



WESTERN AUSTRALIAN  
LOCAL GOVERNMENT ASSOCIATION

# MWAC Supplementary Submission on the Waste Avoidance and Resource Recovery (WARR) 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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## **Western Australian Local Government Association Supplementary Submission on the Waste Avoidance and Resource Recovery (WARR) Bill**

In its submission on the WARR Bill, the Association identified two areas of major concern that it would seek to make a supplementary submission on –

1. The lack of clarity that the definitions provide in relation to municipal solid waste and problematic waste when applied to the provisions in the WARR Bill.
2. The use of the EP Authorisation mechanism as an effective mechanism for ensuring–
  - a. The power of Local Government to collect municipal solid waste (MSW) in its prescribed district is appropriate; and
  - b. All MSW collectors are Local Government or Local Government contractors, approved by Local Government, or EP Authorised.

### **Section 1: Clarifying definitions in the Bill**

The Association is concerned that the definitions given in the Bill for municipal solid waste (MSW), and by association the definition of waste management services (WMS) and problematic waste, creates many uncertainties and presumably unintended consequences when applied to the provisions of the WARR Bill. The following discusses the issues created by these definitions in the Bill and recommends amendments the Association considers appropriate.

#### **1. Municipal solid waste (MSW)**

- a. The broadness of the definition, incorporating residential, commercial and institutional waste, does not allow for any differentiation in how the provisions of the Bill apply to different waste types. This would seem to create an impractical situation for all stakeholders in that different waste types are necessarily dealt with by varying means. Local Government, for instance, may be best placed to deal with residential waste, but may be completely unable to deal with some non-residential wastes.
- b. The definition is unclear with regard to which wastes are incorporated under it. It is, for example, difficult to ascertain if construction and demolition (C+D) waste, commercial and industrial (C+I) waste, agricultural waste or green waste are incorporated, or intended to be incorporated, under the MSW definition. This is of particular concern to Local Government, as it clearly creates uncertainty around any provision of the Bill incorporating the definition of MSW. This includes the definition of waste management services.
- c. The definition of MSW clearly excludes problematic wastes. This may at first seem reasonable, but in practice the exclusion works to remove problematic waste entirely from the provisions of the Bill. This creates a situation in which problematic waste becomes an absolute unknown with regard to how it will be dealt with. It also has serious implications for Local Government planning and charging; in that excluding problematic waste from the definition of MSW also

excludes it from the definition of waste management services. The issues surrounding the definition of problematic waste are discussed further under section 3.

**Recommendation 1.1** – *That the definition of MSW be amended in the Bill; and that specific definitions be included for commercial and industrial (C+I) waste and construction and demolition (C+D) waste; and that a definition for agricultural waste also be considered. The following suggested definitions are drawn from the New South Wales Waste Avoidance and Resource Recovery Strategy 2003, which are in turn drawn from the AS/NZS 3831:1998 Waste Management - Glossary of Terms –*

- **Municipal solid waste means-**  
*The solid component of the waste stream arising from household waste placed at the kerbside for council collection and waste collected by council from municipal parks and gardens, street sweepings, council engineering works and public council bins; excluding hazardous, clinical and related wastes.*
- **Commercial and industrial waste means –**  
*Inert, solid or industrial waste generated by businesses and industries (including shopping centres, restaurants, office warehousing and logistics, manufacturing, repair workshops, all retail outlets, hotels clubs etc.) and institutions (such as schools, hospitals, universities, nursing homes, and government offices); excluding construction and demolition waste, municipal waste, clinical and related waste and hazardous waste.*
- **Construction and demolition waste means –**  
*Materials in the waste stream which arise from construction, refurbishment, demolition, excavation activities.*

**Recommendation 1.2** – *That wherever the definition of municipal solid waste is used in the Bill, the above definitions and the problematic waste definition (+ hazardous waste definition if Recommendation 3.1 is taken up) be specifically used instead if they are appropriate to that provision.*

## **2. Waste management service**

- a. The use of the broad MSW definition within the waste management service definition has the effect (as described in 1a above) of limiting the flexibility of the provisions of the Bill with regard to their application to different waste types. The Association considers that the provisions of the Bill would have greater clarity and function more efficiently if the definition of MSW were split into its component wastes.
- b. The definition of waste management services excludes any wastes that are not included in the MSW definition or the liquid waste definition. This means that problematic waste is specifically excluded from waste management services. In turn, this has the presumably unintended effect of excluding consideration of problematic waste from the following important provisions of the Bill (amongst others) - s38 waste management plan, s51 setting fees and charges, and s47 services a CEO can direct a Local Government to undertake.

- c. The definition of waste management services excludes certain service types including waste management service planning and educational services. This is considered important, as this also has the presumably unintended effect of excluding such services from the provisions outlined above.

**Recommendation 2.1** – *That the definition of waste management services be amended so that wherever the term waste management services is applied in the Bill, it can be applied to all waste management service types provided by Local Government for the purpose of carrying out the intent of this Bill.*

**Recommendation 2.2** – *That the definition of waste management services be amended to incorporate problematic wastes (+ hazardous waste if Recommendation 3.1 is taken up), or an equivalent drafting mechanism be used, to ensure problematic waste is considered in all relevant provisions of the Bill; in particular s38 waste management plans, s51 setting fees and charges, and s47 services a CEO can direct a Local Government to undertake.*

### **3. Problematic waste**

- a. The definition of problematic waste is very broad and could conceivably incorporate any number of waste types. Hazardous waste would clearly be incorporated as it has the potential to cause serious risk to human health or environmental values. However, it is unclear what wastes might be designated as problematic by regulation due to the operational or safety difficulties they cause. Waste types as diverse as tyres, glass or organics could fall under the definition of problematic. This is a serious issue for the Association, as a waste designated by regulation to be problematic will no longer be considered under the general provisions of the WARR Bill (as discussed above). This is a far from ideal situation, as it provides Local Government with minimal understanding of how it may be expected to manage large portions of the waste stream.
- b. The Association considers that the Bill would be made more workable if the definition of problematic waste were augmented with a separate definition of hazardous waste. As hazardous wastes are already addressed in various guidelines and schedules, the use of a special definition for hazardous waste would provide Local Government with far greater certainty on which wastes would be incorporated under this definition and how they would be managed.
- c. The Association suggests that wastes causing safety or operational difficulties only (that is they are non-hazardous) would then be included under the definition of problematic wastes. The management of problematic wastes could be related to the existing provisions of the Bill through the explicit inclusion of the problematic waste definition where this is considered necessary to enable a Local Government or an EP Authorisation holder to deal with such waste appropriately.

**Recommendation 3.1** – *That the problematic waste definition be augmented in the Bill by separately defining hazardous waste; constructed along the following lines for*

*consistency with the existing Waste 2020 Strategy and other pieces of existing legislation-*

- **Hazardous waste means** - wastes defined by regulation or policy as having physical, chemical or other properties that make them an environmental or health hazard, (Waste 2020, 2001); or waste regulated under the Environmental Protection (Controlled Wastes) Regulations 2004.

**Recommendation 3.2** – *That those powers appropriate to the management of problematic wastes be clearly spelt out in the Bill to provide an understanding of the framework which may be applied to their management.*

## **Section 2: EP Authorisations**

The Association's major concern with the EP Authorisation mechanism is that it may not adequately protect the right of Local Government to collect municipal solid waste (as defined in Recommendation 1.1). The collection of such waste is a key responsibility of Local Government for their community; with the cost of this service covered through the collection of rates. The continued economic and logistic workability of this system is considered to be absolutely dependant on Local Government being empowered to collect such waste from every residential premise in their prescribed district to the exclusion of others.

### **4. Establishing powers to collect residential waste**

- a. The intention of s53 and s66 of the WARR Bill seems to be to ensure that Local Government has the first right to collect all MSW (which under the definition of the Bill would include commercial and institutional waste). However, the Association considers that greater certainty would be created through the inclusion of a specific prohibition provision prohibiting the collection of 'house and trade refuse or other rubbish from a premises' where Local Government, or a Local Government contractor, provides, or is willing to provide, a collection should be added to the Bill; as per the Health Act 1911 Provision 112(2).
- Notwithstanding the above comment, the Association is concerned that it may not be possible to use EP Authorisations as they are intended under s66. That is, it is questioned whether an EP Authorisation can actually be required unless an activity has the potential to cause pollution or environmental harm; as defined in the EP Act 1986. This would seem to create an opportunity for a non-authorized collector to argue that an inert waste service they currently, or intend, to undertake does not have the potential to cause either pollution or environmental harm and therefore should not require an EP Authorisation.

The EP Act does empower the creation of regulation with regard to waste services (clause 33), as well as the creation of general regulation to control activities and emissions. It is considered that appropriate regulation to empower EP Authorisations under the WARR Bill could be made through these provisions. However, legal opinion may be required to clarify these issues.

**Recommendation 4.1** – *That a prohibition provision or equivalent drafting mechanism be incorporated in the Bill with the effect of s112(2) of the Health Act 1911 to empower Local Government to collect ‘house and trade refuse or other rubbish from a premises’ to the exclusion of others.*

**Recommendation 4.2** – *That consideration be given to the workability of EP Authorisations in the WARR Bill; with legal advice sought on what, if any, amendments or additional regulations are required to make the power workable.*

## **5. Establishing powers to collect other waste**

- a. The Health Act 1911 empowers Local Government with the right to collect not just ‘house’, but also ‘trade’ waste in its prescribed district to the exclusion of others. This is a broad power that has rarely been used by Local Government; but may be in the best interests of effectively implementing the State waste strategy to maintain. That is, the implementation of a strategy objective with regard to a particular waste type may be best achieved through Local Government having broad influence over how that waste is collected, transported and disposed of. It is noted that the Association has had difficulty developing a consolidated Local Government opinion on which waste types (beyond MSW as defined by the Association in Recommendation 1.1.) the ‘first-right’ to collect provision should apply to. Some are of the strong opinion that the inclusion of this provision with regard to all waste types is essential for successful implementation of the waste strategy. However, others have expressed the belief that all but MSW (as defined by the Association) should be fully open to commercial competition.

It is clear that what is of paramount importance to Local Government is the protection of MSW (as defined by the Association) collections. As such, the Association considers that the definition changes suggested for municipal solid waste in Recommendation 1.1 should be applied to s53 and s66 of the Bill, so that MSW, C+I, C+D and agricultural waste are specifically named in these provisions, if they are all considered appropriate. Problematic waste should also be considered for inclusion. If there are waste types that are not considered appropriate, then they can be excluded from the list. For instance, it may be appropriate for Local Government to have first right to collect MSW and C+I waste, but not C+D or agricultural waste.

**Recommendation 5.1** – *That consideration be given, if necessary in consultation with stakeholders, as to what waste types Local Government requires a prohibition provision to apply to in order to ensure the effective implementation of the waste strategy; and that the prohibition provision suggested in Recommendation 3.1 be drafted incorporate such definitions as considered appropriate .*

## **6. Maintaining power to collect municipal solid waste**

- a. Section 53 in the WARR Bill effectively empowers the CEO to prohibit a Local Government from collecting MSW in their district if they are not carrying out services to ‘modern practice’; and to empower another collector to carry out that service through the provision of an EP Authorisation. This may be reasonable for waste management services involving commercial or institutional waste.

However, the Association does not support this provision with regard to MSW (as per the definition suggested in Recommendation 1.1).

As described above, MSW collections (as per the Association suggested definition) are considered a core service Local Government provides for their rate payers. The workability of this service is dependant on Local Government retaining the right to collect such waste to the exclusion of others. As such, the Association considers that the power to provide EP Authorisations for the collection of MSW (as per the Association suggested definition) should be excluded from s53 provision. This would be achievable if the definition of MSW in the Bill were split as outlined in Recommendation 1.1, and MSW (as per the Association suggested definition) then specifically excluded from the provision. It is however agreed by the Association that it may still be appropriate to treat not adequately carrying out MSW management services in accordance with a waste management plan as an offence by a Local Government under s68 of the Bill.

***Recommendation 6.1*** – *That by additional provision, exclusion or an equivalent drafting mechanism, a prohibition be added to the Bill to prevent an EP Authorisation being given for the provision of municipal solid waste management services (as per the definition suggested by the Association) in a prescribed district.*