

GUIDANCE NOTE – TEMPLATE WASTE LOCAL LAW

Introduction

WALGA received funding from the Waste Authority, through the Waste Avoidance and Resource Recovery Levy, to develop a Template Waste Local Law.

This Guidance Note has been developed to explain the rationale used to develop this Template Local Law, and to assist Local Governments in applying it to their local situation. It contains comments about the local law-making process, the head of power for the Template Local Law and a detailed rationale for the inclusion / exclusion of a range of clauses in the Local Law.

Background

In 2011, the Joint Standing Committee on Delegated Legislation disallowed the City of Gosnells and the Shire of Derby/West Kimberley Waste Local Laws that were based on the former WALGA Template Waste Local Law 2010¹. This occurred, despite the Committee previously approving some Local Laws based on the WALGA Template.

This disallowance resulted in a situation where Local Governments were unable to introduce Waste Local Laws, and had to continue using the refuse provisions of their Health Local Laws, as per the transition arrangements in the *Waste Avoidance and Resource Recovery (WARR) Act 2007*.

The process of creating a new Template Waste Local Law that addresses the concerns of the Joint Standing Committee, has involved working closely with:

- Lawyers experienced in drafting Local Laws
- Joint Standing Committee on Delegated Legislation
- Waste Authority
- Department of Local Government and Communities.

This level of collaboration has been an essential means of ensuring the Template Waste Local Law is legally robust and includes provisions relevant to the local law making head of power under Section 64 of the WARR Act.

The Joint Standing Committee has considered the Template Waste Local Law and made some recommendations for changes (Report 77 – 27 November 2014²). The review of the Template Local Law by the Committee is a new process, as previously the Joint Standing Committee under its then Terms of Reference could only consider Local Laws as they were put forward by an individual Local Government.

The great advantage to the new approach is that if Local Governments follow the Template Waste Local Law, then it is highly likely to meet the expectations of the Joint Standing Committee. However, if a Local Government changes the current form of the Template Waste Local Law, or adds additional content, it is likely to undergo greater scrutiny from the Joint Standing Committee to the extent that justification for any alterations is likely to be requested, with the ultimate potential for disallowance to arise.

¹ Joint Standing Committee on Delegated Legislation (2011). Report 46 City of Gosnells Waste Local Law 2011 & Shire of Derby/West Kimberley Waste Services Local Law 2011. Available from:

<http://www.parliament.wa.gov.au>.

²[http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(ReportsAndEvidence\)/EF5B8A2CE285F6E248257D9D000B4947?opendocument](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(ReportsAndEvidence)/EF5B8A2CE285F6E248257D9D000B4947?opendocument)

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When Making a Local Law

As with other Local Laws, a Waste Local Law cannot operate outside of the district of the Local Government it has been created for. Additionally, a Waste Local Law that is inconsistent or duplicates the provisions of the WARR Act, or any other written law will be inoperative to the extent of the duplication.

When making a Local Law, Local Governments must follow the steps outlined in section 3.12 of the *Local Government Act 1995*. For further information, refer to the Department of Local Government and Communities *Operational Guidelines Number 16 "Local Laws"* available from <http://dlg.wa.gov.au/Content/Publications/LGGuidelines.aspx>

Please note that any local law made under the WARR Act is required to be sent to the Minister for the Environment as well as the Minister for Local Government and Communities in accordance with s. 3.12(3)(b) of the Local Government Act.

Head of Power

Section 61 of the WARR Act provides Local Governments with the power to make Local Laws so that it can perform its functions under the WARR Act. The Template Local Law has been drafted in a manner that clearly reflects this head of power.

Section 64(2) of the WARR Act states that a Local Law may be made for all or any of the following purposes —

- a) the provision and administration of waste services and related matters;
- b) the establishment, provision, use and control of receptacles for the deposit and collection of waste, whether temporary or otherwise;
- c) if a local government itself undertakes or contracts for removal of waste from premises, imposing on the owner or occupier of the premises requirements in connection with the removal so as to facilitate the removal, and prescribing the manner in which the requirement is to be complied with;
- d) if a local government or the holder of a waste collection permit does not itself undertake or contract for removal of waste from premises, imposing on the owner or occupier of the premises a requirement to remove waste from the premises, and prescribing the manner in which the requirement is to be complied with;
- e) if a local government itself undertakes or contracts for the removal of waste, requiring the waste to be placed in waste receptacles provided by the local government;
- f) prescribing intervals at which the contents of the receptacles will be removed by a local government;
- g) requiring the temporary placing of waste receptacles in streets or lanes by owners or occupiers of property for collection of waste, and requiring the replacement of the receptacles on the property;
- h) providing for the maintenance by owners and occupiers of waste receptacles provided by a local government;
- i) providing for the issue of approvals to collect local government waste and remove it from premises;
- j) fixing fees and charges in relation to waste services provided by a local government and the issue of approvals under paragraph (i), and prescribing the persons liable and the method of recovery of amounts not duly paid.

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Why are the provisions of the new Template Waste Local Law different to those of the Health Local Law and WALGA’s former Waste Local Law 2010?

The new Template Waste Local Law is different to previous Waste Local Laws because it seeks to address the concerns raised by the Joint Standing Committee. In designing the Template Waste Local Law, WALGA has only included items that are provided for by the head of power in the WARR Act.

The Local Law has been drafted in a way that accommodates the variety of services that a Local Government may provide to the community. If a Local Government does not offer a particular service that is included in the Template Waste Local Law, that section of the Template can be deleted when creating your own Waste Local Law.

Clause / Rationale

The following table provides background and rationale for selected clauses of the Template Waste Local Law. Remaining clauses are for a self-evident purpose therefore no commentary is included.

Part 1 - Preliminary

Clause: 1.5(1) ‘Collectable waste’

Rationale: This definition has been amended so there is a link with the head of power provided to Local Governments in the WARR Act. Note the definition of *Local Government waste* in the WARR Act when considering this definition. All material from households is considered ‘Local Government waste’ however some of this material may be recoverable (recyclables and organic material). Therefore these types of ‘waste’ are further defined.

The definition of ‘collectable waste’ also highlights that there are some wastes which, although they may have traditionally been regarded as ‘Local Government waste’, such as liquid refuse and liquid waste, are inappropriate for collection by a Local Government. See Schedule 1 of the Template for categories of ‘non-collectable waste’.

Clause: 1.5(1) ‘Collectable waste receptacle’

Rationale: The use of the term receptacle reflects the terminology in the WARR Act. The definition covers all types of material which are commonly collected through a kerbside collection system; non-recyclable waste, recyclable waste and organic material.

Clause: 1.5(1) ‘Non-collectable waste’

Rationale: This definition has been simplified from the previous Template Local Law and included in Schedule 1. It reflects Local Government practice of not collecting a range of materials through the kerbside or vergeside collection systems.

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Clause: 1.5(1) 'Organic waste'

Rationale: The term organic waste is used to designate the organic material from the household, including garden and food waste. Under the WARR Act it is considered to be part of the Local Government waste stream.

This definition has been included to reflect changes in the suite of waste management services provided by Local Government, in line with the Waste Authority's *Better Bins: Kerbside Collection Guidelines*. Local Governments that do not provide a dedicated organics collection service can remove all references to organic waste from their Local Law.

Clause: 1.5(1) 'Recycling waste'

Rationale: The term recycling waste is used to designate the material from the household which can be recycled. Under the WARR Act it is considered to be part of the Local Government waste stream.

This definition has been included to reflect changes in the suite of waste management services provided by Local Government, in line with Waste Authority's *Better Bins: Kerbside Collection Guidelines*.

The definition has been updated to reflect current practice – however Local Governments will need to carefully examine the list of materials included in this definition and ensure it is consistent with any contractual arrangements they may have. For example, only two types of plastic have been included in the Template, whereas some Local Governments collect all types of plastics. This section includes the ability for the Local Government to make a 'determination' regarding adding additional materials in future.

Clause: 1.6 Local public notice of determinations

Rationale: Clause 1.6 provides for a 'determination device' which involves the sub-delegation of law-making power to a resolution of a simple majority of the Council of the Local Government. The making of local laws by contrast requires an absolute majority of Council members.³

There are a number of clauses within the Template Waste Local Law that provide a Local Government the ability to make determinations as to specific matters affecting the operation of the local law. These are clause 1.5 (definition of recycling waste), 2.3(1)(b), 2.4(c), 2.5(c), 2.7(b) and 4.5(2).

In terms of clause 4.5(2) (Depositing waste) it is the Joint Standing Committee's preference that "as far as reasonably practicable" a local law state the classification of waste that may be deposited at a waste facility, rather than utilising the determination device for this purpose.

If Local Governments give due consideration when establishing a local law, there will be limited need for determinations. If intending to utilise the determination device it is crucial that in practice, all steps (a) to (e) under clause 1.6 are followed to ensure any determination has legal effect and that determinations are recorded in a publicly accessible register.

³ Joint Standing Committee on Delegated Legislation (2014) Report 77, Page 11, Paragraph 6.30.

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Clause: 1.7 Rates, fees and charges

Rationale: This section clearly identifies the relevant sections of the WARR Act which relate to Local Governments ability to impose rates, fees and charges. When considering which section to use, Local Governments need to consider the type of activity that the rate, fee or charge will fund.

For example s. 66 of the WARR Act relates to a rate for 'waste services' which is a very broad range of services (as defined in Section 3 of the WARR Act) whereas s. 67 of the WARR Act relates to applying a 'receptacle charge' which is for a much narrower range of services.

Clause: 1.8 Power to provide waste services

Rationale: This section of the Template Local Law clearly identifies where Local Governments power to provide, or enter into a contract for the provision of waste services comes from in the WARR Act.

Part 2 - Local Government Waste

Clause: 2.1 Supply of receptacles

Rationale: This clause relates to situations where Local Governments supply receptacles for use at residential properties. Local Governments that do not provide receptacles do not need to include this clause.

Clause: 2.3 General waste receptacles
2.4 Recycling waste receptacles
2.5 Organic waste receptacles

Rationale: These clauses are intended to provide provisions for collection of a range of Local Government waste, in line with Waste Authority's *Better Bins: Kerbside Collection Guidelines* and guided by definitions under clause 1.5. A Local Government may simply delete reference to any category of waste it does not specifically collect.

These clauses also provide a consistent definition of the weight for each bin. If a Local Government has a range of bin sizes other than 240L it is advised that each of the bin sizes and the maximum weight are included when the Local Government is making the new Local Law.

These clauses also prohibit residents from depositing in receptacles the wrong type of waste where more than one receptacle is provided. There is also a provision for the Local Government to make a 'determination' under clause 1.6 for a different range of services should they be introduced in the future.

Clause: 2.6 Direction to place or remove a receptacle

Rationale: The Joint Standing Committee is of the view that the former Waste Local Law provided no limit on the mandatory directions which Local Governments could make in relation to the placement and removal of receptacles. The word 'specified' before 'premises' was therefore required to be included in the Template Waste Local Law to ensure a limit on directions exists.

Removal of the word 'specified', or other action effectively broadening the mandatory direction beyond specified premises, may therefore cause the local law to come under the scrutiny of the Committee.

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Clause: 2.7 Duties of owner or occupier

Rationale: This clause addresses a number of issues with the former Waste Local Law, being that there was previously a prescriptive requirement to place bins for collection, and remove after collection, within a strict timeframe.

Clause 2.7 is more carefully worded as a consequence. Owners and occupiers are now permitted ‘a reasonable period’ before and after collection time to keep receptacles on their property, and are not compulsorily required to place their receptacle for collection. Local Governments have powers under clause 3.1 to enforce owners/occupiers to ensure receptacles do not become vectors of disease or omit offensive and noxious odours.

Clause: 2.10 Verge collections

Rationale: This clause has been drafted to prohibit persons removing, for a commercial purpose, waste deposited for verge collection. In Report 77, the Joint Standing Committee expressed a view that, other than for commercial purposes, interference with items placed for verge collection should not in itself be an offence.

The prohibition against interference/disassembly is therefore limited to situations in which it may increase the risk of harm to a person. For example, disassembling electrical or mechanical appliances may expose others to harm from broken or sharp materials left behind.

It should be noted that any amendment to the Template Waste Local Law to include a provision that prohibits any person from looking through and removing items from bulk rubbish collections *for non-commercial purposes* is likely to be closely scrutinised by the Joint Standing Committee.

Schedule 1 – Item (i) ‘non-frangible metal’

The Joint Standing Committee in Report 77 expressed the view that the term ‘non-frangible’ under Schedule 1, Item (i) of the Template Waste Local Law, is a contentious phrase. The dictionary or common definition on its own was deemed to be insufficiently certain and without further definition, considered to not be within power.

The WALGA Template Waste Local Law does not attempt to specify or re-define an alternative phrasing to meet the intent of prohibiting ‘non-frangible’ metals in Schedule 1, as a range of descriptive criteria may be considered appropriate to include in a local law.

Any Local Government seeking to include solid metals as a category of non-collectible waste in Schedule 1 should avoid the use of the contentious phrase and instead specify the maximum dimensions of an item of metal instead of, or as well as, describing it as one that cannot easily be bent or broken.

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Former Waste Local Law - Sections Removed

The following section includes outline of subject matter from the former Waste Local Law 2010 that do not appear in this Template Waste Local Law. Each of the subjects include commentary on reasons for their removal and (where appropriate) an alternative head of power / mechanism for the Local Government to use in managing the particular issue.

Subject: Liquid refuse and liquid waste

Commentary: Definitions have been removed as the reference to these types of wastes is limited in the WARR Act. When considering the definition of Local Government waste in the WARR Act, '*sewage or waste of a kind prescribed by the regulations*' are excluded from the definition. Additionally, liquid wastes are covered by separate heads of power under other legislation such as the *Environmental Protection (Unauthorised Discharges) and (Controlled Waste) Regulations 2004*.

There is no reference, as a consequence of this deletion, to the licensing provisions associated with liquid waste removal.

Subject: Septic tank

Commentary: This definition has been removed in line with the removal of all references to liquid waste, liquid refuse etc.

Subject: Waste from non-residential sources

Commentary: All references to waste generated at commercial, industrial and food business premises have been removed to reflect the fact that the WARR Act does not provide Local Government with the head of power to collect waste from non-residential sources.

Additionally, specific mention of the construction of waste corrals ('suitable enclosure') in relation to group dwellings has been removed, as this issue should be addressed by the planning/building approval process rather than through a Waste Local Law.