

15 December 2022

EP Regulation Reform
Legislation and National Policy Branch
Department of Water and Environmental Regulation
Locked Bag 10 Joondalup DC WA 6919



Environment Institute
of Australia and
New Zealand Inc.

Via email: epactamendments@dwer.wa.gov.au

Dear Sir/Madam

Re: Submission on Discussion Paper – Environmental Regulation Reform

The Environment Institute of Australia and New Zealand (EIANZ) Western Australia Division (EIANZ-WA) is pleased to provide feedback on the Department of Water and Environmental Regulation's (DWER) discussion paper *Environmental regulation reform – a strategic view of regulation delivery and fees for industry regulation*.

EIANZ is a not-for-profit, professional association for environmental practitioners. The Institute promotes independent and interdisciplinary discussion on environmental issues and advocates good practice environmental management delivered by competent and ethical environmental practitioners.

We forward this submission on behalf of EIANZ-WA members. Currently, we have over 200 members in WA while across Australia and New Zealand we have over 2,100 members. Our members come from a range of technical disciplines including certified environmental practitioners (CEnVP), ecological consultants, environmental advocates, heritage consultants, researchers, and environmental specialists working in government, industry and the community.

We acknowledge that this discussion paper is at a high-level and is an early step in the consultation process. Considering this, we make the following comments:

- The guiding principles of the reform are generally supported, noting that they could be enhanced by including a principle around measuring effectiveness of the reform against stated outcomes, in line with an adaptive management approach.
- EIANZ support risk-based regulation and provision of Environmental Performance Objectives that provide a greater focus on achieving good environmental outcomes. While we do consider the simplification of the "prescribed premises" to the groups of "prescribed activities" as proposed an improvement due to the reduced complexity, we have concerns about ensuring that high-risk activities are appropriately captured.
- EIANZ support cost recovery to enable a well-resourced and effective public sector that is well trained, provides consistent advice, and drives good environmental practice. Of the models presented, the cost recovery / 'polluter pays' hybrid model is supported above the others as it is more likely to incentivise operators to reduce emissions, lead to better environmental outcomes, and is consistent with the EP Act principle of "improved valuation, pricing and incentive mechanisms".

- Apart from some discussion on regulating greenhouse gas (GHG) emissions, there is no mention of climate change in the discussion paper. We support strong action on climate change, and would welcome further discussion on how greenhouse gas (GHG) emissions might be considered under Part V of the EP Act, to capture the multitude of emissions sources that do not meet the threshold for assessment under Part IV of the EP Act.
- Provision of improved guidelines is critical, as current guidelines can be difficult to interpret and ambiguous. This can lead to disagreement between assessing officers, proponents and stakeholders, and distract from good environmental practice.

Thank you for the opportunity to provide feedback on this discussion paper. Attachment 1 provides the further responses to the questions posed in the consultation materials.

Yours sincerely

A handwritten signature in black ink that reads "BBastow". The signature is written in a cursive style with a large, sweeping initial "B" that loops over the rest of the name.

Belinda Bastow

President

EIANZ – WA Division

Attachment 1 – feedback on aspects of the discussion paper

Guiding principles:

- EIANZ supports principles that are consistent with the objects and principles of the EP Act, are digitally focused, integrate better practice, and ensure risk-based, evidence-based, and transparent delivery.
- Current experience is that industry regulation can be inconsistent, overly risk averse at times, and process rather than outcome driven.
- We are curious as to the inclusion of “ESG initiatives and outcomes” in the context of industry regulation, and would welcome the opportunity to understand how this translates into regulatory practice.
- A guiding principle around measuring effectiveness against outcomes would be supported.

Current regulatory approach

- We support moving from the current regulatory approach so that environmental management, pollution control, and monitoring are risk-based and focused on environmental outcomes.
- We support a shift away from licenses that are prescriptive and require frequent administrative amendments for activity changes that are unlikely to increase risk to the environment.

Feedback on Proposals 1 – 3:

- We support a risk-based approach to licensing, including the hierarchy as proposed, noting that consideration of risk is currently inconsistent across the department. To develop a more consistent risk-based approach, the department might consider workshops between the department and public to prepare revised risk-assessment guidance, and further workshops and training for department staff and public.
- Much of the information presented in Proposals 1 to 3 is related to controls rather than environmental outcomes. The regulatory control mechanisms as described in Proposals 1 to 3 should be linked with outcomes, which might be through the Environmental Performance Objectives as described in Proposal 4.
- We support Standardised Prescribed Conditions Regulations to enable the efficient use of department resources, to drive better environmental practice, and to facilitate good outcomes across broader environmental issues (e.g. e-waste management).
- We have concerns about managing too many activities under regulations as this approach may not be flexible.

Feedback on Proposals 4 – 5:

- We support Environmental Performance Objectives (EPOs) and improved guidance material from the department. EPOs and accompanying guidelines should be more

specific than current EPA factor objectives, and performance standards should be emissions based rather than process standards.

- There might be an opportunity to design EPOs to align with objectives of other legislative instruments (e.g. Part IV EP Act, Mining Act, RiWI Act), to reduce complexity for operators so there can be greater focus on achieving good environmental outcomes.

Feedback on Proposals 6 – 7:

- As per comment above, streamlining regulation, applications, and reporting across agencies would be supported, only if it facilitates better environmental outcomes.
- We support a more streamlined and collaborative approach to environmental regulation across government departments, with a consistent, strong, and aligned focus on environmental protection.

Feedback on Proposal 8:

- We support strong action on reducing greenhouse gas (GHG) emissions under Part V of the EP Act, to capture the multitude of point sources of emissions that do not meet the threshold for assessment under Part IV of the EP Act.

Feedback on Proposal 9:

- We support the encouragement of circular practices and the re-use of waste. The EIANZ provided feedback on the 2020 consultation paper *Waste not want not: Valuing waste as a resource*. Overall, EIANZ was critical of the paper and its focus, with EIANZ highlighting that it was focused on modifying aspects to strengthen the landfill levy rather than pursuing policy and legislative reform for a circular economy. Furthermore, the 2020 consultation paper indicated that the department was investigating legislative options to support the use of waste-derived materials. EIANZ is not aware that this has been developed and communicated with the community. Barriers to recycling of waste need to be removed, through appropriate and risk-based classification and management of recyclable materials. Removal of barriers to recycling however needs to be balanced by the recognition that waste re-processing operations can have significant environmental risk which does need to be managed..

Policy, process and guidance:

- We support the development of further guidelines to assist in the alignment of understanding of industry regulation, noting that these guidelines are not likely to be statutory in nature.
- We have concerns that some current guidelines are difficult to interpret, are not “stand-alone” so require research and reference to third-party guidance, and as such can be ambiguous in interpretation. This ambiguity can lead to disagreement between department officers and stakeholders, assessment delays, and distract from good environmental practice.
- We have concerns that there is no mention of climate change or guidance on GHG emissions, particularly as related to GHG reporting to establish baseline data.

Review of fees:

- The guiding principles are supported and wide ranging.
- Of the fee proposals presented, the cost recovery / 'polluter pays' hybrid model is supported as it is more likely to incentivize operators to reduce emissions, lead to better environmental outcomes, and is consistent with the EP Act principle of "improved valuation, pricing and incentive mechanisms".

Feedback on consultative approach, general comments:

- We support a greater focus and effort on assessing and regulating high-risk activities, integrated/streamlined improved compliance support, and a flexible business model to enable the department to be responsive to industry while ensuring good environmental practice and outcomes.



Environment Institute
of Australia and
New Zealand Inc.

About EIANZ

The Environment Institute of Australia and New Zealand (EIANZ, the Institute) is a professional association for environmental practitioners. 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.

The Western Australian (WA) Division currently has over 190 members while EIANZ has over 2100 members. Our members come from a range of technical disciplines and industries and include environmental consultants, ecologists, advocates, managers, and impact specialists working in government, industry and the community.

A Certified Environmental Practitioner Scheme (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, Land Rehabilitation 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* (Cwth), allowing it to operate in all Australian jurisdictions.