Environmental Protection Act 1986 amendments

Submission

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1.0 About us

The Western Australian Local Government Association (WALGA) is the peak industry body for Local Government in Western Australia. WALGA is an independent, membership-based organisation representing and supporting the work and interests of 138 Local Governments in Western Australia.

WALGA provides an essential voice for approximately 1,222 Elected Members and approximately 22,000 Local Government employees as well as over 2.5 million constituents of Local Governments in Western Australia. WALGA also provides professional advice and offers services that provide financial benefits to the Local Governments and the communities they serve.

WALGA's governance structure is comprised of WALGA State Council, the decision making representative body of all Member Councils, responsible for sector-wide policy making and strategic planning on behalf of Local Government, and Zones, (5 metropolitan and 12 country), groups of geographically aligned Member Councils responsible for direct elections of State Councillors, providing input into policy formulation and providing advice on various matters.

2.0 WALGA's comments

WALGA welcomes the opportunity to comment on the Modernising the Environmental Protection Act Discussion Paper and Exposure draft Bill. Local Governments have been consulted in the development of this submission and it has been endorsed by WALGA State Council.

Local Governments have significant interactions with the *Environmental Protection Act 1986* (EP Act), in relation to their land use planning responsibilities and in their role as land owners and managers.

WALGA is a member of Department of Water and Environmental Regulation (DWER) Regulatory Reform Reference Group, the Environmental Protection Authority Stakeholder Reference Group, the Water Resources Reform Reference Group and the Local Government Roadside Clearing Regulation Working Group.

WALGA has previously commented on the need to examine the adequacy of the operation of the EP Act, including in submissions on matters that relate to the operation and effectiveness of the EP Act and Regulations. These include submissions on proposed cost recovery for clearing permit applications and water licences, the draft DWER Compliance and Enforcement Policy, the Strategic Assessment of the Perth and Peel Regions and the review of the State Environmental Offsets Framework.

As a general comment, WALGA supports proposed amendments to the EP Act that will improve its regulatory efficiency and effectiveness, on the proviso that environmental outcomes are not negatively affected. In this context WALGA supports proposed amendments aimed at updating the operation of the Act to account for technological developments, clarification, changes to other related legislation, removal of anomalies and unnecessary

process/requirements, and removing unreasonable barriers to effective compliance and enforcement. However, WALGA recommends that further consideration should be given to changes that could improve the effectiveness of the Act in achieving its purpose, object and principles (Part I s.4):

To protect the environment of the State, having regard to the following principles –

1. *The precautionary principle*
2. *The principle of intergenerational equity*
3. *The principle of the conservation of biological diversity and ecological integrity*
4. *Principles related to improved valuation, pricing and incentive mechanisms*
5. *The principle of waste minimisation*

The comments in this submission are therefore in two parts. The first relates to the amendments as proposed in Section 2 of the Discussion Paper. WALGA's comments on this section are restricted to those amendments of particular relevance to Local Government. The second part relates to the other matters WALGA considers should also be included in the Bill (some of which are contained in section 3 of the Discussion Paper) or be considered to improve the effectiveness of the EP Act to protect the environment.

To fully realise the benefits that could be delivered from a modernised EP Act, sufficient resources must be allocated to deliver the Department's regulatory functions, supported by investments in better information (including reinstituting State of the Environment Reporting) and a more strategic approach to the management of Western Australia's unique biodiversity.

WALGA also notes that there are a number of reviews and other processes currently underway, the outcomes of which intersect with, and have the potential to impact on, the modernisation of the EP Act. These include the second 10 year statutory review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) which commenced in October (comments on the discussion paper due in February 2020), the review of the State Offsets Framework and consultation on the management of native vegetation in Western Australia (including the development of a State Native Vegetation Policy).

3.0 Comments on proposed amendments

3.1 New areas of environmental reform

Bilateral Agreements

WALGA supports in-principle, proposed amendments to give effect to the operation of bilateral agreements, including for approvals, under Part 5 of the EPBC Act, recognising that such an agreement has the potential to reduce duplication and delay in the consideration of proposals. However such an agreement must ensure that environmental standards are

maintained, that is that approved actions do not have unacceptable or unsustainable impacts on matters of national environmental significance (MNES)[1].

Environmental Protection Covenants

WALGA supports the establishment of environmental protection covenants as a discrete mechanism under the EP Act.

Certification of environmental practitioners

WALGA notes the intention to amend the EP Act to create a head of power for an environmental practitioner certification scheme.

WALGA acknowledges there have been long-standing issues with the standard of information submitted by some proponents under the EP Act and the EPBC Act. This issue was recognised in the 2009 review of the EPBC Act which recommended that:

> *…the Australian Government, in consultation with the environment and planning consulting industry, develop an industry Code of Conduct for consultants supplying information for the purposes of the environmental impact assessment and approval regime under the Act[2].*

Environmental assessment reports received by Local Governments also vary significantly in quality and detail.

A certification scheme has the potential to assist in ensuring that scientifically robust information is submitted by proponents to support timely assessment and decision making under the EP Act. Any certification scheme should sit alongside other measures including the provision of clearer guidance and consistent advice regarding the nature and standard of information required, prompt rejection of sub-standard applications, continued investment in the collection and open access to information and data and the auditing and verification of information provided by proponents.

Unfortunately the discussion paper provides insufficient detail to understand how a certification scheme would operate. For example it is unclear whether this would be a Government managed scheme or run by one or more professional bodies, what it would mean to have a document 'certified', where any liability of such a certification would rest, and what the additional costs of a scheme may be. Should a scheme be implemented, WALGA considers it is crucial that the role of the EPA and DWER to exercise appropriate independent scrutiny and diligence in assessing and approving applications is maintained.

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[1] Standards for Accreditation of Environmental Approvals under the *Environment Protection and Biodiversity Conservation Act 1999*, Australian Government, Department of the Environment, 2014, p10

[2] The Australian Environment Act – Report of the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999*, October 2009 Final Report, Australian Government Department of the Environment, Water, Heritage and the Arts, 2019, recommendation 24, p18

Whether a certification scheme goes ahead, and the nature of any such scheme is of particular relevance to the Local Government sector as employers of environmental practitioners, procurers of services from environmental practitioners and as proponents as well as WALGA's preferred supplier program, which includes environmental practitioners on its panels.

As such WALGA recommends that the Local Government sector be consulted on the design of any proposed accreditation scheme.

Expansion of power to apply for injunctions for a broader range of offences

WALGA supports amendments to broaden the range of circumstances (currently only for native vegetation clearing) in which the CEO can apply for an injunction for breaches of Part IV and V of the EP Act.

3.2 Part III Environmental Protection Policies

WALGA supports a review of the effectiveness of Environment Protection Policies under Part III of the EP Act.

3.3 Part IV Environmental Impact Assessment

Referral and assessment of proposals

WALGA supports proposed amendments to:

- allow for a referred proposal to be withdrawn where a proponent does not wish to proceed
- allow for amendment of a proposal after referral but prior to a determination of a level of assessment
- clarify that the Minister may direct the EPA to assess or further assess a proposal more fully (based on new information, or failure to consider something in the original decision) or after the EPA has decided not to assess the proposal and the Minister, having determined an appeal has upheld the EPA decision, and
- provide the EPA with discretion to determine which decision-making authorities it will notify of its decision to assess a proposal (and are therefore constrained from making a decision which allows its implementation) rather than having to notify every government body connected to the proposal no matter how minor.

WALGA does not support the proposed changes that would allow the EPA to decide not to assess all or part of a proposal where the impact on a key environmental factor can be adequately regulated under other parts of the EP Act or other written laws. It is only the EP Act that facilitates assessments against objectives for key environmental factors and has the scope for assessing cumulative impacts of proposals. Provisions in other processes like licencing or conditions on land use change proposals are designed to protect listed matters and do not adequately assess the impacts on environmental factors as a whole.

In this context WALGA recommends that in this case the EPA should be required to:

1. provide a report on their assessment of the proposal against EPA's objectives and how meeting the other Acts provisions would facilitate this, and
2. specify what conditions be put on the proposal, considering the capacity for enforcement.

Strategic Assessments

WALGA supports the use of strategic assessments as a way of achieving better development and environmental outcomes. WALGA has made previous submissions on this matter in relation to the Green Growth Plan and review of the Strategic Assessment of the Perth and Peel Regions.

WALGA supports the clarification provided for in the proposed amendments that bring the terminology in line with that in other jurisdictions.

Surrender of revocation of Implementation Agreement

WALGA supports providing for the expiry, withdrawal or revocation of an implementation agreement.

Implementation decisions for proposals

WALGA supports all proposed amendments in the Bill that provide the Minister with discretion to restrict consultation to and reach agreement with those decision-making authorities relevant to the proposal and its environmental impacts, rather than all decision-making authorities.

Conditions

WALGA supports the proposed changes that would provide clarity on the types of implementation conditions that can be imposed by the Minister.

WALGA supports the proposed changes that would allow an expansion of the ability of the Minister to make minor changes to implementation conditions after an implementation statement has been issued to a proponent.

WALGA supports the proposed changes that would allow conditions to be imposed allowing for staged implementation of a proposal.

Changed proposals and revised proposals

WALGA supports proposed amendments to s.45C to enable the Minister to require information when a proponent makes a request to change a proposal.

WALGA also supports the proposal to streamline the process for amending a proposal during assessment and clarification of the process for referral and assessment of a significant amendment and that the proposed changes are to be assessed in the context of the entire project.

Compliance and enforcement

All proposed amendments are supported.

Schemes

WALGA supports the proposed amendments to allow the EPA to extend the time to decide whether to assess a scheme or determine that it is incapable of being make environmentally acceptable beyond the existing 28 days when it has not been provided with sufficient information to make a decision and further information has been sought. It is noted that this is in line with the process for other proposals.

WALGA recommends that to minimise delays the EPA's request for additional information should be made as soon as possible after the scheme has been referred.

WALGA supports the proposed amendments that provide for an agreement or decision between the Minister for the Environment and the Minister for Planning that a scheme may not be implemented.

Further comments regarding schemes are contained in section 4.

Cost recovery

WALGA does not support the imposition of cost recovery on Local Governments, as stated in its November 2018 submission to the Department of Water and Environmental Regulation's Discussion Paper on Cost Recovery.

In that Discussion Paper the imposition of fees proposed was premised on the application of the user-pays principle:

> *'…the full or partial cost of service of regulatory activities should be borne by those who benefit most from the service.'*

The Discussion Paper continued:

> *'Currently the cost of assessing applications for native vegetation clearing permits and water licences and permits is primarily borne by the taxpayer, not the applicants who derive the benefit.'*

WALGA agrees with the user-pays principle and considers cost recovery may be appropriate in an efficient system where there is a private benefit accruing to, in this case, the applicant for a permit or licence. However, WALGA argues strongly that the activities undertaken by Local Governments for which approvals, permits or licences are required are almost entirely for public benefit, are often non-discretionary (eg for improving road safety) and that these benefits often extend beyond their local communities. This therefore amounts to cost shifting from one level of government to another.

Compounding this issue is the inability for most Local Governments to absorb additional costs without raising rates. This means a reduction in funds available to spend elsewhere or ratepayers paying more.

3.4 Part V Environmental Regulation

Clarifying when decisions on applications for clearing permits or licences are constrained

WALGA supports clarification of the intent that the CEO may not make a decision on a clearing permit or licence application that will have the effect of leading the proposal that has been referred to the EPA under s. 38 down the road of implementation in potential contradiction of the advice of the EPA or the decision of the Minister.

Clearing of native vegetation

As previously stated, WALGA supports proposed amendments to the EP Act that improve administrative efficiency without negatively affecting environmental outcomes. In this context WALGA notes that the current clearing permit system is cumbersome, inefficient and complex. DWER's performance in meeting the target of assessing clearing permit applications within 60 business days is correspondingly poor, with only 49 per cent within this timeframe in 2018-19.

Efficient *and* effective clearing regulation is important to the Local Governments, which as a sector represents a significant proportion of all clearing permit applications, second only to the State Government. Over the period 2016-18, Local Governments submitted approximately 250 clearing permit applications. In 2017-18, 23 per cent of all clearing permit applications were submitted by Local Governments. Almost all Local Government clearing permit applications since 2016-17 have been for clearing of areas of less than 10 ha.

Local Government frustration with the regulatory requirements for their activities requiring a native vegetation clearing permit are reflected in on-going requests for changes to the regulatory system. Via WALGA's Zone and State Council representation, Local Governments have requested changes to the native vegetation clearing regulations, including calling for:

- exemptions for Local Government services (State Council resolution 2012 & 2017)
- amendments to exemptions relating to clearing in road reserves, ranging from specific changes to clearing to improve sightlines to overall exemptions within narrow road reserves (20m wide) (via Regional Road Groups or direct representation to WALGA in 2017-2019)
- intervention in the system to prevent vexatious appeals which can result in significant delays in road works delivery dependent on time specific grant funding requirements;
- A review of conditions put on clearing permits, due to impacts on timeframes for the deliverer of road projects (Zone resolution 2018), and
- clarity around the application of clearing exemptions (numerous requests for clarification via WALGA due to inadequate responses from DWER staff).

More efficient regulation is only one part of a more comprehensive approach to the management of native vegetation that is needed in Western Australia. WALGA has been strongly advocating for such an approach to be developed and implemented, noting in particular the findings of the Western Australian Auditor General, referencing the last State of the Environment Report 2007:

> *'In some parts of WA (especially the Wheatbelt and parts of the Swan Coastal Plain) native vegetation has been cleared beyond safe ecological limits. Continued clearing will result in loss of biodiversity and extinctions, with fragmented habitats becoming more susceptible to climate change, disease, and weed and introduced animal invasion.'*

The DWER Cost Recovery Discussion Paper, coming more than 10 years after the State of the Environment and Auditor General's report made the same comment (p6).

In addition to illustrating the need for ongoing State of the Environment Reporting, WALGA recommends that the acknowledgement by DWER that ecological limits of clearing have been exceeded in the Wheatbelt and the Swan Coastal Plain requires the State Government to develop a strategic, comprehensive and sustainably funded approach to the protection of native vegetation, of which clearing regulation is only one part.

In this context WALGA supports the Government's commitment to develop a Native Vegetation Policy for Western Australia, improved mapping and monitoring of native vegetation, strategic regional conservation planning and better regulation.

Declaration of Environmentally Sensitive Areas

WALGA supports prescribing Environmentally Sensitive Areas (ESAs) in regulations as a means of keeping ESA's current. The current ESA notice was gazetted in 2005 and it is generally accepted that the existing requirements in s. 51B have mitigated against updating. However WALGA considers that the requirement for the Minister to consult with relevant parties on significant changes to ESAs is important and recommends that this should be included in the proposed new s. 51B.

Referral process for clearing permits

WALGA strongly supports the introduction of a referral process for clearing for which an exemption does not apply but may not have a significant effect on the environment, as this will lead to improvements in the ability of Local Governments to implement their road and other projects in an efficient and effective manner.

WALGA notes in the discussion paper that the CEO's decision on whether a clearing permit is required will be published and recommends that this requirement should be included in the draft Bill.

Licences

WALGA supports the significant changes proposed to the licencing system and considers that they will address the significant gaps in the current regulatory framework. However, WALGA recommends that additional staffing is needed for the Department to ensure that the streamlined and efficient processes for licence applications is achieved.

The current licencing approach does not require a prescribed premises to have a licence, instead a licence is a protection against prosecution. In WALGA's Submission on the DWER Compliance and Enforcement Framework, WALGA highlighted the limitations of the current situation and supported a licence being required to undertake Schedule 1 activities.

In particular WALGA supports the licencing of the activity rather than the premises, so there will be 'prescribed activities' rather than 'prescribed premises'. This will provide more flexibility for proponents and enable more than one licence on a site (for example if two operators share the same premises). The ability to determine an area for the activity will remain. Other amendments will allow additional flexibility in relation to who can hold the licence, currently this is restricted to the 'occupier' of the site.

WALGA supports the move to an occupier of a premises being required to hold a licence if undertaking an activity which falls under Schedule 1 of the EP Act. Currently there is no express requirement for an occupier to hold a licence. WALGA also supports the introduction of a new penalty for carrying out a prescribed activity without holding the relevant licence. For this amendment to be effectively implemented, WALGA recommends that the Department have in place a plan and sufficient resources to identify and licence these activities.

The Discussion Paper flags the need for consequential amendments to Schedule 1 of the EP Act Regulations. This could potentially have a significant impact on Local Government, particularly the landfill classifications. DWER has previously proposed to reduce the number of landfill categories which would potentially mean landfills which are currently only regulated, would need to be licenced. WALGA recommends further engagement with the sector and with industry in the review and revision of Schedule 1 of the EP Act Regulations, covering prescribed activities.

WALGA also recommends that guidelines or environmental standards for each category of activity in Schedule 1 need to be developed in consultation with industry to provide certainty to industry regarding the requirements for their type of prescribed activity and to ensure a transparent approach to how DWER will assess different facilities. Without this documentation there is likely to be considerable concern from Local Government that a one size fits all approach to regulation will be used.

WALGA supports an opt-in system for persons undertaking prescribed activities not meeting the threshold. This change is supported as it has the ability to encourage better practice approaches by smaller operators, it also allows for a smoother transition from unlicenced to licenced operators as an operation increases in size.

WALGA also supports provisions to include liability for persons other than the licencee, requiring an employee or a contractor to comply with licence conditions and potentially be liable for breach of conditions (depending on the circumstance).

WALGA supports combining works approvals and licences into one instrument which would regulate both the works and the prescribed activity.

WALGA also supports changes to allow for the revocation or suspension of a licence for non-payment of prescribed fees and that DWER can give a closure notice in this instance.

Defences

The need to remove dangerous trees that pose a significant risk to public safety is a scenario that faces Local Governments on a regular basis. The time and expense associated with obtaining a clearing permit for removing such trees can unnecessarily prolong this risk.

WALGA supports the provision of a defence for clearing in an ESA to prevent imminent danger but recommends that clear guidance be developed to ensure that this provision is understood.

Summary

In summary WALGA recommends or endorses as follows with respect to proposed changes to Part V Environmental Regulation:

- supports clarification of the intent that the CEO may not make a decision on a clearing permit or licence application that will have the effect of leading the proposal that has been referred to the EPA under s. 38 down the road of implementation in potential contradiction of the advice of the EPA or the decision of the Minister
- recommends that the State Government to develop a strategic, comprehensive and sustainably funded approach to the protection of native vegetation, of which clearing regulation is only one part
- supports the Government's commitment to develop a Native Vegetation Policy for Western Australia, improved mapping and monitoring of native vegetation, strategic regional conservation planning and better regulation
- supports prescribing Environmentally Sensitive Areas (ESAs) in regulations as a means of keeping ESA's current
- recommends that the requirement for the Minister to consult with relevant parties on significant changes to ESAs be included in the proposed new s. 51B
- supports the introduction of a referral process for clearing for which an exemption does not apply but may not have a significant effect on the environment
- recommends that the requirement for the Minister to consult with relevant parties on significant changes to ESAs be included in the draft Bill
- supports the significant changes proposed to the licencing system but recommends that additional staffing is needed for the Department to ensure that the streamlined and efficient processes for licence applications is achieved
- supports the licencing of the activity rather than the premises, so there will be 'prescribed activities' rather than 'prescribed premises'

- supports the move to an occupier of a premises being required to hold a licence if undertaking an activity which falls under Schedule 1 of the EP Act but recommends that the Department have in place a plan and sufficient resources to identify and licence these activities
- recommends further engagement with the sector and with industry in the review and revision of Schedule 1 of the EP Act Regulations, covering prescribed activities;
- recommends that guidelines or environmental standards for each category of activity in Schedule 1 need to be developed in consultation with industry
- supports an opt-in system for persons undertaking prescribed activities not meeting the threshold
- supports provisions to include liability for persons other than the licencee, requiring an employee or a contractor to comply with licence conditions and potentially be liable for breach of conditions (depending on the circumstance)
- supports combining works approvals and licences into one instrument which would regulate both the works and the prescribed activity
- supports changes to allow for the revocation or suspension of a licence for non-payment of prescribed fees and that DWER can give a closure notice in this instance, and
- supports the provision of a defence for clearing in an ESA to prevent imminent danger but recommends that clear guidance be developed to ensure that this provision is understood.

3.5 Part VI Enforcement

WALGA supports all proposed amendments to Part VI.

3.6 Legal Proceedings and Penalties

WALGA notes that the proposal to increase the timeframe for the issue of an infringement notice (currently 35 days from the alleged offence) is different in the discussion paper (35 days from date that the offence comes to the attention of an inspector) and the draft Bill (within 12 months after the day on which the alleged infringement notice offence is believed to have been committed). WALGA supports the 12 month timeframe.

A number of Local Governments have commented that some penalties such as those for unauthorised discharges and noise are too low to act as a deterrent and should be increased.

3.7 Part VII Appeals

WALGA supports all proposed amendments in relation to the appeals process. Further recommendations regarding appeals are contained at section 4.

3.8 Schedule 6

WALGA supports the clarification provided by the proposed amendments to Schedule 6 regarding clearing for which a clearing permit is not required, in particular in relation to comply with a notice given under s. 33(1) of the *Bush Fires Act 1954,* clearing that is done by the owner or occupier of land to comply with a notice issued by a Local Government under the *Local Government Act 1995* or by the Local Government if the owner or occupier does not comply with the notice.

4.0 Further recommendations for modernisation of the EP Act

4.1 Review of the EP Act

While WALGA supports most of the proposed amendments to the EP Act, it is clear that these are overwhelmingly related to the efficiency of the Act's operations, not its effectiveness in achieving its objective to protect Western Australia's environment. In this context WALGA notes that the current EP Act has been operational for 32 years (and the previous EP Act was in place for 15 years) and that scientific understanding of the environment, threats to the environment, including the impacts of climate change and approaches to regulation and environmental impact assessment have changed markedly over that time. WALGA considers that the focus only on efficiency and streamlining is a missed opportunity to consider the 'how' to best achieve environmental protection.

WALGA recommends a thorough independent review be undertaken to ensure that Western Australia's environmental legislation is able to effectively address contemporary and interrelated challenges of biodiversity protection, natural resource management, land use, human settlements, production and consumption systems and climate change.

WALGA also recommends that there be a statutory requirement for the EP Act to be independently reviewed every 10 years.

4.2 Principles of the EP Act

WALGA recommends that two additional principles be added to s. 4A of the EP Act in relation to:

1. Climate Change: that climate change mitigation and adaption should be a fundamental consideration.
2. Advice and decision making will be evidence based, using the best available scientific knowledge.

4.3 State of the Environment Reporting

State of the Environment (SOE) reporting synthesises environmental data and information to communicate credible, timely and accessible information about the condition of the environment to decision makers and the community. Western Australian State of the Environment reporting has not been undertaken since 2007.

WALGA recommends that a requirement for the EPA to produce a Western Australian SOE report at least every 5 years should be included in the EP Act, along with the requirement for an SOE Report to be tabled in Parliament.

4.4 Needs based approach for new landfills and waste infrastructure

In the Waste Avoidance and Resource Recovery Strategy 2030, Action 45 is to *'Investigate options for developing a 'needs based' approach to the approval of new landfills and other waste infrastructure'*.

When the *Waste Avoidance and Resource Recovery Act 2007* was reviewed in December 2014, the Background Paper identified that existing landfills had capacity for the waste being generated until around 2025, or until 2030 if the targets in the Waste Strategy were met. The Paper also identified that there was *'increasing pressure for metropolitan waste to be disposed to landfill outside the metropolitan area'*.

The Paper stated:

> *'There is a strong case to reform the landfill policy and regulatory framework to include planning, siting and compliance considerations so that landfills can be managed consistent with government policy. Policy considerations should balance the need to ensure availability of sufficient landfill space to manage residual waste and unplanned events…with the need to limit supply to encourage maximum diversion from landfill'*[3].

WALGA agrees with this assessment.

This policy gap has not been addressed in the years since the Background Paper was released, and non-metropolitan Local Governments continue to raise this important issue with WALGA. Instead of limiting the number of landfills to support the diversion targets in the Strategy, the State's regulatory framework currently allows landfills to be assessed on a case by case basis, only considering whether the environmental impacts at each site are acceptable. This failure to adopt a strategic approach is likely to result in more landfills, greater competition between sites, lower landfill prices and ultimately, undermine the landfill diversion targets in the State Waste Strategy.

WALGA acknowledges the need for appropriately planned landfills in the future, but would highlight that there is more than sufficient landfill space to service the metropolitan area for the foreseeable future and recommends that the policy relating to landfills needs to change to ensure the need for a site is demonstrated before it is approved.

WALGA recommends that the EP Act be amended to ensure that the CEO can refuse a license application if a proposed facility will undermine Waste Avoidance and Resource Recovery

[3] *Review of Waste Avoidance and Resource Recovery Act 2007 Discussion Paper*, Department of Environment Regulation, 2015.

Strategy outcomes and targets. This could be included in s. 54 of the EP Act under matters the CEO must have regard to.

4.5 Schemes

The Planning and Development Act 2005 (P&D Act) currently requires all planning schemes and amendments to planning schemes to be referred to the EPA for determination as to whether an assessment is required. This requirements applies for both region and local planning schemes.

With the decision in 2015 to create a tiered system of local planning scheme amendments there is an opportunity to alter S. 81 of the P&D Act to remove or reduce the regulatory burden of formal referrals to the EPA on scheme amendments where the amendment is 'basic', or where the amendment is 'standard' or 'complex' and there is no likelihood that the amendment will materially impact on the environment.

The proposal above has two parts:

- The removal of the need to refer 'basic' amendments to the EPA in all situations.

  Such a requirement would require modifications to the P&D Act and possibly the Planning and Development (Local Planning Scheme) Regulations 2015 (LPS Regs), but would unlikely require modifications to S. 48A of the EP Act, as basic amendment would no longer require referral.

  WALGA's support for this change stems from the fact that 'basic' amendments are largely administrative in nature, and unable to be classified as 'basic' where they are inconsistent with the Scheme, a Local Planning Strategy, or a State Planning Policy. Thus the likelihood of a 'basic' amendment meeting the threshold of assessment under S. 48A(b) or being incapable of being made environmentally acceptable under S. 48A(c) the EP Act is extremely low.

- The possibility of removing or reducing the regulatory burden of referrals for 'standard' and 'complex' amendments where there is no likelihood that the amendment will materially impact on the environment.

  The meanings for both 'standard' and 'complex' amendments as provided for in R. 34 of the LPS Regs include a number of descriptions that are either administrative in nature or relate to matters that would not likely involve the need to consider the environmental impact of the proposal. An example of this would be point (e) of the 'Complex' amendment definition. This requires all proposals for a development contribution scheme or an amendment to such a scheme to be considered as a 'complex' amendment. In this example the amendment could be as simple as amending a cost schedule or altering the administrative requirements in the cost schedule, both of which would pose no risk to the environment of the Scheme area or the wider environment.

WALGA does not support a blanket removal of the referral requirement under S. 81 of the P&D Act for 'standard' and 'complex' amendments. Instead, it is recommended that a streamlined 'referral' process for such proposals is adopted. Where a Local Government has determined to adopt or prepare an amendment, and that amendment is determined to be 'complex' or 'standard', it is proposed to allow the Local Government to make an initial assessment on whether a formal referral is required or not. On making such a decision the Local Government would then forward this to the EPA. The EPA would have a period of time (~14 days) to determine if this is the appropriate decision. Should the EPA determine that a formal referral is required then the Local Government would refer the amendment in line with the current requirements of S.48A of the EP Act and S. 81 of the P&D Act.

It is assumed that should this proposal be accepted that the EPA and the WAPC would issue guidance on how a Local Government would exercise its discretion on 'standard' and 'complex' amendments and the matters it should consider in making such a decision to ensure consistent decision making.

WALGA recommends that the principles applied above should also be applied to 'minor' amendments to region planning schemes where the likelihood of environmental impact is low.

Such changes would greatly reduce the regulatory burden of the EPA in reviewing and responding to the large number of scheme amendments processed each year that are unlikely to reach the threshold of requiring environmental review. This would also reduce timeframes for the processing of scheme amendments, particularly 'basic' amendments.

4.6 Appeals

WALGA recommends that there should be statutory timeframes introduced for the appeals process and that a report on the appeal should be provided to the Minister within 60 days.

4.7 Cumulative impact

WALGA recommends that the need to consider cumulative environmental impacts should be incorporated throughout the EP Act.

4.8 Making data publicly available

WALGA has strongly supported the State Government's initiative to develop the Index of Biodiversity Surveys for Assessments (IBSA) as a means of capturing and consolidating data contained in biodiversity survey reports to support assessments and compliance under the EP Act, and making this information publicly available.

Currently there is no requirement for the intellectual property holder to agree to make their data public.

WALGA recommends that consideration be given to making such a requirement mandatory subject to specific exemptions.

5.0 Conclusion

WALGA appreciates the opportunity to comment on the Discussion Paper and draft *Environmental Protection Amendment Bill* 2019 and acknowledges a number of the proposed changes to the EP Act in relation of licencing and clearing permits have the potential to improve environmental regulation in Western Australia.

However, WALGA asserts that the relatively narrow scope of amendments proposed represents a missed opportunity to look holistically at the EP Act (and related legislation) to ensure they are fit-for-purpose in protecting Western Australia's unique environment into the future.