed.

General Recommendation 28 – *That all waste strategy compliance provisions be reviewed with regard to creating a more equitable balance between the requisite contributions of all stakeholders, including all major waste collectors and all major waste producers.*

Section 2

Potential Issues for Supplementary Submission

The implications of two major aspects of the Bill remain unclear to the Association:

1. The use of the EP Authorisation mechanism as an effective mechanism for ensuring –

    a. The power of Local Government to collect municipal solid waste in its prescribed district is appropriate; and

    b. All municipal solid waste collectors are Local Government or Local Government contractors, approved by Local Government, or EP Authorised.

2. The lack of clarity that the definitions in relation to municipal solid waste and problematic waste provide when applied to the provisions in the WARR Bill.

The Association will continue to investigate these issues and may make a supplementary submission which may include a clarification of its position in respect of these matters.

Section 3

Specific Comments on the Waste Avoidance and Resource Recovery (WARR) Bill

The following specific comments are provided to indicate whether each section of the WARR Bill is either supported or not supported based on the consolidated opinion of Local Government. Where appropriate, brief recommendations are made to indicate where it is considered basic amendments are required to make a section workable. Where a section is considered of major concern to Local Government, it is referenced to the discussion in the previous general comments section.

Part 1: Preliminary

1. ✓ Short Title

2. ✓ Commencement

3. ✘ Meaning of terms used in this Act

It is considered that the definitions of some important terms have been omitted from the Bill, whilst others are unclear in their intent; creating confusion over what the rights and responsibilities of Local Government are with regard to undertaking and charging for waste management services.

Recommendation 3.1 *– That a definition for CEO be included in 'Meaning of terms used in this Act' to clarify provisions in the Bill containing reference to the CEO.*

Discussed further under 'General comments- 1.Powers provided to Local Government under Health Act 1911'

- 1b. Setting fees and charges
- 1d. Prescribing Districts
- 1e. Local laws

Discussed further under 'General comments- 3.Responsibilities and Waste Ownership'

- 3a. Confusion over the definition of municipal solid waste

4. ✓ State Bound

It is fully supported that the Act should bind the State. However, clarification is required on the effect of this on waste collection and disposal from state institutions, particularly State Waste contracts.

Recommendation 4.1 *– That the effect of the binding of the State on waste collection and disposal be clarified.*

Discussed further under 'General comments- 3.Responsibilities and Waste Ownership'

- 3b. EP Authorisations
    - ii. Existing contracts

5. ✘ Objects of the Act
It is not considered that the Objects of the Act are adequate to appropriately govern the reading of the Bill to ensure the objectives of the Bill outlined in the Explanatory Notes are realised. It is also considered that the broadness of the objects will make it difficult to assess compliance against, particularly in the case of a SAT appeal process. Of paramount concern is that the protection of human health is not explicitly incorporated as an objective. ***Recommendation 5.1 -*** *That the protection of human health be incorporated as a primary Object of the Act to ensure the intent of the repealed provisions within the Health Act 1911 are carried through.* ***Recommendation 5.2 –*** *That the waste hierarchy be removed from the Objects as it is a management model rather than a principle to be followed. It is considered that a reference to sustainable resource management would achieve the same object whilst not binding the Act to a prescriptive model.* **Discussed further under 'General comments- 2.Enabling Local Government'** ➢ 2b. Waste management services a Local Government may be required to undertake
6. ✔ Effect on other Laws
7. ✔ EDPH to be consulted on public health issues

Part 2: Waste Authority
The formation of an independent Waste Authority to undertake the functions outlined in Schedule 2 of the Bill is fully supported by the Western Australian Local Government Association. An effective, independent Authority is considered to be absolutely essential to the successful functioning of the Bill overall.

8. ✔ Waste Authority established
9. ✔ Status
10. ✔ Authority may use other names

11. ✘ Membership

It is acknowledged that the specific skills, knowledge and experience criteria given for members of the Authority is not mandatory; it is suggested that the criteria only asks that someone should meet a given criteria, not must. Nevertheless, it is considered that the given criteria could actively disadvantage prospective Authority members that have valuable skill, experience, and knowledge, but have obtained that experience only in, for instance, Local Government or environmental health. It is considered that the inclusion of such prescriptive criteria in the Bill may limit rather than enable the potential effectiveness of the Authority.

Recommendation 11.1 – *That the prescriptive criteria given for members of the Authority be removed; with the suitability of Authority members rather being assessed against their general skill, experience and knowledge in matters relating to sustainability, waste management, and resource recovery or recycling.*

Recommendation 11.2 – *That the Authority be required as one of its functions under the Act to establish a Stakeholder Advisory Group, with representation from all major waste management stakeholder groups. The criteria for selecting members should be based on prescriptive criteria such as that set out in s11(2)(a-e) to enable the Authority to seek such members with specific skills, knowledge and experience as are required.*

12. ✔ Chairman and deputy chairman

13. ✔ (with amendment) CEO may attend meetings

The CEO's entitlement to attend meetings is supported. However, it is also considered that, given the great importance of the work to be undertaken by the Waste Authority and the need for transparency in that work, it is important to provide the public with the same entitlement to attend meetings. For the same reasons, it is also considered appropriate that the public should be given the entitlement to a 'question time' at the completion of each meeting as per the Local Government Act 1995.

Recommendation 13.1 – *That the public be entitled to attend Waste Authority meetings. It is suggested that this entitlement should follow the same procedure as is followed in public participation at Local Government meetings as detailed in the Local Government Act 1995.*

14. ✔ (with amendment) Constitution and proceedings

Recommendation 14.1 – *The term of office of members of the Authority should be staggered to ensure a continuation of knowledge and procedures.*

15. ✔ Remuneration and conditions of members

16. ✘ Provision of services and facilities

The Association has previously put forward, and maintains the view, that the Waste Authority should be entirely independent of any State Government Department. Notwithstanding this, it is considered that if the Waste Authority remains linked to the DEC (or any other State Department) then the Minister should be explicitly prohibited from drawing on the WMR Fund for the provision of Waste Authority services and facilities. This is in keeping with the State Government's commitment not to use the Fund to fund core functions of State Departments.

Recommendation 16.1 – *That the Bill incorporate a provision to prevent the WMR Fund being drawn on to fund the provision of Waste Authority services and facilities.*

17. ✔ (with amendment) Use of staff and facilities of other departments, agencies and instrumentalities

The Association is concerned that staff and facility sources listed under s17(1) does not include a provision for the Waste Authority to use the services of Local Government. Given the instrumental role played by Local Government Environmental Health Officers in the operation of the Health Act, it is questioned whether the omission of Local Government services will affect the workability of the Bill on the ground.

Recommendation 17.1 - *That provision be made to enable the Waste Authority to make appropriate financial and practical arrangements with a Local Government to make use of Local Government Officers as necessary.*

18. ✔ (with amendment) Committees

There is a contradiction between subsections 1 and 3 in this section which makes it unclear as to whether the Minister's approval is required for the Waste Authority to establish, alter or discharge committees. Given the Minister's influence on the make-up of the Authority itself, it is considered reasonable that The Authority should be empowered to independently establish, alter or discharge committees.

Recommendation 18.1 – *That the contradiction in drafting be amended so that the Waste Authority is empowered to establish, alter or discharge committees as the Authority considers appropriate without approval of the Minister.*

Part 3: Functions of the Waste Authority
Division 1: General

19. ✓ (with amendment) Functions of the Waste Authority
The functions of the Waste Authority are considered by the Association to be appropriately broad and empowering to achieve genuine progress towards the Zero Waste vision. However, a key in achieving that potential is considered the development, implementation, promotion and review of the Waste Strategy and it is therefore of concern that Schedule 2 only refers to implementation.

Recommendation 19.1 – *That Clause 4 of Schedule 2 be expanded to incorporate coordination of the development, implementation, promotion and review of the Strategy.*

20. ✓ Powers generally
The functions of the Waste Authority are considered by the Association to be appropriately broad and empowering to achieve genuine progress towards the Zero Waste vision.

Part 3: Functions of the Waste Authority
Division 2: Accountability

23. ✓ Minister may give directions
The Minister's entitlement to give directions is considered appropriate given the transparency created through subsection (2) requiring such directions to be published in the Authority's annual report.

22. ✘ Minister to have access to information
The Association considers that the Waste Authority's role as a liaison/advisory body will be greatly encumbered by this provision unless the Minister's power to access information is greatly reduced. The separation of the regulatory and advisory functions of the Bill is wholly supported by the Association in that such a separation allows free interaction between an entity and an advisory body without fear of legal ramifications. It is feared that an entity's confidence in liaising with the Authority over potentially controversial issues will be eroded, unless they are able to ensure information they discuss with the Authority will, if necessary, remain confidential.

Recommendation 22.1 – *That a provision be incorporated to entitle the Authority to keep confidential from the Minister such information that an entity has declared to be confidential in situations were it is the entity that has initiated the contact (that is the entity is not being evaluated or audited).*

23. ✓ (with amendment) Annual report of the waste authority
The Association fully supports the Waste Authority providing an annual report to Parliament. However, it is considered that, in the interests of accountability and transparency, the Bill should be more prescriptive on aspects the Authority must report against. It is considered essential that if it is to be useful as an evaluation tool, the report must, as a minimum, evaluate against the Authority's business plan and specifically outline WMR Fund spending.

Recommendation 23.1 – *That a provision be incorporated to require the Authority to report against its business plan and specifically report on spending of the WMR Fund.*

Part 4: Management Documents
Division 1: Waste Strategy

24. ✓ (with amendment) Purpose of the Waste Strategy
The purpose of the strategy overall is fully supported by the Association. However, the phrase 'benchmarked against international best practice' is inappropriate given international best practice may genuinely be unattainable for reasons including geography and population density and therefore inappropriate for inclusion in the Act. It is considered reasonable for the Authority to consider international best practice when developing the Strategy if it chooses. However, primary consideration should be given to whether such a standard is financially and logistically achievable across Western Australia.

Recommendation 24.1 – *That the phrase 'benchmarked against international best practice' be removed from the Bill.*

Recommendation 24.2 – *That, as a principle, the Waste Strategy incorporate consideration for the variable financial and logistic constraints of different Local Governments.*

25. ✓ Waste Strategy may adopt codes or legislation

26. ✓ Waste Authority to prepare a draft strategy

27. ✓ (with qualification) Consultation
The level of consultation in the development stage of the Strategy is acceptable with the qualification that s28 and s29 are amended as outlined below. In particular, if public consultation remains at the discretion of the Minister, then a more prescriptive list of major stakeholders that must be consulted is essential.

28. ✘ Public Notification

Given the importance of the Waste Strategy to all Western Australians, including the general public, it is considered that all means possible should be employed to elicit public input into the document. It is therefore inappropriate that the Minister should be empowered to decide if public submissions should be sought. Further, the draft strategy should be made available on the internet free of charge.

Recommendation 28.1 – *That the Bill be amended so that public submissions must always be sought on the development or review of the Strategy.*

Recommendation 28.2 – *That a provision be added to the Bill to ensure the draft Strategy must be published on the internet and be made available for downloading free of charge.*

29. ✘ Public Submissions

Although major stakeholders, including Local Government, could be consulted by the Authority earlier, there is certainly no guarantee of this. Therefore, the public submission period may be the only opportunity for a major stakeholder to submit comments on the Strategy. Given this, the minimum of 28 days is considered a woefully inadequate period for consultation, particularly given the State and Local Government Partnership Agreement sets out 12-weeks as the minimum for a major consultation.

Recommendation 29.1 – *That the consultation period be changed to reflect the 12-week period enshrined in the Partnership Agreement.*

30. ✓ (with qualification) Draft to be referred to certain bodies

As with s27, the level of consultation at this stage of the Strategy is acceptable with the qualification that s28 and s29 are amended as outlined above.

31. ✓ (with amendment) Consideration by the Minister

Recommendation 31.1 – *That the report by the Waste Authority to the Minister on the submissions and requests be published on the internet with a view to maximising the openness and transparency of the consultation process.*

32. ✘ Approval of the Minister
It is accepted that the Minister must have the power to endorse the Strategy. However, it is feared that the Bill currently allows for a situation where the Minister may delay indefinitely the decision to approve, or refuse to approve, the Strategy. Given the importance of the Strategy in acting as a lynchpin for the Bill as a whole, it is essential that a situation where there is no strategy in place for an extended period be avoided.

Recommendation 32.1 – *That a provision be put into the Bill through which the Minister must approve or refuse to approve the Strategy within 12-weeks of receiving the Strategy, or the Strategy defaults to an approved status.*

Recommendation 32.2 – *That a provision be added to the Bill to ensure the draft Strategy must be published on the internet and be made available for downloading free of charge.*

33. ✓ (with qualification) Review and revision of the waste strategy
The Association endorses the Strategy review process with the qualification that the changes suggested in s28 and s29 are made.

34. ✓ (with qualification) Power to request report on waste strategy compliance
The Association recognises the power of the CEO to request report on waste strategy compliance as an important and realistically usable tool for driving compliance with the Strategy.

Part 4: Management Documents
Division 2: Business Plans

35. ✓ (with amendment) Draft business plan to be submitted to the Minister
There is concern that as the Bill stands, the Authority does not have to produce a business plan each financial year. That is, it could publish in January of 2007 and December of 2008 and still fall within the requirements of the Bill.

Recommendation 35.1 – *The word financial should be added to s35(1) so it read as 'Each financial year the Waste Authority must prepare a draft business plan'.*

36. ✓ Contents of the business plan

37. ✘ Approval and implementation of the business plan
As with the Waste Strategy, it is feared that the Bill currently allows for a situation where the Minister may delay indefinitely the decision to approve, or refuse to approve, the business plan. This is an untenable situation, given that the Waste Authority must have regard for the business plan in carrying out its functions. Also of concern is that, whilst the business plan itself must be made public, major deviations from the plan may be made with the approval of the Minister without additional consultation and without making such changes public.

Recommendation 37.1 – *That a provision be put into the Bill through which the Minister must approve or refuse to approve the business plan within 4-weeks of receiving it or the plan defaults to an approved status.*

Recommendation 37.2 – *That a provision be added to the Bill to ensure the business plan and all major deviations from that plan must be published on the internet and be made available for downloading free of charge.*

Part 4: Management Documents
Division 3: Waste Management Plans

38. ✘ Waste Management Plans

39. ✘ CEO's powers in relation to waste management plans

40. ✘ Waste Authority may prepare or modify waste management plans

The powers provided to the CEO with regard to the development of waste management plans are considered inappropriately prescriptive and limiting of Local Government's entitlement to autonomously develop Plans for the Future that represent both the needs and wishes of the community.

Discussed further under 'General Comments – 2.Enabling Local Government'
- 2a. Waste Management Plans

Discussed further under 'General Comments – 4.Appeals processes'
Discussed further under 'General Comments – 5.Unbalanced Focus of the Bill'

41. ✔ (with qualification) Effect of waste management plans
Acceptance of this section is dependant on the prescriptive nature of the proposed waste management plans being altered to make them more enabling to Local Government.

Discussed further under 'General Comments – 2.Enabling Local Government'
- 2a. Waste Management Plans

42. ✓ (with amendment and qualification) Report on Waste management plans

It is considered that s42(2) is not a suitable inclusion in legislation as its prescriptive nature could prove limiting in the future. It is considered that s42(2) would be more flexible and effective if removed from the Bill itself, but written up as operational guidelines that could then be referred to in s42(1) (i.e. Local Government would make a report as outlined in operational guidelines). It is also considered that reporting in s42(1) should be restricted to a maximum of yearly reporting.

Acceptance of this section is dependant on the prescriptive nature of the proposed waste management plans being altered to make them more enabling to Local Government.

Recommendation 42.1 – *That the Bill be amended so that s42(1) refers to guidelines that should be incorporate the matters outlined in s42(2) and 42(2) itself be removed from the Bill.*

Recommendation 42.2 – *That a provision be added to the Bill to limit reporting requirements under s42(1) to each financial year.*

Discussed further under 'General Comments – 2.Enabling Local Government'

- 2a. Waste Management Plans

Discussed further under 'General Comments – 4.Appeals processes'

Discussed further under 'General Comments – 5.Unbalanced Focus of the Bill'

Part 5: Product Stewardship

43. ✓ (with amendment) Product Stewardship agreement

44. ✓ (with amendment) Extended producer responsibility schemes

45. ✓ (with amendment) Priorities with regard to extended producer responsibility schemes

The Association fully endorses the inclusion of head powers for the introduction of product stewardship schemes. It is considered that the provision of such tools is essential to enable the Waste Authority to effectively implement the Waste Strategy. However, there is concern over the lack of accountability and transparency inherent in the priority waste list development consultation and the mechanisms that trigger the processes involved in introducing a product stewardship scheme.

Recommendation 45.1 –*That provision be made to ensure a full consultation process (as per the State and Local government Agreement) is undertaken in the development of a priority waste list.*

Recommendation 45.2 –*Criteria should be developed in the form of guidelines against which the significance of a waste type can be judged and considered for inclusion on the priority waste list.*

Recommendation 45.3 –*The priority list should be tied to the Strategy and include objectives and targets for each of the priority wastes. These targets must be appropriate and measurable.*

Recommendation 45.4 –*The product stewardship agreement should specify periods for reporting against achievements of the targets outlined in the Strategy. The Waste Authority should then assess if a product stewardship scheme is adequate to meet the targets the Authority itself has set for that priority waste. If the Authority is satisfied with the agreement, then they recommend that the CEO register it. If the Authority is not satisfied the scheme will meet the targets it has set, then provision should be made for an extended producer responsibility scheme under s44 to be triggered.*

Part 6: Waste management services
Division 1: Services provided by Local Government

46. ✘ Application of this part

It is unclear what the intention or outcome of this section is. It would seem that subsection (3) by inference makes a Local Government responsible for the waste management services of a port if no agreement is made under subsection (2). Given the non-standard and specialized nature of port waste, Local Government may not be in a position to provide an adequate service to a port. Further, it would seem that even if a Local Government were to invest in the infrastructure required to appropriately service a port, they could lose that entitlement at any stage, without right to appeal if an agreement under s46(2) were made. As such, the Association does not support a situation in which Local Government may be made responsible for a port's waste management services by default.

Recommendation 46.1 –*That the provision be amended to ensure that, if there is no agreement under s46(2), a Local Government may choose to provide waste management services to a port in its district; and that, if Local Government does choose to undertake services and carries them out in accordance with 'modern practice', then a later agreement under s46(2) cannot be made without the agreement of that Local Government.*

47. ✘ Provision of waste management services

There is considerable concern that these provisions create no limitation on the waste management services a Local Government may be instructed to undertake. Further, where it is indicated how such services, or evaluation of such services, will be paid for; it is Local Government that is the fund source.

Whilst it is acknowledged these instructions can be appealed, this is clearly an unacceptable impost on Local Government. It creates a situation where Local Government cannot predict what they may be required to do in the future and therefore is rendered incapable of making adequate future plans. Further, it is in direct conflict with the commitment of the State not to cost-shift on to Local Government.

Discussed further under 'General Comments – 2.Enabling Local Government'

- 2b. Waste management services a Local Government may be required to undertake

Discussed further under 'General Comments – 4.Appeals processes'

48. ✘ Codes of Practice

This provision has significant implications for Local Government given that the CEO must have regard to codes of practice in judging whether a Local Government is carrying out waste management services according to modern practice. As such, it is of paramount importance that Local Government must be guaranteed the right to provide input on the development of any code of practice which may impact on the operation of Local Government waste management services.

Recommendation 48.1 –*That provision be made to ensure Local Government is fully consulted in-line with the provisions set out in the State-Local Government Partnership Agreement on the development of any code of practice which may impact on the operation of Local Government waste management services.*

Discussed further under 'General Comments – 3.Responsibilities and Waste Ownership'

- 3b. EP Authorisations
    - iii. Modern practice

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49. ✘ CEO may monitor and evaluate waste management services

50. ✘ Expenses of evaluation

It is considered that these provisions place an unfair impost on Local Government to meet the expense of evaluations that should reasonably be undertaken by the DEC. The Association agrees that if a Local Government is found to be failing to carry out a waste management service in its district to the detriment of public health; that is committing an offence under s68, then it is fair that that Local Government should meet the expense of that evaluation. However, given the lack of clarity provided on the services a Local Government may be required to provide under s47(3) and the lack of clarity given on the definition of modern practice with regard to s53, placing the expense of evaluation on Local Government for s50(1)(a) and (b) seems little more than cost shifting on the part of the Local Government. With regard to s50(1)(c), given that Local Government can be made to report on its waste management plan under s34 and s42, this provision seems repetitious and unnecessary.

Recommendation 49-50.1 – *That the provisions be amended so that Local Government is only responsible for the expense of evaluation if they are found to have committed an offence under s68 or a requirement is imposed under s47(3) for the purposes of protecting public health.*

Discussed further under 'General Comments – 2.Enabling Local Government'

- 2b. Waste management services a Local Government may be required to undertake

Discussed further under 'General Comments – 4.Appeals processes'

51. ✓ (with amendment) Fees and charges for waste management services
The Association is in agreement that Local Governments should be able to set fees and charges for their waste management services. However, there are a number of concerns with this provision of the Bill as it is written, particularly with regard to how effectively the powers of the Health Act have been carried over.

Recommendation 51.1 –*That the Bill be amended appropriately to ensure Local Government is empowered to set fees, charges and rates accounts for all considerations. For instance, charging for services as a part of a rates notice, charging flats individually, charging holiday homes, charging for future landfill remediation services.*

Discussed further under 'General comments- 1.Powers provided to Local Government under Health Act 1911'

- 1b. Setting fees and charges

52. ✘ Disposal of waste by Local Government

Discussed further under 'General comments- 1.Powers provided to Local Government under Health Act 1911'

- 1c. Disposal of waste

Part 6: Waste management services
Division 2: Waste collection authorisations

53. ✘ Waste Collection Authorisation

54. ✘ CEO to consult Local Government and EDPH

The intent of this provision seems to be to provide Local Government with a monopoly to collect or contract for such municipal solid wastes such as it chooses to provide a service for. It further seems to intend to create a situation where non-government linked collectors are EP authorised by the CEO; thereby creating a situation where all collectors are known and registered in some way.

The Association endorses this intent, but has serious questions as to how this system would work in practice. It seems improbable that the DEC will have the capacity to provide EP Authorisations to all non-Local Government collectors, particularly if it first has to go through the process outlined in s54. It is also questioned whether an EP Authorisation is the appropriate mechanism, since many types of waste do not currently require an EP Authorisation for collection.

Discussed further under 'General comments - 1. Powers provided to Local Government under Health Act 1911'

- 1a. Provision of services

Discussed further under 'General Comments – 3. Responsibilities and waste ownership'

- 3b. EP Authorisations
    i. Applicability of EP Authorisations

Discussed further under 'General Comments – 4. Appeals processes'

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55. ✓ (with amendment) Authorisation holder may supply waste receptacles
Recommendation 56.1 *–That the Bill incorporate a similar provision for Local Government with respect to supplying waste receptacles.*

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56. ✓ Disposal of waste by holder of authorisation

Part 7: Collection and application of Levy
Division 1: Collection of Levy

57. ✓ Payment of Levy

58. ✓ Financial assurance

59. ✓ Payment by instalments

60. ✓ Penalty for non-payment

61. ✔ **Recovery of levy**
62. ✔ Evading levy

Part 7: Collection and application of Levy
Division 2: Waste management and recycling fund

63. ✔(with amendment) Waste management and recycling fund ***Recommendation 63.1 –*** *Provision be made for all revenues from penalties and fines to be paid back into the Levy after the costs of administering such penalties have been met.*
64. ✘ Application of moneys in the WMR Fund There is concern whether s64 effectively hypothecates the Fund to waste management or whether the wording gives a degree of ministerial discretion; for instance the fund could potentially be used to fund contaminated site remediation. There is also concern that s64(c) enables WMR funds to be used for core activities of the DEC that should be funded by consolidated revenue. It is considered that the use of the Fund for such activities or for anything other than Waste Authority waste management programs would directly violate the commitments made by the State to this principle when it was first agreed to introduce the Levy. ***Recommendation 64.1 –****That the Bill explicitly bind use of the WMR Fund to Waste Authority waste management programs and explicitly prohibit the use of the fund for contaminated site remediation or DEC core activities.*
65. ✔ Application of Financial Administration and Audit Act 1985

Part 8: Offences

66. ✘ Waste collection not to be carried out by unauthorised persons As with s53, the Association supports the intent of ensuring all persons collecting waste are authorised to do so. However, as before it is questioned as to whether this provision is workable in practice. **Discussed further under 'General comments - 1. Powers provided to Local Government under Health Act 1911'** ➢ 1a. Provision of services **Discussed further under 'General Comments – 3. Responsibilities and waste ownership'** ➢ 3b. EP Authorisations ii. Applicability of EP Authorisations iii. Existing Contracts
67. ✔ Obstruction or hindrance

68. ✓ (with amendment) Services to be provided in accordance with waste management plan or authorisation
This section is acceptable to Local Government in as much as it is made absolutely clear that the intent of the offence is only to protect public health; not improve waste management services for the purposes of improved resource recovery or such like.

Recommendation 68.1 –*That the Bill clarify that this section relates specifically to public health by explicitly stating this in 68(1).*

Part 9: Enforcement
Division 1: Investigating and obtaining information

69. ✘ Power to require information or material

70. ✘ Inspectors

71. ✘ Authorised persons and analysts

72. ✘ Audit may be directed by CEO

It is acknowledged that in order to effectively enforce the implementation of the Waste Strategy, powers such as those provided under part 9 are necessary and broadly supported by the Association. However, as the Bill currently stands, the provisions appear to be overly inflexible and non-transparent in their application. Further, they provide no avenue for appeal and do not guarantee commercial confidentiality. It is the experience of the Association that such draconian enforcement measures are unlikely to be readily applied in practice.

Recommendation 69-72.1 –*Local Government be provided with an avenue to appeal any enforcement proceedings issued against it through either the Minister or SAT.*

Recommendation 69-72.2 –*The penalties have a maximum and minimum, so lesser offences have an enforcement avenue.*

Recommendation 69-72.3 – *The trigger mechanism for the CEO, or someone empowered by the CEO, to initiate an investigation must be clarified and made public.*

Recommendation 69-72.4 – *Commercial confidentiality must be assured where necessary (as per the EP Act 1986).*

Discussed further under 'General Comments – 4. Appeals processes'

Part 9: Enforcement
Division 2: General

73. ✓ **Who can initiate proceedings for offences**
74. ✓ **Time for bringing prosecutions**
75. ✓ **Daily Penalties**
76. ✓ **Attempt, incitement or accessory after the fact**
77. ✓ **Additional powers available to the court**

Part 10: Appeals

78. ✘ **Local Government may appeal from requirement of CEO**

The power to appeal is limited in the Bill to s47(3), s49(4) and s 47(9). However, there are numerous other instances in the Bill where the CEO can require a Local Government to undertake an activity, potentially at the expense of that Local Government, that has no avenue of appeal. This is considered clearly and directly in conflict with the principle of natural justice.

Recommendation 78.1 –*That the right of a Local Government to appeal any requirement of the CEO to undertake an activity be applied to every relevant provision in the Bill.*

79. ✓ **How an appeal is made**

80. ✘ **Local Government may appeal from requirement of CEO**

Given the high level Ministerial entitlement to direct the Waste Authority functions, it is generally considered that SAT is a more independent body to hear Local Government appeals. However, many Local Governments, particularly rural ones, have stated that the Minister is a preferred avenue for appeals, as SAT appeals have proved to be prohibitively expensive in the past. As such, it is considered the principle of natural justice is best served by allowing a Local Government to nominate either SAT or the Minister as their avenue for appeal, with the decision of the chosen body remaining final.

Recommendation 80.1 –*That the provision be amended to allow a Local Government to nominate to appeal either through the Minister or SAT (but not both).*

Discussed further under ‘General comments- 4. Appeals processes’

Part 11: General Provisions

81. ✓ Waste Management Operations

82. ✘ Confidentiality

Recommendation 82.1 – *Commercial confidentiality must be assured where necessary (as per the EP Act 1986).*

83. ✓ Delegation

84. ✓ Other provisions of the EP Act apply

85. ✓ Protection of liability for wrongdoing

86. ✓ Laying documents before Parliament

87. ✘ Regulations

The wide range of matters in respect of which regulations may be made with regard to Local Government waste management services makes it difficult to provide endorsement to this section. In general, the Association considers that regulations should be restricted to ensuring the protection of human health; or be enabling to Local Government to make Local Laws to ensure consistency with the waste strategy in a manner suitable to the individual requirements of that district.

Discussed further under 'General comments- 1.Powers provided to Local Government under Health Act 1911'

- 1e. Local Laws

Discussed further under 'General Comments – 2.Enabling Local Government'

- 2c. Matters in respect of which regulations may be made – Waste collection and facilities

88. ✓ (with amendment) Review of the Act

It is questioned whether, given the involvement of the Minister in the carrying out of the Act through influence of the Authority, a more independent body should not prepare a report on the Act.

Recommendation 88.1 – *That provision be made for an independent body or entity to report on the Act.*

89. ✘ Consequential amendments

It is questioned whether the repealed provisions of the Health Act have been effectively carried over into this Bill.

Discussed further under 'General comments- 1.Powers provided to Local Government under Health Act 1911'

90. ✓ Transitional and savings provisions

Section 4

Specific comments on the Waste Avoidance and Resource Recovery Levy Bill 2006

Part 1: Preliminary

1. ✓ Short Title

2. ✓ Commencement

3. ✘ ✘ ✘ Interpretation

The definition of “licensed premises” has been amended from the definition used in the original *Environmental Protection (Landfill) Levy Act 1998.* **The Association vigorously opposes this change.** The qualification provided in the original Act is critical to ensuring that the levy applies only on waste to landfill and is not able to be placed on waste received at other licensed premises such as transfer stations, greenwaste processing facilities and resource recovery facilities. Any uncertainty with respect to the application of the levy on other licensed premises, especially resource recovery facilities, will significantly impact the ability of proponents to satisfy project stakeholders and funding institutions as to the long term viability of such ventures. This is clearly not desirable for moving towards the Zero Waste target and is vigorously opposed by Local Governments.

Levy Bill Recommendation 3.1 – That the definition of licensed premises in the Waste Avoidance and Resource Recovery Bill 2006 must be amended to read – “licensed premises” means premises in respect of which the occupier is required to hold a licence under the *Environmental Protection Act 1986* ***Part V, and which are used for the purpose of disposing of waste to landfill” (or a similar construction which limits the application of the levy to waste sent to landfill only).***

4. ✓ Levy may be prescribed

5. ✓ Levy imposed

6. ✓ Levy payable by holder of license