



## Consultation summary

*Guidance statement—regulating the use of waste-derived materials*

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## Summary

### Background

The Department of Environment Regulation (DER) is proposing to introduce an administrative framework to regulate waste-derived materials. An administrative framework is favoured principally because it can be implemented sooner than a legislative framework to remove uncertainty from the markets for waste-derived materials, and early adoption of a framework for waste-derived materials will aid the achievement of the landfill diversion targets.

DER's proposed framework includes the publishing of a guidance statement and associated material specification guidelines that are intended to aid DER's assessment, from an environmental regulation perspective, as to when certain waste-derived materials can be regarded as having ceased to be waste.

On 7 July 2014, DER released the consultation paper, *Draft guidance statement: Regulating the use of waste-derived materials*. Comments were invited on any aspect of the *draft guidance statement* contained in Appendix A of the consultation paper in addition to questions on issues of particular interest to DER.

Consultation closed on the 29 August 2014, with 19 submissions received. This document summarises these submissions, the key issues raised, and responses to these issues.

### Summary of consultation submissions

Respondents generally supported the priority waste-derived materials identified in the consultation paper. It was noted that some of the priority streams in the consultation paper refer to both materials (acid sulfate soils) and uses (soil products, construction products, fill materials and fuel). Some respondents highlighted specific materials of interest, many of which could be categorised within the broader priority uses or materials identified in the consultation paper. The responses highlighted the need for a clear framework and clear definitions of materials.

Respondents identified fill materials, soil products and construction products as the priority waste-derived materials.


Most respondents indicated a willingness to participate in workshops to inform the development of specified priority material guidelines.

The majority of respondents suggested that there should be no fee associated with the application, or that if a fee was incurred it should be minimal and based on the actual administration costs incurred by DER.

From an overall perspective, some respondents considered that the purpose and application of the material guidelines require further clarification.

### Direction for the guidance statement and priority material guidelines

DER appreciates the consultation contributions and notes a high level of support for the materials proposed in the consultation paper. The consultation responses will be used to inform the implementation of the guidance statement, and the development of priority waste-derived material guidelines. In the longer term, the understanding



gained from consultation and implementation of the guidance statement will inform a process of legislative or regulatory reform.

Where the production and use of a waste-derived material is in accordance with a published material guideline or a DER written approval, DER proposes not to regulate the material as waste under the *Environmental Protection Act 1986* (EP Act), the *Waste Avoidance and Resource Recovery Act* (the WARR Act) or the *Waste Avoidance and Resource Recovery Levy Act 2007* (WARR Levy Act).

The following materials/uses have been identified as a priority for material guideline development in 2014–15 and are consistent with the priorities identified in the consultation:

Uses:

- construction products (road base) from construction and demolition waste, and surplus building products; and
- fill materials.

Materials:

- soil product— red sands;
- soil product— IronMan™ gypsum; and
- road base— fly-ash from coal-fired power stations.

These priorities are based on the volume of material produced (and therefore available for re-use), and a need to regulate the quality and end use of the waste-derived material so that it does not cause an unacceptable environmental impact.

Industry working groups have been established to inform the development of priority materials guidelines, and include the organisations that expressed an interest during consultation in participating in workshops. All draft material guidelines will be subject to public consultation prior to their publication and implementation.

DER will develop and implement a prioritisation system for considering case-by-case requests.

Although yet to be determined, DER's preferred approach for the recovery of costs is likely to be based on equity and consistent with the fee structure that applies to Part V licensing. The fee structure will need to be reviewed in the context of any regulatory or legislative reform.



## Introduction

The Department of Environment Regulation (DER) is proposing to introduce an administrative framework that will consist of a guidance statement and associated priority material guidelines.

The implementation of a framework for waste-derived materials (the framework) is intended to aid the achievement of the landfill diversion targets set out in the Western Australian Waste Strategy “*Creating the Right Environment*” and remove uncertainty as to when certain waste-derived materials should be regarded as having ceased to be waste. To aid the achievement of landfill diversion targets, finalisation of the framework and a number of associated priority material guidelines is planned to coincide with the increase in the landfill levy on 1 January 2015.

The implementation of an administrative framework will allow for further evidence to be captured that could be used to inform future legislative or regulatory reform.

On 7 July 2014, DER released the *Draft guidance statement: Regulating the use of waste-derived materials* (the consultation paper). Comments were invited on any aspect of the draft guidance statement that was contained in Appendix A of the consultation paper in addition to three questions on issues of particular interest to DER.

Consultation closed on the 29 August 2014 with 19 submissions received. This document summarises these submissions, key issues raised and DER’s responses to each.

## Consultation submissions

The consultation paper asked respondents to comment on any aspect of the draft guidance statement in addition to the following three questions on issues of particular interest to DER:

1. a) Which waste streams should DER develop material guidelines for?
  - b) What do you think the priority order for the development of the material guidelines should be and why?
  
2. a) Are you willing to participate in workshops to help inform the development of material guidelines?
  - b) If so, which waste streams would you like to be involved with?
  
3. How should DER’s cost associated with regulating waste derived materials be recouped from industry—flat fee per application; sliding fee based on the degree of work involved or some other mechanism?

Submissions were received from the 19 organisations listed in Table 1. The responses to the specific questions and other issues raised are summarised in the following sections.

**Table 1: Consultation submissions received**

Organisation	Acronym / Abbreviation
Alcoa	Alcoa
Australian Organic Recyclers Association*	AORA
ChemCentre	ChemCentre
C-Wise*	C-Wise
Consilium Waste Consulting	CWC
Compost WA*	C-WA
Department of Agriculture and Food WA	DAFWA
Eclipse Resources	Eclipse
Housing Industry Association	HIA
Instant Waste Management	IWM
Mindarie Regional Council	MRC
Peel-Harvey Catchment Council	PHCC
Southern Metropolitan Regional Council	SMRC
Swan River Trust	SRT
SITA Australia	SITA
Urban Development Institute of Australia	UDIA
WA Local Government Association	WALGA
Waste Management Association Australia	WMAA
Water Corporation	WC

*\*Referred to in this report as the 'recycled organics industry' as similar responses were received by all three organisations.*

## Priority waste-derived materials

The following materials/uses were identified in the consultation paper as priority waste-derived materials where the development of a material guideline is required:

- fill materials (including clean fill);
- soil products;
- construction products;
- treated acid sulfate soils; and
- fuel.

Other potentially suitable materials identified in the consultation paper include glass, tyres and plastic, as large quantities of these continue to go to landfill with opportunities for re-use being missed. Consultation respondents were asked to identify which materials guidelines should be developed for, and the priority order.

## Which materials/uses should DER develop guidelines for?

Consultation respondents supported the priority materials identified by DER. Some mentioned additional specific materials of interest. The priority materials for the development of material guidelines as highlighted through the consultation are listed in

Table 2 below. Materials in the lighter coloured cells are considered as materials that form part of the priority use above it.

**Table 2: Priority waste-derived materials**

Priority use	Waste-derived material	Organisations
Fill materials (including clean fill)		Water Corporation, DAFWA, ChemCentre, Consilium Waste Consulting, Peel Harvey Catchment Council, UIDIA, Alcoa, SITA, IWM, HIA
	Treated acid sulfate soils	Peel Harvey Catchment Council
	Heavy chained hydrocarbon affected soils	UDIA
Soil products		Water Corporation, DAFWA, ChemCentre, Consilium Waste Consulting Swan River Trust, Alcoa, SITA SMRC, MRC, SITA
	MSW-derived compost	
	Organic based soil products	Peel Harvey Catchment Council, UDIA
	Other mining and industrial products with use as soil products	Peel Harvey Catchment Council
	Bauxite-derived products	Peel Harvey Catchment Council
Construction Products (including road base)		Water Corporation, DAFWA, ChemCentre, Consilium Waste Consulting, MRC
	Fly-ash (coal-based)	UDIA
	Glass from MRFs	SMRC
	Construction products	Peel Harvey Catchment Council, UDIA, HIA
	Demolition products	UDIA, HIA
	Fill materials	Water Corporation, DAFWA, ChemCentre, Consilium Waste Consulting, Peel Harvey Catchment Council, UIDIA, Alcoa, SITA, IWM, HIA
Fuel		Water Corporation, DAFWA, ChemCentre, Consilium Waste Consulting, SMRC, MRC, SITA
	Treated acid sulfate soils	Water Corporation, DAFWA, ChemCentre, Consilium Waste Consulting



## What do you think the priority order for materials should be?

Respondents were asked to identify a priority order for the development of material guidelines for key waste streams. A number of respondents proposed a framework for assessing priorities, rather than prioritising the materials themselves. It was recommended by respondents that DER provide a clear framework for determining which materials were appropriate as part of the final material guidelines.

The Waste Management Association of Australia WA Branch (WMAA) submission suggested that a priority order be developed based on:

1. large amount of materials in the waste stream;
2. there being a market, in the broadest sense or beneficial use for the material; and
3. there being a need for further regulation of the end market.

The Department of Agriculture and Food WA also supports the priority materials based on the large volumes of materials required, and the environmental impacts of using virgin or unsuitable products as an alternative.

SMRC and WALGA encourage an approach of prioritising materials where the perception regarding the waste-derived nature of the material may affect marketability and value and where materials are produced in significant quantities.

### Response to submissions

DER supports the use of a framework to prioritise the development of material guidelines and proposes to use the framework outlined below which encompasses a number of recommendations provided by respondents:

1. the volume of the waste produced;
2. whether there are uses for the material that will not result in unacceptable environmental impacts; and
3. there being a need for further regulation of the waste-derived material product quality and end use.

DER will develop and implement a prioritisation system for considering case-by-case requests; however, if large number of applications are received, industry should be aware that the timeframes for determinations will be protracted. Case-by-case requests will be progressed subject to DER's available resources.

### Priority materials

Table 3 summaries the responses to this question and, identifies that fill materials and soil products are the priority waste streams for material guideline development.

**Table 3: Priority waste-derived materials/uses**

Material	Organisations	Priority
Fill materials (including clean fill)	WC, DAFWA, PHCC, UDIA, Alcoa, SITA, ChemCentre, CWC, IWM, HIA	1
Soil products	SRT, WC, DAFWA, PHCC, Alcoa, SITA, ChemCentre	2
Construction products (including road base)	UDIA, ChemCentre, CWC, IWM	3
Bauxite residue mud (Alkaloam®)	PHCC, Alcoa	4
Fuel	SITA, ChemCentre	4
Treated acid sulfate soils	ChemCentre, CWC	4

The recycled organics industry stated that the focus should be on waste-derived materials where there is no, or limited, current active market and a demonstrated need. Due to the range of material guidelines already embedded in the current industry standards for recycled organics they believe that these should be a lower priority.

The recycled organics industry gave the example of a number of organisations that are processing organics to the AS4454 standards and/or are ISO9001 accredited. AS4454 is considered by the organics industry to be a suitable minimum processing standard, but additional product requirements may be required for some feed stocks and applications.

### Response to submissions

The following materials/uses have been identified as a priority for material guideline development and are consistent with the priorities identified in the consultation:

- construction products (road base) from construction and demolition waste, and surplus building products;
- fill materials (including clean fill);
- soil product—red sands;
- soil product—IronMan™ gypsum; and
- road base—fly-ash from coal-fired power stations.

These priorities are based on the volume of waste produced, and a need to regulate the quality and end use of the waste-derived material so that it does not pose an unacceptable environmental impact.

The development of these material guidelines are the key priorities for DER in 2014–15.

### Participation in workshops to inform materials guidelines development

Respondents were asked to identify if they were interested in participating in workshops to inform the development of material guidelines. If yes, respondents were

asked to identify which materials were of interest. The responses are outlined in Table 4. Five respondents requested participation in workshops for all material guidelines.

**Table 4: Respondents that requested further consultation**

Materials	Organisations
All material guidelines	Waste Management Association of Australia, Peel Harvey Catchment Council, WALGA, SITA, Consilium Waste Consulting
Fill materials	Water Corporation, UDIA, Alcoa, ChemCentre, IWM, HIA
Soil products	Swan River Trust, Water Corporation, Department of Food and Agriculture, Alcoa, ChemCentre
Treated acid sulfate soils	Water Corporation, UDIA, ChemCentre
Road base	UDIA, MRC, Instant Waste Management, HIA
MSW derived organics	SMRC, MRC
Glass from MRFs	SMRC
Fuel	SMRC, MRC

WALGA identified the need to consult with non-metropolitan stakeholders which generally incur higher waste handling costs, have fewer resources to undertake activities and may be adversely affected by the material guidelines. WALGA also emphasised the need to develop material guidelines in consultation with the industry to ensure they are practical and readily achievable, so as to stimulate rather than inhibit markets. This will require consulting with current or potential end users of the priority waste-derived materials.

### Response to submissions

Industry working groups have been established to inform the development of priority materials guidelines, and include the organisations that expressed an interest during consultation in participating in workshops. All draft material guidelines will be subject to public consultation prior to their publication and implementation.

### How should DER's cost associated with regulating waste-derived materials be recouped from industry?

Many respondents identified that there should be no fee associated with the application, or that if a fee was incurred it should be minimal and based on the actual administration costs incurred by DER. Some respondents did not answer the question.

Respondents' rationale for not supporting a fee is that an imposition of additional costs would be counterproductive. Some producers of materials have already spent substantial amounts and contributed to knowledge of the re-use of material over many years. Those proposing new materials to be approved are likely to incur significant fees in trialling and testing materials. There will be significant benefit to the state to reduce environmental impacts through use of these materials; therefore, the fee structure should recognise this.

SMRC and WMAA consider that licensed facilities should be exempt from any administration fee if one is imposed.

Responses are summarised in Table.

**Table 5: Summary of preferred application cost structure**

Mechanism	No.	Organisation
No Fee	7	AORA, C-Wise, Compost WA, MRC, SMRC, WMAA, WALGA, Instant Waste Management, HIA
Flat fee per application	4	Water Corporation, Alcoa, ChemCentre, Consilium Waste Consulting
Sliding fee based on the degree of work involved	5	Department of Food and Agriculture WA , Peel Harvey Catchment Council, ChemCentre, Consilium Waste Consulting
Other mechanism	1	UDIA
No comment	3	Swan River Trust, SITA, Eclipse

The Water Corporation indicated that the cost in developing and proving the safety of a waste-derived material should rest with the proponent and that DER should only charge a flat fee to assess and complete an application. If a poorly prepared or incomplete application is submitted, it should be rejected with the explanation for rejection. On revision and re-submission the fee should apply once more.

Water Corporation also suggested that if a proponent wants their application expedited that a mechanism be in place for the proponent to cover those additional costs after negotiation and agreement with the DER.

Water Corporation, WMAA and SMRC suggested that a panel of competent auditor consultants could be established to assess complex, non-standard applications and that the proponent be responsible for costs associated with the auditor's assessment.

The UDIA and WALGA indicated that if an application fee is introduced the cost should be based on actual costs for assessing applications. They considered that this would be very hard for DER to determine fairly and accurately as the number of applications likely to be received and material guidelines required is not known. It is likely that this will vary while the approvals process is being established. Until these costs are known and accountable these organisations proposed that the costs should be absorbed through the waste levy or consolidated revenue.

### Response to submissions

DER will incur costs associated with the development of the material guidelines and also the ongoing regulation of them. Although yet to be determined, DER's preferred approach for the recovery of costs is likely to be based on equity and consistent with the fee structure that applies to Part V licensing. The fee structure will need to be reviewed in the context of any regulatory or legislative reform.

## Other issues raised during consultation

Respondents had the opportunity to comment on any other aspect of the draft guidance statement. Some specific issues were identified by respondents that have experience with developing similar material guidelines elsewhere.

### Outcome of the framework

During the public consultation, a number of respondents sought clarification on what was going to be the outcome of the implementation of the material guidelines. Respondents highlighted the need for the material guidelines to classify approved materials as a product. There is concern from respondents that if this distinction is not clearly made there will be legal ambiguity and lack of confidence in the market. The regulatory framework in South Australia and Victoria refer to approved materials as products unless its use has the potential to lead to pollution or environmental harm.

In its submission, Water Corporation referred to a soil conditioner for acid grey sands called Lime-amended BioClay® that has previously received approval from DER as a product. The mechanism used to grant the approval was meeting the requirements of a Class 1 biosolids based product as defined by the 2012 *WA Guidelines for Biosolids Management*. A similar regulatory mechanism may exist for other specific materials.

Respondents to the consultation also indicated the need for a material to be classified as a product so that it is regulated under State and Commonwealth Consumer Law. However, the consumer law applies specifically to goods and services for personal, domestic or household use. Many of the material specifications will relate to products used for commercial and industrial purposes and therefore it is the responsibility of the consumer to verify that quality of the material, that it is fit for purpose and compliant with all regulatory requirements.

### Response to submissions


The primary outcome of the framework is to encourage material re-use and divert waste from landfill where waste-derived materials or products comply with the material guidelines. This will aid the achievement of landfill diversion targets and reduce the demand for raw materials and fossil fuels.

Where the production and use of a waste-derived material is in accordance with a published material guideline or a DER written approval, DER proposes not to regulate the material as waste under the EP Act, the WARR Act or the WARR Levy Act.

DER has previously made decisions on whether to regulate a number of waste-derived materials as waste prior to the development of the proposed guidance statement. DER intends to review these decisions in line with the final guidance statement.

### Structure of the framework

Respondents welcomed the draft guidance statement as a mechanism for providing a clear definition for when materials cease to be a waste. However, a number of respondents considered there to be a lack of clarity around the structure of the draft guidance statement. In some cases, the content of the consultation paper led to different interpretations of the intended structure and purpose of the guidance statement.



Respondents also identified the importance of ensuring that the terminology in the draft guidance statement and subsequent material guidelines is correct and consistent.

WMAA and SMRC raised an issue of understanding what stage of the process the material guidelines would apply to—the initial producer or end user. In other jurisdictions, similar guidelines generally have a set of obligations for the producer and the consumer.

A number of proponents (Water Corporation, WMAA, Alcoa) suggested that generic material guidelines be prepared to inform proponents wanting a determination for the use of waste-derived materials. It was suggested that this be modelled on the Victorian *Environmental Protection (Industrial Waste Resource) Regulations 2009*, a ‘Code of Practice’ or ‘Guidance Note’ issued in a similar manner under the WA *Occupational Safety and Health Act 1984*, or the Pennsylvania Department of Environmental Protection Beneficial Use Permits.

The Peel-Harvey Catchment Council considers that general material guidelines are not an appropriate approach, as it will not deliver the outcomes required to reduce stockpiles and landfilling. The council considers that a legislative approach is required and that guidelines should be developed for each material, particularly in the case of soil products where the source and application of each material may vary.

UDIA is supportive of an administrative approach rather than regulation as a way of reducing red tape without compromising environmental outcomes.

WALGA and WMAA recommended that the administrative approach be reviewed after two years of implementation to determine the effectiveness of the approach.

### Response to submissions

The framework includes the publishing of a guidance statement and associated material guidelines. Figure 1 below provides the framework structure and highlights DER’s current priorities for development of material guidelines (in orange).

Where a use or material can be incorporated into a general guideline, this is the preference.

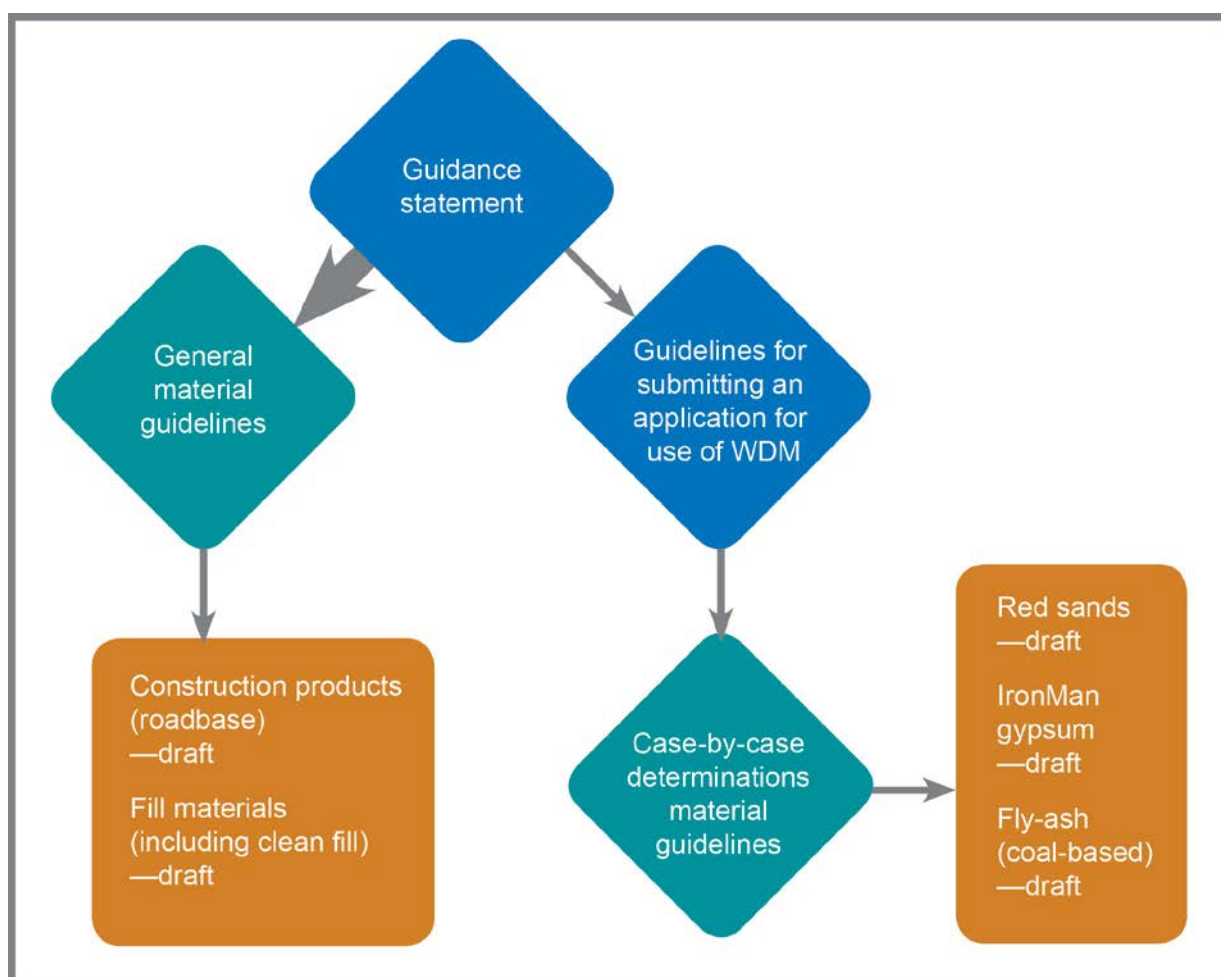
Where a use or material cannot be incorporated into a general guideline, case-by-case determination may be available subject to priorities and available resources. DER will develop and implement a prioritisation system for considering case-by-case requests.

DER proposes to develop *Guidelines: Submitting an application for the use of waste-derived materials*. This document will clearly outline the steps to be taken, including the information required in an application, to seek a case-by-case determination. Guidelines from other jurisdictions, including Victoria, will be considered in this approach.

Applicants for case-by-case determinations will need to demonstrate that the materials or uses being considered are unlikely to apply to a wide range of material producers and are not suitable for incorporation into, or development of, a general material guideline.



**Figure 1 Framework Structure**



The obligations of consumers, producers and end user will be defined in each material guideline. The definition of each material type and approved use will also be outlined in each material guideline.

## Links with existing regulators, standards and guidelines

A number of respondents (Department of Agriculture and Food WA, Water Corporation, Compost WA, AORA, C-Wise) emphasised the need for the approvals process to be integrated as a 'one stop shop' to meet the requirements of other regulatory agencies such as the Department of Health, Main Roads, Department of Food and Agriculture WA, and Department of Mines and Petroleum.

In addition, respondents identified that there are existing guidelines and regulations that apply to a range of materials and uses. The organics industry highlighted that organisations which are already ISO9001 accredited should not be subject to a further layer of quality management assessment.

It was further noted in the consultation that an existing government group is already tasked with the development of waste related standards and specifications. This refers to the Markets and Standards Working Group (Cluster 2 of the National Waste Policy (NWP) working groups) established by the former Environment Protection and Heritage Council (EPHC) in 2010.

## Response to submissions

The draft guidance statement sets out how DER will regulate the use of waste-derived materials and will be applied in accordance with DER's statutory responsibilities including the EP Act, WARR Act and the WARR Levy Act.

Where the production and use of a waste-derived material is in accordance with a published material guideline or a DER written approval, DER proposes not to regulate the material as waste under the EP Act, the WARR Act or the WARR Levy Act. DER will use the understanding of the implementation of the guidance statement to inform any legislative or regulatory reform.

DER will be liaising with key stakeholders in other agencies to reduce duplication and streamline the determination process.

DER intends that existing standards will be appropriately referenced in the specific material guidelines so as not to duplicate or contradict any existing requirements.

## Monitoring outcomes of the material guidelines

The draft guidance statement indicates an outcome of the framework is encouraging diversion of waste from landfill. However, through the consultation Department of Agriculture and Food WA (DAFWA) highlighted that in its view many materials impacted by the material guidelines will not be recognised as contributing to the landfill diversion targets as they are not materials that formally enter the waste system – this includes some excavation activities, industrial and mining by-products. Despite these materials not entering the formal waste system they have an opportunity to result in significant benefit through their re-use.

DAFWA suggested that under the proposed reporting framework the re-use of materials not formally entering the waste stream is unlikely to be captured. Furthermore, if a new reporting mechanism was to be introduced the administrative impact should be considered. Similarly, in terms of communicating benefits to industry, DER may seek to concentrate on the value of improved markets for end products as opposed to landfill diversion.

## Response to submissions

The definition of 'waste' is provided in the EP Act and WARR Act and further clarified in the draft guidance statement, and includes matter that has yet not formally entered the waste system, such as mining by-products (stockpiles).


The outcomes for the material guidelines will be monitored by DER via the take-up and use of the material guidelines and the achievement of waste diversion targets. DER anticipates there will be other ancillary benefits to the implementation of the guidance statement and material guidelines including reduced demand for raw materials.

DER is investigating ways to measure avoided raw material use to the extent that the framework gives rise to measuring and reporting on those materials.

## Market drivers

The recycled organics industry highlighted the value of green procurement policies within government as being a critical element of the market 'pull' factor. Greater





emphasis should be placed on encouraging government procurement where standards already exist for products, rather than further standards. It was suggested that one way to encourage this further would be use of the Waste Avoidance and Resource Recovery Account funds to provide a rebate to end users over a limited period of time which would be a low-cost and efficient way to increase resource recovery.

WALGA also highlighted the need for ongoing market development assistance from government as a regulatory framework alone will not be the only solution required. The market for some waste-derived products is limited and low value, imposing additional regulations may further undermine the viability of these markets. The material guidelines should not restrict lower order uses of material where higher order uses are cost prohibitive or have limited markets – for example in the case of glass used locally as road base rather than recycled into a higher order use of glass requiring transport to Adelaide or overseas.

One respondent suggested that a genuine market be determined by whether the material has a monetary value.

### **Response to submissions**

The draft guidance statement acknowledges the uncertainty about when waste ceases to be a waste. To date, this uncertainty has been a barrier to the development of markets for waste-derived materials and has the potential to inhibit waste recycling and the diversion of waste from landfills.

The increase in the landfill levy from 1 January 2015 will help divert the amount of waste being disposed to landfills and encourage investment in alternative waste treatment options and other government initiatives to support increased recycling.

While not a key objective of the framework, the development of markets is anticipated to be a secondary benefit of its implementation.