

CGO 370/15



Government of Western Australia  
Department of Local Government and Communities

Our Ref: E1505862

Jason Banks  
Director General  
Department of Environment Regulation  
Locked Bag 33  
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4/3/15



Dear Mr Banks *Jason,*

**Review of Waste Avoidance and Resource Recovery Act 2007**

Thank you for the opportunity to provide a submission to the review of the Waste Avoidance and Resource Recovery Act 2007.

Local governments in Western Australia undertake a critical role in waste management and the Department of Local Government and Communities welcomes the review and further engagement with the sector and the Department on the proposed amendments.

Further comments to assist the review of the Waste Avoidance and Resource Recovery Act 2007 are enclosed.

Yours sincerely

Jennifer Mathews  
DIRECTOR GENERAL

25 February 2015

enc (1)

### Attachment 1: Department of Local Government and Communities response

The Department focuses on building closer collaboration and stronger partnerships between the State Government, local government and community service organisations to support seniors, youth, carers, women, volunteers, children and families, parenting and early years, and people from culturally and linguistically diverse backgrounds.

The Department has reviewed the WARR Act with these interests in mind and supports the overall approach to achieve an effective and aligned, across government, waste strategy through the management of the WARR Act.

The Department supports the need for more efficient and effective arrangements to be put in place, with greater State involvement and direction, and agrees a more strategic State approach is timely. The Department supports the preference for a minimal compliance approach.

The Department notes that local governments in this State have undertaken a primary role in the area of waste management and as such, the proposals with respect to the *WARR Act 2007* have substantial implications for the sector, as do the broader directions envisaged in the paper. Given the substantial current role of local government under the WARR Act and Interface with the *Local Government Act 1995*, any proposals for change will benefit from consultation with the Department of Local Government and Communities and the sector.

The Department supports further exploration of the landfill levy and ways of funding the necessary infrastructure.

The Department notes the following points with respect to the proposal for Statutory Waste Groups with compulsory local government membership.

#### **1. The Local Government Act 1995**

*The Local Government Act 1995* establishes the governance arrangements for local governments to provide services to their communities. The Act sets up the operational framework for local governments, regional local governments and soon to be established regional subsidiaries.

The types of services to be provided are not established by the Act, rather, the Act confers a "general competence" power upon local governments to do those things that are required for the good governance of the district. This is further illustrated by Section 3.61 of the *Local Government Act 1995* which provides for the establishment of regional councils:

*(1) Two or more local governments (referred to in this Division as the participants) may, with the Minister's approval, establish a regional local government to do things, for the participants, for any purpose for which a local government can do things under this Act or any other Act.*

Section 3.62 then requires the purpose of regional councils to be specified in the establishment agreement for that regional council:

*(1) A regional local government —  
(a) is a body corporate with perpetual succession and a common seal; and  
(b) is to have as its governing body a council established under the establishment agreement and consisting of members of the councils of the participants.*

*(2) The purpose for which a regional local government is established (referred to in this Division as the regional purpose) is as set out in the establishment agreement.*

Specific services that are required by a written law to be provided by local government or actions required of local governments in relation to those services, are dealt with in other legislation that is specific to that service. For example, the Health Act and the Planning and Development Act set out requirements of local government that relate to health and town planning. These matters are not dealt with in the Local Government Act.

Such an arrangement ensures that the Minister concerned has oversight of those functions that come within that Minister's portfolio responsibilities.

Regional local governments may therefore be established for a wide variety of purposes, one of which may be waste management. Regional local governments are in place across the State and there are a number outside of the metropolitan area serving a range of purposes. It is fundamental to their intent that they are voluntary.

The Department therefore recommends, for the foregoing reasons, any creation of Statutory Waste Groups with compulsory membership should be given effect through the WARR Act, not through a modification of the regional local government provisions in the Local Government Act 1995. This would be unnecessarily complex to achieve in the Act and would be inconsistent with long-established legal convention.

## **2. Transitional arrangements**

Transition arrangements to Statutory Waste Groups will be complex and careful consideration will need to be given to a number of complex issues:

- Current regional local governments with waste operations have different asset and liability (debt) situations;
- Contract obligations and commitments also differ significantly;
- The viability and life of current processing operations differs substantially;
- The renegotiation of establishment agreements, which has proved problematic in the past;
- Moving a local government from one grouping to another will need to take this into account; and
- Independent legal and financial advice is likely to be necessary.

While the Department notes that the proposals are based on waste management arrangements in Victoria, it is unclear whether the proposed Statutory Waste Groups would have membership other than local government or whether they would have solely local government membership.

Detailed consultation on the establishment arrangements, role, functions and operations of the Statutory Waste Groups will be required.

The Department poses the following questions for the Review in this regard:

- What would be the structure of the waste groups?
- What would be the membership?
- How would local government membership be determined?
- How would local government representation be arranged, given the proposed three waste groups and the number of local governments in the metropolitan area?

- What would be the legal implications of compulsory membership for individual local governments?
- What does the role of "coordination of procurement" of waste processing (and possibly collection) involve in practice? Is this an advice role only or would the groups be directly involved in the procurement process?
- Would all waste management activities and service provision be captured under the proposed Statutory Waste Groups?
- Is it envisaged that the Waste Groups, as statutory State entities, would operate in accordance with State procurement requirements? The interface with a range of Local Government Act 1995 provisions would need to be considered.
- What accountability mechanisms are envisaged for such things as decision-making, financial management, governance and administration and conflict of interest?
- What would be the provisions with respect to liability relating to the Waste Groups and to individual local governments?
- What would be the funding arrangements? How will levy funding be allocated?
- How would the waste groups and individual local governments interrelate and what would the functional arrangements look like?
- What arrangements will there be for local government districts across the State where there is no Statutory Waste Group?

It would be important to address or consider these questions as part of the review.