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CCF WA Submission on waste levy and waste management – proposed approaches for legislative reform

Thank you for providing this opportunity to comment on DWER's Waste Reform Project discussion paper. The Civil Contractors Federation is the member-based body representing the Australian civil construction industry, with branches in each State and Territory and a National Office in Canberra. Nationally, we represent more than 1,500 civil contractors and a further 700 suppliers to industry. Our members are involved in a variety of projects and activities including the development and maintenance of civil or 'horizontal' infrastructure such as roads, bridges, railways, sewer, water and drainage pipelines, dams, wharves, and commercial and housing land development.

Use of clean fill in land development

In CCF WA's view, it is disappointing that the Waste Reform Project discussion paper does not seek to provide more clarity around a 'grey area' of great concern to the WA land development and civil contracting industries – that is, how the landfill levy applies to clean fill used in bulk earthworks for residential subdivisions and commercial land developments.

The WA Court of Appeal's decision in the Eclipse case confirmed that clean fill transported from one development site to another meets the definition of 'waste' applied in the WARR Regulations. This ruling has raised concern that any development site that receives more than 500 tonnes of fill in a year is liable to be assessed for the landfill levy – an outcome that would render most subdivision development uneconomic. Transported clean fill is routinely used for constructing new residential subdivisions, so any move to treat clean fill as waste would have huge knock-on effects to the housing market, restricting land supply and reducing housing affordability.

Purpose and application of the levy

From its inception, the purpose of the landfill levy has been to encourage environmental outcomes, i.e. promote the recycling of waste rather than its disposal to landfill. When the WARR Bill was being considered by the WA Parliament in 2007, the Bill's explanatory notes made it clear that the intention of imposing a levy on waste to landfill was to "*discourage the disposal to landfill of*

potentially useful resources and to provide funds for projects to promote waste avoidance and resource recovery.” In a similar vein, the Waste Authority website describes the levy as “an economic instrument to reduce waste to landfill”.

CCF WA acknowledges that the application of the landfill levy for its intended purpose – to encourage recycling – may currently be compromised by some terms in the Act, e.g. ‘accepted for burial’, ‘disposal premises’ and ‘received’. As the discussion paper notes, the latitude provided by these terms may work against the Act’s intention of promoting reuse and recycling. Our concern, however, is that tightening the regulations to address this will also facilitate the broadening of the scope of the levy to include land development – which as noted above was never the intention.

Definition of ‘disposal premises’

The discussion paper notes that the current definition of disposal premises “...does not include development sites with incidental earthwork operations, or marina and land reclamation, as these premises are not being used for the dominant purpose of receiving waste and therefore the levy would not apply at these premises.” Concerningly, however, the paper goes on to recommend that the current definition be amended to ensure “its application to all waste disposed to land”.

In the light of the broad definition of ‘waste’ in the Eclipse decision, is DWER recommending amendments that will require the application of the levy to all fill used in land development? The discussion paper is far from clear on this point, and this lack of clarity continues to cause significant uncertainty in WA’s land development industry.

Recycled construction materials

CCF WA endorses the comment in Cement Concrete & Aggregates Australia’s submission around promoting greater use of clean re-usable materials and recoverable construction materials across government departments. We agree with CCAA’s position that such materials should not be defined as waste.

In summary, CCF WA recommends that:

- Materials recycled for use in construction – including clean fill for land development and crushed materials used for road base and other purposes – should be explicitly excluded from any definition of waste.
- any new definition of disposal premises should exclude land development sites with incidental earthwork operations, or marina and land reclamation.

Please do not hesitate to contact me for further discussion on the issues raised in our submission.

Yours sincerely



Jeff Miller
Chief Executive Officer (WA)