

31 January 2018

Project Manager

Proposed regulatory amendments to categories 63-66, 89

Department of Water & Environmental Regulation

Locked Bag 33

CLOISTERS SQUARE WA 6850

**Consultation Paper: Amendments proposed following the decision on *Eclipse Resources Pty Ltd v The State of Western Australia [No.4] (2016) WASC 62***

Dear Project Manager,

Thank you for the opportunity to comment on the above Consultation Paper. The subject matter is of significant importance to members of the Waste and Recycling Industry Association of Western Australia (WRIWA).

**Background to WRIWA**

WRIWA is a recently formed association representing private sector companies that have direct investment in the waste, recycling and composting sectors in WA. WRIWA members collect, process, recycle and dispose of around two thirds of the total produced in WA. WRIWA has participated in the Waste Reform Agenda roundtable convened by the Minister for Environment. This is a positive reflection of the market importance of WRIWA members and their commitment to high professional and environmental standards.

WRIWA is the state based affiliate of the National Waste and Recycling Industry Council (NWRIC), the national industry body that represents the interests of industry members across Australia.

WRIWA has two broad objectives;

- to achieve best practice environmental outcomes from collection, processing, recycling and disposal of waste
- to ensure markets are fair and transparent, ensuring competition occurs on a “level playing field” that drives value for customers and a fair return on investment for members.

WRIWA members include the large nationally based waste collection and recycling companies, landfill owners and operators, and state/locally based C&I and C&D collection, processing and recycling companies.

## **WRIWA Interest in Amendments to Waste Definitions**

In line with its objectives, WRIWA endorses the need for amendments to waste definitions following the “Eclipse” decision to achieve the following;

- Ensure the greatest possible and highest value re-use is derived from recovered materials within the Construction and Demolition (C&D) industry sector.
- Ensure the C&D industry is fully informed of different waste definitions, the criteria for acceptance at different premises, and is able to observe a compliance process at least cost for the benefit of customers. Application of the landfill levy for C&D material should depend on the potential environmental impact from the usage or activity of the material.
- Ensure the environment is least affected from the re-use or disposal of C&D materials.

## **WRIWA comments and suggestions to improve proposed amendments to EP Regulations and Waste Definitions**

1. WRIWA agrees with the proposed definitions of both “clean fill” and “uncontaminated fill”.
2. WRIWA agrees with the proposition contained in the Consultation Paper that the *“use of ‘clean fill’ and ‘uncontaminated fill’ as defined in the amended Waste Definitions document will not pose any risk of harm to human health or the environment.”*
3. WRIWA further agrees that the amendments should not apply to sites “using fill that does not pose a risk of harm to the environment or human health.”
4. WRIWA does not agree that use of *‘clean fill’* and *‘uncontaminated fill’* within category 63 to 66 and 89 licensed premises should automatically attract a landfill levy. The payment of any landfill levy for these materials should depend on whether the *‘clean fill’* and/or *‘uncontaminated fill’* can productively substitute within the licensed premises for virgin material that would otherwise have to be purchased.
5. Use of *‘clean fill’* and *‘uncontaminated fill’* (meeting the specifications detailed at Appendix B of the Consultation Paper) within category 63 to 66 and 89 licensed premises for the purposes of daily cover or road construction are productive uses of a recovered material. This material is acknowledged to *“not pose any risk of harm to human health or the environment”*. There is no change in human health or environmental impact if *‘clean fill’* or *‘uncontaminated fill’* is disposed of in a site that has only accepted this material, or alternatively within licensed landfill sites.

6. WRIWA rejects any suggestion that the effective 8% discount on the landfill levy charge payable by landfill operators is a funding mechanism for daily cover. The 8% discount has always been for the purposes of meeting the administration costs imposed by government regulation of the landfill levy, i.e. gathering compliance information at the point of entry from waste disposers, surveys, bad debts etc.
7. To prevent levy avoidance, the use of *'clean fill'* and *'uncontaminated fill'* for the WRIWA proposed levy exempt purposes within licensed landfills should require declarations of mass via a weighbridge and in the case of *'uncontaminated fill'* the provision of documents to the landfill operator demonstrating the minimum sampling and testing standards for uncontaminated fill (Table 2, Appendix 2 of the Consultation Paper).
8. Simple dumping of any *'clean fill'* and *'uncontaminated fill'* materials at landfills should attract liability for the landfill levy as it is preferable to use this material for a more productive purpose.

### Support to WRIWA suggestions

WRIWA believes the most effective way to improve resource recovery and recycling outcomes, and therefore minimise the landfilling of C&D waste, is to correctly value every component of the production process. The suggestions presented by WRIWA are aimed at improving the economic drivers to recover and recycle C&D waste. There are currently a number of factors working against achieving the outcomes being sought by government, regulators, industry and consumers. Some of these factors are;

- In Western Australia there is a lack of markets for recovered and recycled C&D materials. The WA Government needs to take a lead in specifying tender and other procurement requirements for inclusion of recycled materials. WRIWA believes the use of recycled C&D material in Victoria is far more advanced and beneficial to environmental outcomes than what exists in WA. Valuing the use of *'clean fill'* and *'uncontaminated fill'* for legitimate road construction and daily cover activities within licensed landfill would assist market and value creation.
- A lack of DWER enforcement of compliance with existing landfill levy obligations. The WRIWA position is contained in its 16 November 2107 submission to the DWER **'Discussion paper – Waste levy and waste management: Proposed approaches for legislative reform'**
- A market economy need to assess landfill levy obligations based on whether recovered and recycled materials are being used for productive and



environmentally safe purposes rather than simply defining the levy obligation on a physical location.

### **Next Steps**

WRIWA is keen to discuss its suggestions and comments with DWER or participate in any working groups that may be convened by DWER to progress finalisation of waste definitions and regulatory amendments. WRIWA is happy to provide further details to DWER and the matters raised in this submission.

Please contact Mike Bobrowicz, Executive Officer – WRIWA on 0418 190 861 if you have any queries or need for discussion.

Yours sincerely,

Mike Harper  
**President – WRIWA.**