

Andrew Gulliver
44 Wandoo Drive
BALDIVIS WA 6171

14th November 2017

Project Manager
Waste Reform Project
Department of Water and Environmental Regulation
Locked Bag 33, CLOISTERS SQUARE WA 6850
Email: warr_reform@dwer.wa.gov.au

Re: Discussion paper – Waste levy and waste management:

Proposed approaches for legislative reform

I make this submission drawing on 40 years' experience managing licensed promises. During this time I have been heavily involved with industry associations and government consultation processes at national and State level. My comments are based on decades of practical industry experience and collaboratively working with government agencies.

I have reviewed submissions by the Waste Management Association of Australia and private companies and generally support those submissions. I will not repeat their points here.

My comments relate to how government manages the inherent conflict between encouraging innovation and managing environmental risk. These are two fundamentally different functions of government. This can be characterised as the dilemma between creating a 'can do' versus a 'can't do' community. It is almost impossible for one agency to fulfil these two opposing needs and the reform process needs to address them both.

Managing what we 'can't do'

The need, and community expectation, for environmental protection is unquestioned. Industry is generally supportive of regulations that are fair, equitable and evenly applied.

The regulation of industry implies setting limits on what is acceptable. It is government's role to define those limits and the regulators' role to ensure compliance. This necessarily requires a policeman function or 'can't do' approach. The community demands a 'policeman' role within government to ensure safe practices.

Encouraging the 'Can Do' approach

A government agency finds it difficult to act as both the facilitator of innovation and the policeman for the community – it is a fundamental conflict of interest.

WA is experiencing an embarrassing failure to deliver the beneficial outcomes desired by the community and expressed in the Acts. The institutional frameworks of government do not foster innovation and change. There is systemic failure and the system is not working.

As a community we can only make progress by working together to develop a legislative and regulatory system that allows the taking of risks in order to achieve mutual objectives.

Risk-based licensing provides a mechanism for government to permit risk-taking and encourage innovation where industry has demonstrated both a willingness and capacity to manage risk effectively. The 'Regulatory Principles' provide guidance.

The legislative and regulatory framework should encourage outcomes-based licensing rather than prescription. Prescription constrains innovation and improvement and increases cost.

In considering the alignment of the objectives of the WARR Act and the EP Act it is also necessary to consider the institutional frameworks that support the beneficial outcomes envisioned in those objectives. Without the latter the former is ineffective.

The reform paper refers to interstate activities. These activities involved institutional frameworks that provided advocacy for investment and innovation as a separate function of government (compared to regulation). The reform paper is silent on these.

Government and Industry Working Together

Industry and government should be working cooperatively to create beneficial outcomes. This is not happening and the community is therefore ill-served. Arguably, this is the most cost-effective way to implement a government's agenda.

Good policy, legislation and regulation provide certainty and reduce investment risk. Government needs industry to invest in order for government to achieve its policy objectives. Industry needs good regulatory frameworks, properly implemented, to reduce investment risk and ensure a level playing field. The mutual success of government and industry are inextricably linked. Both government and industry need to recognise and act on this.

WA's environmental agency has clearly delivered sub-optimal performance in recent times (refer to auditor general and public commissioner reports). This has resulted in a defensive and adversarial approach to industry. Hopefully, under new leadership, this will be addressed. Appropriate policy and institutions should aim to foster this collaboration.

Whilst a review of the WARR and EP Acts may be necessary the successful implementation of any recommendations will rely on government and industry working together. Arguably, the required changes to the Acts would be an outcome of this collaboration – therefore why not pursue closer collaboration between industry and the agencies as the highest priority action? The reform paper is silent on this.

The review process will inevitably take several years to change legislation. The community (and the environment) require effective action sooner.

Market driven outcomes and supply chain approach

The government has received multiple reports and recommendations highlighting the need to create markets for recycled products. Despite this advice the agencies revert to regulation that creates market 'push' as materials are driven away from landfill through economic drivers. Generating market 'pull' for recycled products is the best way to create circular economies and achieve the objectives described in the Acts.

Government can provide both leadership and the market 'pull' by implementing 'green' procurement practices at state and Local government level that provide the market pull necessary to initiate a circular economy. Other suggestions are provided in the compost industry position papers submitted to government many times over the past ten years.

The positive approach described in this submission will do more to effect change and beneficial outcomes in the immediate future than any number of legislative reviews, however necessary they may be.

Thank you for the opportunity to contribute.

Sincerely,
Andrew Gulliver (by email)