



Department of Water and Environmental Regulation
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Legislative Framework for Waste-derived Materials Public Consultation

Thank you for your email dated 12 June 2019, inviting submissions to the Department of Water and Environmental Regulation issues paper "Waste not, want not: valuing waste as a resource" on the Legislative Framework for Waste-derived Materials. The Transport Portfolio submits the following comments:

Main Roads supports the use of waste-derived materials as a product, particularly those materials that may be used in road construction, for example construction and demolition (C&D) materials. The agency notes that there are growing stockpiles of processed and unprocessed C&D materials due to a weak demand for recycled products. Industry has provided feedback that this lack of demand is, at least partly, due to uncertainty as to how C&D material will be regulated as waste.

Main Roads reviewed the legislative frameworks of the three State jurisdictions as tabled in the issues paper and is of the view that a hybrid model of New South Wales (NSW) and South Australia (SA) frameworks would provide the best outcome for Western Australia (WA). The hybrid model is intended to allow regulators to develop product specifications for common waste-derived materials to provide certainty for the market in those products, but also allow proponents to create or use 'new' waste-derived materials through a risk-based assessment.

The NSW framework provides for general or specific 'orders and exemptions' to regulate the use of waste-derived materials. General orders and exemptions are applied for commonly recovered wastes and waste-derived materials and are available for anyone to use. Specific orders and exemptions are assessed on a case-by-case basis by the NSW Environmental Protection Authority for waste-derived materials that do not have a general order. While the general orders and exemption provide clarity around the listed waste-derived materials, there appears to be little flexibility for emerging technologies to be implemented without regulatory approval.

The NSW system for general order and exemptions can be applied to common waste-derived materials in WA to derive specifications to give industry certainty around those particular waste-derived materials. However, the requirement for regulatory approval of specific order and exemptions stifles innovation and flexibility in the market.

The SA framework provides a mechanism to undertake a risk assessment of waste-derived material. Effectively, when recycling and reusing waste, it must be demonstrated that the waste reuse is genuine, beneficial and fit-for-purpose. Further, where there is no standard governing its use, producers / suppliers and users are able to make a determination on whether a material is a product. This is on the basis that the material constitutes a product that is ready and intended for imminent use, without the need for further treatment to prevent any environmental harm that might result from such use. Where a waste-derived material is not provided with an exemption or order, as in the NSW system, the risk assessment could provide an alternative mechanism to ensure material is used / reused in an acceptable manner as a product.

Main Roads suggests that a combination of NSW orders and exemptions and the SA risk assessment would provide industry with clarity regarding legal requirements and provide producers, suppliers and users with the flexibility to assess the safety of 'new' waste-derived materials without a lengthy regulatory process. It is noted that SA is considering a cost recovery fee for assessments. If a cost recovery system was to be adopted in WA, consideration needs to be given as to how this would be funded administration - whether by application fees or potentially from landfill levy funds. Either way, if cost recovery is being considered, it should form part of the discussion with industry in the early stages of framework development.

The definition of waste also needs to be carefully considered. The definition needs to be flexible enough to ensure consistency and avoid conflict with the *Contaminated Sites Act 2003*, *Environmental Protection Act 1986*, *Waste Avoidance and Resource Recovery Levy Act 2007* and waste classification definitions. In addition, as per the NSW definition of waste, the definition needs to be broad enough to capture waste-derived materials.

The Public Transport Authority (PTA) supports the development of a legislative framework for waste-derived materials and recommends that this matter is given urgent priority. The PTA's primary interest is the beneficial reuse and recycling of materials generated on construction projects including sand, rock, concrete, asphalt and other products.

The issues paper has accurately identified the current challenges associated with the beneficial reuse and recycling of construction generated materials including no provision for risk-based assessment of these materials, no statutory process to approve the use of these materials and ambiguity on when the use of these materials will trigger licensing and levy obligations. This results in materials which are fit for purpose, suitable for use and which can be demonstrated to have negligible environmental risk not being utilised in a sustainable manner.

The PTA considers the development of the proposed legislative framework should include:

- A Strategic Plan which supports the implementation of the framework to enable the government to define and measure progress against its long-term objectives, to develop strategies to address potential challenges and to communicate timeframes and responsibilities associated with implementation of the framework.
- A revised definition of waste to ensure that the statutory definition is consistent with the ordinary meaning and which allows the applicable legislation to function effectively and without unintended consequences.
- Consideration of, and where applicable, clarification of the interaction with other legislation, including the *Contaminated Sites Act 2003*.
- Flexibility to allow for industry-wide solutions such the establishment of centralised 'hubs' where materials can be stored and processed without triggering licensing and levy obligations.
- A tiered approach to the assessment of a material's suitability for use to allow for low risk uses to proceed efficiently and cost effectively, for example by introducing standards for waste-derived materials.
- A risk-based case-by-case approval system for determining if a material is suitable for use.
- Supporting implementation guidance to provide certainty to generators and receivers of waste-derived materials, including encouraging the uptake of, and market development for waste derived material. The development of a list of specific examples is recommended.
- A reporting framework with guidance for the generators of waste-derived materials and service providers.

While the intent of the proposed legislative framework is supported, there is currently insufficient detail to provide specific advice on unintended consequences. The PTA suggests further consultation is undertaken as additional definition is developed.

Yours sincerely



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Director General

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