

Project Manager  
Proposed regulatory amendments to categories 63-66, 89  
Department of Water and Environmental Regulation  
Locked Bag 33  
CLOISTERS SQUARE WA 6850



Environment Institute  
of Australia and  
New Zealand Inc.

Via email: [wastereform@dwer.wa.gov.au](mailto:wastereform@dwer.wa.gov.au)

Dear Sir / Madam

**Feedback from EIANZ on Amendments proposed following the decision on Eclipse Resources Pty Ltd v The State of Western Australia [No.4] (2016) WASC 62.**

The Environment Institute of Australia and New Zealand (EIANZ) (the Institute) Western Australia (WA) Division (the Division) is pleased to have this opportunity to provide comments on the "Consultation Paper: Amendments proposed following the decision on Eclipse Resources Pty Ltd v The State of Western Australia [No.4] (2016) WASC 62" (July 2017).

The EIANZ is the leading professional body in Australia and New Zealand for environmental practitioners, and promotes independent and interdisciplinary discourse on environmental issues. On all issues and all projects, the Institute advocates good practice environmental management delivered by competent and ethical environmental practitioners.

We forward this submission on behalf of the WA EIANZ members. The Division currently has approximately 140 members, while the Institute has over 1400 members across Australia in a range of technical disciplines including certified environmental practitioners (CEnVP), ecological consultants, environmental advocates and environmental impact specialists working in government, industry and the community.

Again, we thank the Department of Water and Environmental Regulation (DWER) for the opportunity to be engaged in its review of proposed regulatory amendments to categories 63-66, 89.

Yours sincerely

A handwritten signature in black ink that reads "BBastow".

Belinda Bastow  
President  
EIANZ – WA Division

4<sup>th</sup> February 2018

# 1 INTRODUCTION

## 1.1 Background

The EIANZ WA Division is pleased to make comments on the “Consultation Paper: Amendments proposed following the decision on Eclipse Resources Pty Ltd v The State of Western Australia [No.4] (2016) WASC 62” (July 2017) (the Consultation Paper).

EIANZ is supportive of the Department of Water and Environmental Regulation’s (DWER) efforts to address the unintended consequences for use of clean fill resulting from the Eclipse Decision, the Consultation Paper proposes amendments to the:

- description for category 63 to 66 and 89 of Schedule 1 of the Environmental Protection Regulations 1987 (EP Regulations), and
- “Landfill Waste Classification and Waste Definitions 1996 (as amended December 2009)” (Waste Definitions).

EIANZ have engaged practitioners and technical experts to provide valuable feedback on the proposed amendments for waste management in Western Australia.

## 1.2 Role of the EIANZ

The EIANZ, as the leading membership based professional organisation for environmental practitioners in Australia and New Zealand, is an advocate for good practice environmental management. The Institute supports environmental practitioners and promotes independent and interdisciplinary discussion on environmental issues. The Institute also advocates environmental knowledge and awareness, advancing ethical and competent good practice environmental management.

A Certified Environmental Practitioner Scheme ([www.cenvp.org](http://www.cenvp.org)) is also in place to assess and certify competent experienced environmental practitioners working in government, industry and the community. This includes specialist competencies such as Impact Assessment, Ecology and Contaminated Lands.

The EIANZ is an advocate for environmental assessment, management and monitoring investigations and reports being certified by suitably qualified and experienced persons for the completeness and scientific rigor of the documents. One of the ways of recognising a suitably qualified practitioner is through their membership of, and certification by, an organisation that holds practitioners accountable to a code of ethics and professional conduct, such as the EIANZ.

The EIANZ is a not-for-profit, charitable organisation incorporated in Victoria, and a registerable Australian body under the Corporation Act 2001 (Cwlth), allowing it to operate in all Australian jurisdictions.

## 2 General Observations

### Observation 1: Lack of strategic approach and clear framework to waste management in WA.

In principle, the EIANZ is supportive of legislative reform and initiatives to promote re-use and recycling of waste in accordance with best practice for environmental protection. At present, there are several sources of information around waste reform in WA, however, a clear framework and strategic approach to guidance is absent. The EIANZ would like to see the proposed reforms driven from the development of a waste strategy (and framework) for WA that is underpinned by sound environmental objectives and delivered by robust policy instruments (i.e. guidelines).

In a broader context, it is vital our waste strategy achieve tangible improvement in how we re-use and recycle waste, without the potential for conflicting layers of information/guidance potentially preventing desired environmental objectives.

### Observation 2: Lack of rationale and transparency around uncontaminated fill thresholds aimed at environmental protection.

The Consultation Paper allows for the use of uncontaminated fill that meets environmental and health standards after testing without the need for a licence or payment of the waste levy. The new “Uncontaminated fill” definition will include inert type 1 waste (excluding asphalt and biosolids) which meets specified maximum concentrations (thresholds) of chemical substances and limits of relevant physical attributes (set out in Table 1 of Appendix B), as determined by specified sampling and testing requirements (set out in Table 2 of Appendix B).

The EIANZ notes the following:

The Consultation Paper provides no rationale, justification or transparency on methods used to determine the suite of parameters for testing, or how threshold values (i.e. guideline concentrations) have been determined. This is not consistent with other regulations aimed at environmental protection (i.e. ANZECC/ARMCANZ (2000) Water Quality Guidelines, Waste Regulations, National Environment Protection (Assessment of Site Contamination) Measure, *Contaminated Sites Act 2003*).

The EIANZ are supportive of acceptance criteria which provide for environmental protection, however, levels for certain parameters appear conservative, and much lower than values used in other similar legislation and technical guidance (EU Landfill Directive and the Dutch Soil Quality Decree). In some instances, threshold levels are below the routine detection limit used by NATA accredited laboratories in WA. If DWER are going to set conservative acceptance criteria for certain materials to be used as fill, EIANZ would like transparency on sources of information used to set these threshold levels. A lack of detail makes it difficult to assess the full implications of revised acceptance criteria on the use of uncontaminated fill for re-use and recycling.

A lack of transparency around the development of criteria, why it was chosen and what desired environmental objective/outcome it aims to achieve, undermines community faith in environmental regulation. As a consequence, both government and environmental practitioners, find themselves unable to effectively utilise these tools to communicate and which ultimately threatens the sustainability of our industry and trust in government institutions.