

DEPARTMENT OF WATER AND ENVIRONMENTAL REGULATION SUBMISSION

LOCAL GOVERNMENT ACT 1995 REFORMS

The Department of Water and Environmental Regulation (DWER) welcomes the opportunity to provide input to the reforms of the *Local Government Act 1995* (LG Act) being progressed by the Department of Local Government, Sport and Cultural Industries (DLGSC).

This paper outlines potential amendments to the LG Act for consideration. The proposed changes will drive improvements to the State's waste performance and strengthen processes relating to the clearing of native vegetation.

PROPOSED REFORMS TO STRENGTHEN LOCAL GOVERNMENT WASTE MANAGEMENT

The *Waste Avoidance and Resource Recovery Act 2007* (WARR Act) provides for the preparation of a waste strategy for the State to set strategic direction for continuous improvement of waste services, waste avoidance and resource recovery.

The current waste strategy – the *Waste Avoidance and Resource Recovery Strategy 2030* – focuses on transitioning to a circular economy through greater waste avoidance and contains specific targets for material recovery and environmental protection, as well as landfill diversion.

Local governments have a central role under the waste management framework established by the WARR Act and the waste strategy, largely arising from powers to charge for the collection and management of local government waste in their districts. Improvements to the State's waste performance will increasingly rely on initiatives such as local government waste plans informed by better practice guidelines, and the implementation of the three-bin kerbside collection to recover food organics and garden organics (FOGO).

A 2020 report published by the Office of the Auditor General identified issues and opportunities for improving the delivery of waste management services by local government. The Office of the Auditor General's findings and recommendations relevant to the WARR Act were considered in the report on the review of the WARR Act tabled in Parliament in October 2021.

The report of the WARR Act identified and recommended changes to modernise the WARR Act to address current and emerging challenges and ensure Western Australia can achieve its vision of becoming a sustainable, low-waste circular economy in which human health and the environment are protected from the impacts of waste.

This included recommendations to amend the WARR Act to drive better practice approaches to waste services; define and require the provision of essential waste services; improve the operation of waste plans and their alignment with the waste strategy; and streamline local laws.

The current reforms to the LG Act provide an opportunity to consider these recommendations, which would be supported by complementary changes to the LG Act to improve local government waste management.

1. Waste local laws

Local governments have the power to make waste local laws under section 61 of the WARR Act. To be validly made, such laws must be done in accordance with the procedural requirements set out in Part 3 Division 2 Subdivision 2 of the LG Act.

The responsibility for ensuring that a local law is valid and will not be the subject of a disallowance recommendation to State Parliament by the Joint Standing Committee on Delegated Legislation (JSCDL) rests with the local government.

To be validly made, a waste local law requires the consent of the Chief Executive Officer (CEO) (in practice, the Director General of DWER). There is no similar requirement for the making of other local laws. The CEO's consent under the WARR Act to a local law is not a guarantee against a disallowance recommendation being made to Parliament by the JSCDL.

Considering this arrangement, there is no clear benefit from the requirement for the CEO to consent. In addition, the administrative differences in the way that waste local laws are processed leads to ongoing costs for DWER and additional complexity and regulatory burden for local governments.

DWER recommends that the management of waste local laws is consolidated by transitioning these to being managed under the LG Act. This would ensure that DLGSC has primary responsibility for all local laws in Western Australia, streamlining regulatory processes for local governments.

State Government agencies (including DWER) will continue to provide comment on local laws and their development to ensure they are effective.

This reform option is consistent with Recommendation 9 of the WARR Act review report, which proposes the streamlining of legislation for the making of waste local laws by removing duplicated provisions under the LG Act. The CEO requirement to consent to waste local laws would also be removed.

2. Waste plans

The WARR Act provides that a local government may include in its plan for the future a waste plan outlining how, in order to protect human health and the environment, waste services provided by the local government in the relevant district will be managed to achieve consistency with the waste strategy.

Aligning waste services through a waste plan consistent with the waste strategy provides a mechanism for local governments and regional councils to address targets and objectives of the waste strategy. It also supports consistent waste planning across the local government sector.

In 2019, the former CEO exercised his power under the WARR Act to require all local governments and regional councils in the Perth and Peel regions and major regional centres to prepare a waste plan outlining how waste services will be managed. This action was taken to give effect to the target in the waste strategy for all Perth and Peel local government to introduce a FOGO collection system by 2025.

The Auditor General's 2020 report acknowledged that without transparent local planning aligning with the WARR Act and waste strategy, the State and the community are unable to hold local governments accountable for delivering effective waste services.

The WARR Act review has recommended that the provisions for waste plans are amended to improve their operation and alignment to the outcomes of the waste strategy, including ensuring their implementation.

This proposed change should be complemented by amendments to the LG Act which would require a local government to perform its functions in accordance with a waste plan made under the WARR Act and make it subject to an appropriate consequence for not doing so.

3. Regional Councils

The LG Act provides for the formation of regional local governments (known as regional councils). Regional councils for waste management were historically developed for waste disposal, processing and education activities rather than waste collection from residents. Local governments have relied on regional councils to help improve the recovery of wastes and plan for future waste management options.

Within the Perth and Peel regions and in major regional centres, local government waste recovery rates range from below 20 per cent to above 60 per cent. This demonstrates the significant improvement available if better practice performance is consistently achieved in the local government sector.

It is noted that the governance structures that were developed for regional councils have faltered with the transition from the landfilling of waste into resource recovery. This issue is exemplified by the number of local governments that have either not participated in regional initiatives for waste recovery, have withdrawn from a regional council or are currently considering withdrawal from a regional council.

DWER acknowledges the important role regional councils could play in achieving key outcomes and targets in the waste strategy. In addition, it is anticipated the changes underway in the waste sector will impact future local government and regional council activities, including:

- the emergence of waste to energy as a financially viable alternative to landfill; and
- the standardisation of domestic waste collection systems in response to the Government's target for all Perth and Peel regions local governments to provide a three bin FOGO service by 2025.

As less waste is landfilled, regional councils will need to ensure their waste collection and resource recovery services are relevant and viable. Certainty of membership will be important in allowing regional councils to pivot to provide relevant services in the changing waste management landscape without the constant threat of withdrawal as a limiting factor for future shared projects.

In addition, standardised waste collection services increase the potential for regional councils to deliver waste education services effectively and efficiently across local governments without the challenges of accommodating different collection systems (e.g. bin colours, messaging).

Standardised collection services also offer the potential to contract waste and recycling collection services on a regional basis, rather than by each local government. This should offer efficiencies from larger contract volumes and values.

This role of regional councils was considered in the discussion paper on the first review of the WARR Act published by the former Department of Environment Regulation in 2014. The discussion paper proposed compulsory membership for local governments and requirements for services to be delivered consistent with the waste strategy and State waste infrastructure plans.

While this may be necessary in future, DWER recommends a less directive approach where action can be taken if local government cooperative arrangements are not delivering the desired outcomes.

It is proposed that the LG Act be amended to provide that the Minister for Local Government, on advice from the Minister for Environment, could require a local government to demonstrate how exiting a regional council will improve or better support the implementation of the waste strategy and State waste infrastructure plan.

This may include a requirement that would prevent a local government from leaving a regional council until it had demonstrated the action was justified.

For example, a local government could be required to demonstrate to the Minister for Local Government, in consultation with the Minister for Environment and the Waste Authority, that a proposal to leave a regional council arrangement does not undermine achieving the objectives and targets of the waste strategy. It may be appropriate for the Minister for Local Government to table a report in Parliament when the justification from a local government has been accepted to ensure appropriate transparency of local government decision making is given effect.

Alternatively, consideration should be given to directions that can require a local government to be a member of a regional council, including specifying which regional council it must join. This would provide a head power that could be used to further coordinate the use of the regional council mechanism so that it aligns with the needs of the State as expressed through the waste strategy and State waste infrastructure plan.

New principles under the LG Act

Consistent with the intent in the Local Government Review Panel Report, DWER recommends additional guiding principles are included in the LG Act to ensure that, in carrying out their functions, local governments support sustainable development and effective decision-making for economic, social and environmental outcomes. Relevant functions include strategic planning, works, approvals and land management.

It is noted that several guiding principles and objectives were proposed in the Local Government Review Panel Report that are not included in the current reforms – for example, an objective for the “promotion and improvement of the community’s economic, social and environmental well-being.”

A relevant principle from the waste strategy and included in the WARR Act is the benchmarking of performance against better practice. The application of this principle can improve transparency of decision making by requiring comparison to high performing systems, providing justifications where these performance levels cannot be met, and the development of robust public reporting systems needed to assess benchmarking against better practice over time.

Road upgrades and native vegetation clearing are important issues that should be considered in a broad context to promote environmental sustainability. For example, where environmental outcomes are considered during early planning or design phases rather than at the environmental approvals stage, local governments are more likely to avoid or minimise impacts to native vegetation, such as by aligning roads through already cleared land or avoiding areas of high environmental value.

Cost of Waste Service to be specified on Rates Notices

DWER supports the concept of polluter pays, as set out in the objectives and principles of the *Environmental Protection Act 1986* and incorporated into the objects of the WARR Act. Polluter pays approaches can provide appropriate drivers to change waste management behaviours. Local governments applying charges for specific services provided to households, based on their waste generation profile, is consistent with this principle.

An example of this is the use of charges to financially differentiate between a waste service that provides a small residual waste bin (red lid) as these services encourage greater material recovery and reduce disposal costs over those with a large residual bin.

Using rates without differentiation to fund waste services is not sensitive to the amount of waste generated by a household, reduces the transparency of reporting to the community on the real costs of waste management, and provides no financial incentive to individual households to reduce their waste.

DWER recommends that the possible impacts of increased costs for pensioners as a result of moving away from using rates as a funding mechanism for waste services should be given consideration during this process.