



WESTERN AUSTRALIAN
LOCAL GOVERNMENT ASSOCIATION

Policy Statement on WASTE MANAGEMENT LEGISLATION

PREPARED BY THE



MUNICIPAL WASTE ADVISORY COUNCIL
"Getting the Environment Right"

June 2004

Status of this Policy Statement

This Policy Statement 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.

Policy Statements 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 this Policy Statement and to act consistently with its contents. Individual Local Governments and Regional Councils are encouraged to support them in this but are not bound by the document.

Policy Statements adopted by the WA Local Government Association are reviewed and new Policy Statements are developed regularly. The latest WA Local Government Association Policy Statements can be obtained from the website: www.wastenet.net.au

In-line with standard MWAC policy, this policy statement will be reviewed 6-months after its endorsement by the State Council. It will be reviewed again at least every 2-years subsequent to this; with any significant developments acting to instigate an earlier review.

The Municipal Waste Advisory Council's member organisations are:



MUNICIPAL WASTE ADVISORY COUNCIL

Policy Statement on WASTE MANAGEMENT LEGISLATION

Title:	WA Local Government Association Policy Statement on Waste Management Legislation (June 2004) <i>"A Policy Statement to enunciate the Local Government position on waste management legislation in Western Australia"</i>
Statement of Policy:	<p>1. Context Waste Management Legislation may be developed which consolidates relevant existing provisions and develops a new framework for waste management. Local Government is aware that the complete framework within which waste management is conducted will never be entirely prescribed by a single piece of legislation. While Local Government is, at the time of writing, particularly concerned with a proposed piece of legislation, it recognises that other pieces of legislation will remain or become relevant. Thus this policy statement should be read with an emphasis on the functional result rather than on a specific piece of legislation.</p> <p>2. Principles</p> <p>a) Sustainability Waste Management Legislation must support other legislation and policies in WA relating to sustainability. The elements described in s4A of the Environmental Protection Act are key components of the principle of Sustainability as it is understood by Local Government.</p> <p>b) Waste Hierarchy Waste Management Legislation must support the Waste Hierarchy as an approach to assessing the relative desirability options within of a range waste management options.</p> <p>c) Transparency and Accountability Waste Management Legislation must support the principles of Transparency and Accountability by requiring these principles to be applied in all of the processes and mechanisms established pursuant to the Legislation.</p> <p>3. Objectives</p> <p>a) Primary Objectives Applying the Principles set out above, Waste Management Legislation must clearly state the primary objectives which it is intended to achieve. These should include the following:</p> <ul style="list-style-type: none">• To protect human health and the natural environment;• To minimise resource consumption;• To minimise waste; and• To effect the transition to a waste free society. <p>b) Supporting Objectives Waste Management Legislation must achieve the primary objectives by pursuing the following supporting objectives:</p> <ul style="list-style-type: none">• To minimise waste sent to landfill;• To minimise the negative environmental impacts of material sent to landfill;• To maximise waste reuse and recycling;• To create incentives to avoid waste;• To increase the commitment and participation of stakeholders in respect of/to? waste issues;• To secure stable and adequate funding for advancing the management of waste



- To foster technological innovation and capital investment; and
- To develop flexible and effective frameworks and structures to achieve the forgoing objectives.
- To define the roles and responsibilities of key participants in waste generation and or management

4. Framework

Waste Management Legislation must contribute to a framework which provides for a state strategy, coordinated action, a well resourced waste agency and clear roles and responsibilities for the various stakeholders.

a) State Waste Strategy

Waste Management Legislation must endorse the creation and maintenance of a State Waste Strategy. It is critical that the development of the Strategy should be the responsibility of an Independent Waste Agency (see below). The Legislation must provide guidance on the matters which are to be addressed in the State Waste Strategy.

b) Priority Waste List

The legislation must require the compilation and publishing, on an annual basis, of a list identifying which wastes and product types are of most concern in the State. The list should be developed on the basis of answers to questions including:

- Does the waste or product cause significant environmental or social impacts?
- Does the waste or product cause significant costs/problems for waste processors?
- Does the waste or product have unrealised potential for recycling / resource recovery?
- Is the waste or product likely to be disposed of illegally?
- Does the waste or product cause significant community concern?
- Is the producer well placed to reduce the impacts of their products?

c) Consultation

The development of the State Waste Strategy, the Priority Wastes List and to some extent subsidiary strategic plans will require consultation with stakeholders, including waste generators, waste managers and the community at large. Waste Management Legislation must establish clear consultation processes for the parties to follow.

d) Coordinated Activity

Strategic planning at subsidiary levels, such as within industrial sectors or government departments must support the State Waste Strategy and reflect upon the Priority Waste List. Waste Management Legislation must establish mechanisms to encourage and assist stakeholders to achieve conformity with the Strategy in all their waste planning and activities. This should not preclude a flexible approach to determining conformity.

e) Independent Waste Agency

Waste Management Legislation must establish an Independent Waste Agency (the Agency) to perform a number of roles of a collaborative, facilitative and/or strategic nature. The key roles of the Agency will be to develop, administer, monitor and review the State Waste Strategy and the Priority Waste List and to develop and implement an annual Business Plan.

f) The Department of Environment

The Department of Environment should continue to perform a range of regulatory functions. In carrying out these functions, the Department must be required to apply the principles and assist in achieving the objectives of Waste Management Legislation. In addition, the Department must be required to support the State Waste Strategy.



g) Local Government

Waste Management Legislation must clearly define the role of Local Government in managing waste. This must include a clear statement of the purposes for which Local Government carries out Waste Management activities; clear statement of the powers of Local Government in carrying out its Waste Management activities; clear statement of Local Government's relationship to the Agency and the State Waste Strategy. Specific powers that Local Government has an interest in retaining or acquiring include:

- Power for Local Governments to charge for the provision of a range of waste management services;
- Power to assert a monopoly over such waste collections as it is empowered to undertake;

h) Industry

Waste Management Legislation must support the framework to target waste generation, which in turn necessitates changes in production and marketing. Therefore, Industry involvement must be recognised as integral to the framework and a priority for legislative reform. In particular, those industries relevant to the Priority Waste List should be targeted for involvement in the State Waste Strategy. Where necessary regulation or legislation should be developed to mitigate the impacts of those industries in order to ensure that the objectives of the Strategy and Waste Management Legislation are met.

5. Funding

Waste Management Legislation must be supported by stable, adequate and equitable mechanisms for securing funds to give effect to the legislative and strategic objectives. This is likely to require some revision of existing legislation like the Environmental Protection (Landfill) Levy Act 1998.

a) Landfill Levy

The levy must continue to be fully hypothecated to waste management by virtue of it being paid into a fund such as the Waste Management and Recycling Fund. Waste Management Legislation must specify that increases in the Levy are to be justified with reference to the amount required for waste programs consistent with the State Waste Strategy or Waste Management Legislation.

b) Waste Management and Recycling Fund

The statutory provisions which govern the spending of moneys from the Fund should be amended in order to require disbursements from the Fund to only be made in accordance with the Annual Business Plan of the Independent Agency. This is necessary to ensure that the Fund is applied in a coordinated manner.

c) The Role of the Minister

The Fund should continue to be administered by the Minister, subject to the following modifications. Rather than applying the moneys on a project by project basis, the Minister should apply the moneys on an annual basis to resource the Independent Agency's Annual Business Plan. Ministerial discretion would be retained through the Minister's right to approve or reject the Annual Business Plan. Before granting approval, the Minister would need to be satisfied that the Annual Business Plan is well adapted to support the objectives of the State Waste Strategy and is consistent with the purposes of the Fund.

d) Consolidated Revenue

Waste Management Legislation must not disturb the current arrangements whereby the functions of the Department, relevant to waste management are funded out of consolidated revenue. In particular, Waste Management Legislation must not apply the resources of the Fund to subsidise these functions.

e) Accounting and Auditing

All disbursements from the Fund must require proper accounting and acquittal procedures and regular auditing of the Fund should be provided for.



f) Other Levies

The points raised in relation to funding (5(a) – (e)) should be read to apply equally to any new levies which may be introduced in the future in relation to waste management issues. In particular, any new levies would need to be hypothecated to waste management and disbursed within a strategic framework such as that outlined above.

6. Achieving Legislative Objectives

a) Legislation to authorise various functions and instruments to support objectives

Waste Management Legislation should provide head powers for a suite of different types of policy functions and instruments. These should provide for a range of different approaches to achieving the objectives of the Legislation. Key functions and instruments are listed below (Points 7-9).

b) Selection of appropriate policy responses

Waste Management Legislation must provide clear guidance on the processes to be employed in choosing the best policy response from among the functions and instruments outlined below (Points 7-9). Many of the policy responses may fall under the category of Actions developed under the State Waste Strategy.

c) Criteria for selecting appropriate response to be set out

Waste Management Legislation must provide criteria by which to determine the most appropriate mix of policy responses for achieving the legislative and strategic objectives. Some of the key criteria that Local Government wishes to see applied include:

- Whether a given response sends the right signals to waste generators;
- Whether such signals are financial and able generated by market based instruments? (financial signals transmitted through the market should be preferred);
- Whether the compliance costs and administrative burdens are reasonable;
- Whether there is capacity to deliver a given response in a timely fashion;

7. Regulatory functions

Waste Management Legislation must provide head powers for a range of regulatory functions. At a minimum the head powers should enable the Minister or the Department to do the following:

- Make regulation to reinforce industry self regulation
- Impose realistic reporting requirements on waste generators and waste managers
- Impose targets on key waste generators
- Ban the landfilling of particular products or waste types
- Impose the full range of Extended Producer Responsibility schemes on producers

8. Non-Regulatory Functions

Local Government contemplates that a wide range of non-regulatory or strategic functions would be carried out by the Independent Agency. At a minimum, Waste Management Legislation must require the Agency to discharge the following functions:

- Develop the State Waste Strategy
- Develop the Priority Waste List
- Develop an annual Business Plan which sets out, with costings, how the Independent Agency proposes to support the State Waste Strategy in a given year

In addition, Waste Management Legislation should enable the Independent Agency to perform the following functions:

- Provide, through the Business Plan, funding or in-kind support to assist stakeholders to achieve objectives of the State Waste Strategy.
- Provide facilitation, coordination and/or funding for industry self-regulation programs
- Enter into partnership agreements with key stakeholders



	<ul style="list-style-type: none"> • Collaborate with producers on projects to promote cleaner production practices; • Conduct research to advance waste management practices in line with the legislative and strategic objectives; • Provide advice to the Minister including recommendations for new regulation or legislation (including regulation which may require collaboration with other government departments); • Audit the compliance of various government departments with the State Waste Strategy. <p>9. Market Based Instruments Waste Management Legislation must provide head powers to enable the Minister or the Department to establish market based instruments including, but not limited to:</p> <ul style="list-style-type: none"> • Targeted Levies; • Product deposit-return schemes; • Tradeable certificate schemes. <p>10. Act must bind the Crown Waste Management Legislation must explicitly bind the Crown.</p> <p>11. Legislation must provide for Independent Legislative Review It is reasonable to expect that ongoing improvement will be required to ensure that Waste Management Legislation is functioning well and achieving its objectives. The requirement for a periodic review should be formalised within the Act.</p> <p>12. Procedural Fairness Where the Department or the Agency are given executive or quasi judicial powers which empower them to make decisions with the potential to prejudice the interests of Local Government generally or any local government specifically, those powers must be granted subject the application of the principles of natural justice and the granting of recourse to appropriate review bodies.</p>
Date of Adoption	2004
Associated Policies:	Policy Statement on Extended Producer Responsibility (2004)
Background:	<p>Origins of this Policy Statement Local Government is a key stakeholder in Waste Management Policy and takes an active interest the question of legislative reform of this policy area. The WA State Government has made clear its intention to create new legislation relating to waste management, waste avoidance, recycling and the recovery of materials and resources from the waste stream. Local Government has been broadly supportive of this intention and continues to engage with the State Government in developing a progressive and workable legislative framework for waste management.</p> <p>A range of stakeholders in WA have actively implemented successive policies and programs to address the growing quantity of waste and associated environmental and social impacts. However, there is evidence that a more comprehensive and long term approach to minimising the impacts of waste is required. The State Sustainability Strategy, the Strategic Directions for Waste Management in WA and numerous other publications point to the need to coordinate and integrate our approaches, have more regard to the non-financial costs and benefits of our actions and look beyond 'bolt-on' modifications to existing systems.</p>



MWAC has gone to considerable lengths to collate the experiences, views and priorities put forward by the many Councils and Shires in the State in respect of waste issues. MWAC has also devoted considerable time and resource to researching the legislative responses to waste issues which have been implemented elsewhere in Australia and in other parts of the world. This work has served to highlight many issues which Local Government will wish to see addressed as well as a variety of mechanisms to address them.

Policy Context

Local Government considers that waste regulators and waste generators have been unreasonably focussed on the systems employed by Local Government to manage the municipal waste stream. It is clear to many in Local Government that significant gains remain to be made in relation to the issue of waste generation. The waste hierarchy suggests that waste policy should value more highly measures to reduce or eliminate the generation of waste. These are likely to be measures which waste managers, and Local Government in particular, are poorly equipped to implement. New legislation to address waste issues will need to reverse the traditional focus and facilitate the transition away from an outdated mentality that society can deal with its waste problems through end-of-pipe solutions.

Local Government recognises a number of forces which can be expected to impinge on the legislative approach. Firstly, Local Government recognises that Governments cannot be expected to efficiently regulate all aspects of private activity and that the Command and Control approach to environmental regulation is deeply unpopular with some stakeholders. Secondly, Local Government recognises that all stakeholders have an interest in efficiency and that considerations of cost are relevant in determining which instruments are most appropriate to deal with any given issue. Finally Local Government recognises that many stakeholders expect legislative responses to permit flexible approaches to compliance.

The forgoing points are noted because Local Government has developed this policy statement, having due regard to the political, economic and social context of waste issues. Local Government considers that this policy statement reflects some sensitivity to the limitations imposed by such parameters. In particular, Local Government understands that any WA Waste Management Legislation will provide a blend of regulatory, collaborative, punitive, incentive-based and other policy instrument types.

The Legislative Goal

Local Government has identified that it wants a legislative framework for waste management which is clear on its objectives, establishes well targeted responses, has the necessary teeth to take unpopular measures when required and proceeds in a truly coordinated fashion such that all stakeholders are able to mutually reinforce the achievement of the same overarching objectives. In order to establish these things, the legislation will need to provide for a number of elements. The most important of these are listed in the following section.

Components of Waste Management Legislation

Coordinated Strategic Waste Planning Framework

Local Government has determined that a coordinated Strategic Waste Planning framework would be a valuable component of any Waste Management Legislation. By this term, Local Government means a hierarchical system of strategic planning which facilitates mutually reinforcing actions across disparate sectors. Such a system would involve a waste strategy for the entire state, supported by provisions which ensure that it is adopted and applied in the necessary public and private sectors. This concept is illustrated below in Figure 1.



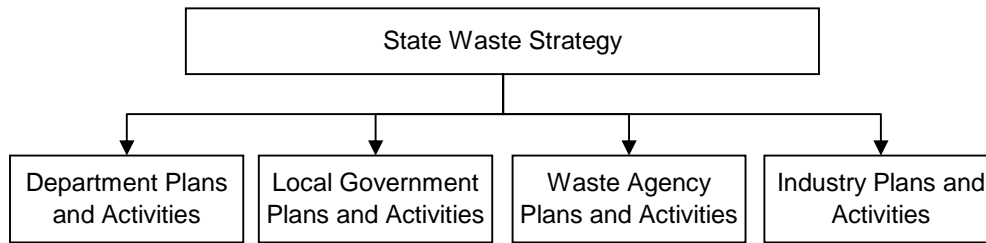


Figure 1: Conceptual diagram showing the relationship between the State Waste Strategy and the planning activities of key stakeholders

Independent Waste Agency

Local Government research suggests that a waste agency which is properly resourced but suitably independent from the regulatory machinery of government will be a cornerstone of a new structure for governmental engagement with waste issues. It is apparent to Local Government that collaborative and regulatory functions are poorly married with the one bureaucracy and that these functions must be separately vested. This will be important both in order to ensure the transparent management of funds and to attract private engagement with a collaborative agency. Furthermore, if there is to be a coordinated strategic waste planning framework it would be beneficial to have this drawn up by an agency which is independent from all the stakeholders – including other components of the machinery of government.

Novel Mechanisms

A large number of novel regulatory and economic mechanisms for dealing with waste generation and management have been implemented around the world. Promising mechanisms include Extended Producer Responsibility schemes, tradeable certificate schemes, combined upstream tax/subsidies and deposit schemes. The drafting of new Waste Management Legislation for WA will be an opportunity for the legislature to establish procedures for the adoption of some of these mechanisms where they can be shown to be appropriate. In other words, while the legislation may not establish specific mechanisms, it should authorise the adoption of new mechanisms and thereby reduce the political inertia which may otherwise impede such adoption.

Definitions:

Extended Producer Responsibility:

The financial and/or physical co-responsibility of those involved in producing, providing or selling a certain product for the management and disposal of that product at the waste phase. Extended Producer Responsibility schemes generally engage producers in financing or carrying out the collecting, processing, recycling or disposing of post-consumer waste. Extended Producer Responsibility schemes may also be directed at changing manufacturing practices.

Life Cycle Inventory

An inventory which quantifies and classifies energy and raw material requirements, emissions into air and water, solid waste generation and other environmental burdens occurring throughout the life cycle of a product or a process.

End of Policy Statement



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