



Resourcing Queensland's future

19 September 2018

Committee Secretary
Innovation, Tourism Development and Environment Committee
Parliament House
George Street
Brisbane Qld 4000
itdec@parliament.qld.gov.au

Dear Sir or Madam

Re: Waste Reduction and Recycling (Waste Levy) and Other Legislation Amendment Bill 2018

The Queensland Resources Council (QRC) welcomes the opportunity to provide a submission to the Innovation, Tourism Development and Environment Committee (the Committee) on the *Waste Reduction and Recycling (Waste Levy) and Other Legislation Amendment Bill 2018* (the Bill) introduced into the Queensland Parliament on 6 September 2018.

QRC is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies, and associated service companies. QRC works on behalf of its members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

While recognising the Government's imperative to introduce the waste levy in early 2019, QRC must express its strong disappointment with the exceptionally short timeframe afforded to stakeholders outside of the Recycling and Waste Management Strategic Advisory Group for making submissions to the Committee on the Bill. With the Parliamentary Committee process increasingly being used as key avenue for public consultation, and in order to deliver on this Government's commitment for reasonable consultation, it is critical that submission periods provide adequate time to collate genuine stakeholder contributions.

QRC understands and supports Government's intent to bolster and reinvigorate Queensland's current waste management and recycling framework and shift it in a new direction into the future. However, the resources sector's main concern is that the Bill as drafted could have unintended consequences, particularly in regard to the definition of 'waste facility' as proposed to be amended. This along with other issues are outlined below for the Committee's consideration.

In addition, while recognising that the Committee's role is to deliberate and report on the Bill, QRC raises concerns in relation to the supporting draft *Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2018* (the Amendment Regulation) as it is integral to understanding the impact of the waste levy proposed in the Bill.

1. DEFINITION OF 'WASTE FACILITY'

Section 36 of the Bill provides that:

"The operator of a levyable waste disposal site is liable to pay the State a levy (the waste levy) on all levyable wastes that is delivered to the site..."

The definition of a 'levyable waste disposal site' under Section 26 of the Bill carries through to the definition of 'waste disposal site' under Section 8A of the existing Waste Reduction and Recycling Act 2011 (WRR Act) and subsequently 'waste facility' under the Schedule (Dictionary) of the Act, which states:

"waste facility –

1 A waste facility is a facility for the recycling, reprocessing, treatment, storage, incineration, conversion to energy, sorting, consolidation or disposal (including by disposal to landfill) of waste.

2 However, a waste facility **does not include** a facility that is lawfully operated for the sole purpose of disposing of waste generated by an environmentally relevant activity carried out under the Environmental Protection Act (the relevant activity), if—

- (a) the waste is generated only by, and its generation is ancillary to, the operation of the relevant activity; and
- (b) the relevant activity is not a waste management ERA; and
- (c) the facility is operated by, for, or in direct association with, the entity carrying out the relevant activity".

QRC **supports** the current definition of 'waste facility' under the WRR Act. This appropriately provides that any facility, whether operated by the resources sector or otherwise, which meets the above exemptions, is not deemed a waste facility, and hence not subject to the proposed waste levy. The position is clearly articulated in the Explanatory Notes to the Bill (see page 47) and explained in the Department of Environment and Science's (DES) public briefing to the Committee on 17 September 2018.

However, QRC is concerned with:

- The interpretation of subsection 2(b) in the definition of 'waste facility' under the existing WRR Act (and as to be amended by Bill); and
- The proposed amendments to the definition 'waste facility' under Clause 20(4) of the Bill.

1.1. Distinguishing between different Environmentally Relevant Activities

As provided above, a facility is not deemed a waste facility (in part) under subsection 2(b) of the existing definition 'waste facility' where the relevant activity is not a waste management Environmentally Relevant Activity (ERA).

The resources sector undertakes activities ancillary to its operations, which may include waste management that would otherwise be a prescribed ERA under the *Environmental Protection Act 1994* (EP Act) and *Environmental Protection Regulation 2008* (EP Regulation). QRC is concerned that there is a potential for resource activities to be considered as a 'waste management ERA' (as defined by the existing WRR Act) for the purpose of the waste levy.

To remove any doubt, QRC asks that the Committee seek clarification from DES that subsection (b) in the definition of 'waste facility' in fact be read having regard to Section 19A of the EP Act, which states:

"19A Interaction between prescribed ERAs and resource activities

(1) This section applies in relation to an environmental authority for a resource activity if 1 or more activities (each an ancillary activity) carried out under the authority as part of a resource activity is also a prescribed ERA.

(2) The resource activity is taken to be comprised of—

(a) the ancillary activities; and

(b) the other activities carried out under the authority as a resource activity.

(3) The ancillary activities are taken to be resource activities for the purpose of applications for an environmental authority.

(4) However, the ancillary activities are taken to be prescribed ERAs [only] for the purpose of the following—

(a) the power to impose conditions on the environmental authority under chapter 5, part 5, division 6;

(b) the fees that apply to the environmental authority under this Act".

For the resources sector, this will provide certainty that its ancillary activities will continue to remain exempt when read in the context of the definition of 'waste facility'.

1.2. Proposed amendments to 'waste facility'

Clause 20(4) of the Bill proposes to amend the existing definition of 'waste facility' under the WRR Act:

(4) Schedule, definition waste facility, item 2, paragraph (c) –

Omit, insert –

(c) the facility is operated by or for the entity carrying out the relevant activity; and

(d) the facility is authorised under the same environmental authority as the relevant activity.

QRC is concerned that the removal of subsection 2(c) "*the facility is operated by, for, or in direct association with, the entity carrying out the relevant activity*" from the existing definition of 'waste facility' coupled with the proposed drafting of the Clause 20(4) will have unintended consequences for some operations of the resources sector.

As noted above, the resources sector undertakes waste management activities ancillary to its operations. In certain circumstances, one operation will utilise a facility authorised under a separate EA for another associated operation to recycle, reprocess, treat, store, incinerate, convert to energy, sort, consolidate or dispose of waste. This not only has cost benefits with the streamlined investment and operation of waste infrastructure but also affords a better avenue for environmental risk management. If a facility can **no longer be 'in direct association with' the entity carrying out the relevant activity** and must be **authorised under the same EA**, existing operations will automatically be delivering its waste to a deemed 'waste facility' and hence a 'waste disposal site' post-commencement of the Bill, which will trigger the waste levy. In this regard, the proposed amendment to the definition of 'waste facility' has the potential to be retrospective and consequently have substantive cost implications.

QRC recognises Government's intent is to curb the transfer of waste to exempt facilities to avoid payment of the waste levy. However, Government must have regard to the resources sector's need for waste management flexibility, particularly where there are beneficial use opportunities. As such, QRC recommends that Clause 20(4) be amended to reflect the proposed drafting amendments below:

(c) the facility is operated by or for <<, or in direct association with,>> the entity carrying out the relevant activity; and

(d) the facility is authorised under the same environmental authority as the relevant activity << or, the facility is authorised under the same environmental authority to receive waste from an entity in direct association with the environmental authority holder.>>

2. DEFINITION OF 'WASTE MANAGEMENT ERA'

DES is currently progressing related reform to the Bill, as described in the *Review of the Regulated Waste Classification and Waste-Related Environmentally Relevant Activity (ERA) frameworks Decision Regulatory Impact Statement*, to streamline and update Prescribed Waste Management Environmentally Relevant Activities (ERAs) under the EP Act and EP Regulation. The activities associated with the revised listing of ERAs is marginally different to that currently provided under the existing definition of 'waste management ERA' under the WRR Act. By way of consistency, QRC recommends that this definition be amended to reflect the revised listing of Prescribed Waste Management ERAs as it is soon to be amended in the EP Regulation.

3. WASTE LEVY ON RESIDUE WASTE

The inclusion of a waste levy for residue waste from recycling appears inconsistent with the Government's shift to a 'zero avoidable net waste economy'. A waste levy, discounted or not, on residue waste provides a disincentive to business to recycle. The recycling company will pass on the levy cost to users regardless of a discount. A discount will not provide an incentive for leading practice or recycling efficiency thresholds, nor new technologies with low efficiencies.

Waste management is based on the general principles of the waste and resource management hierarchy, which includes segregated waste types at its source. Segregation of waste on site allows for an increased opportunity to recycle waste, however, can take up a large amount of resources in a complex work environment, as can be found in the resources sector. The inclusion of a waste levy for all residue waste from recycling processes means that the return currently provided will be minimised, discouraging the additional resources to separate waste types at the source.

QRC is of the view that it is not beneficial to the objectives of the Bill to include a waste levy on residue waste. As such, QRC recommends that the application of the levy in this regard be removed from the Bill.

4. USE OF REVENUE RAISED BY THE WASTE LEVY

The Explanatory Notes to the Bill state that "*Between 2018-19 and 2021-22 it is expected that over 70% of revenue generated through the waste levy will be allocated to advance payments to councils, scheme start-up and operational costs, industry programs and other environmental priorities. Surplus revenue from the levy will benefit the entire Queensland community by providing funding for schools, hospitals, transport infrastructure and frontline services*".

QRC does not find it appropriate for Government to impose a levy that is not reflective of, or directed to, resolving waste-related issues.

With households to be subsidised, it means that businesses will bear the unnecessary and unjustified cost of Government's approach to collecting additional revenue through the levy for matters other than waste.

To further support QRC's position, the Environment and Communications Committee leading the Senate inquiry into the waste and recycling industry in Australia provided in its report, released on 26 June 2018, that:

*"The committee recommends that the Australian Government support state and territory governments **fully hypothecating landfill levies towards measures that reduce the creation of consumption and waste, and that increase the recycling of waste materials**".*

If Government is seeking further funding for schools and hospitals etc., QRC recommends this be applied proportionately to all taxpayers via another price signal and not under the guise of the waste levy.

5. ECONOMIC IMPACT OF THE LEVY

Government has not transparently demonstrated, through a Regulatory Impact Statement, modelling or otherwise, how the levy rates (as proposed now and the incremental increases) for different waste streams were arrived at or what impact this has on business, and potentially households, should Government not be able to subsidise the cost into the future.

QRC acknowledges that a very brief jurisdictional analysis has been outlined for general waste, noting that at the public briefing on 17 September 2018, DES indicated that the \$70 general levy had been arrived at because it was somewhere in the middle of other state levy amounts. However, no attempt has been made to justify the rates for regulated waste.

Further, the levy rates listed will increase by \$5 per year for the next four years. Again, this incremental creep in cost and its impact on business has not been well assessed. While the additional cost per tonne appears small, it can have a material impact on annual costs, particularly for those who are handling large volumes of regulated waste and have no other avenue for disposal.

QRC recommends that the modelling (or other assessment) underpinning the waste levy be made publicly available, or further works be undertaken to better inform the levy before pursuing legislative change.

6. WASTE REDUCTION AND RECYCLING (WASTE LEVY) AMENDMENT REGULATION 2018

The Amendment Regulation was tabled in Parliament alongside the Bill on 6 September 2018. It sets out the waste levy zone and fees amongst other matters, which is a formal extension to the *Transforming Queensland's Recycling and Waste Industry Directions Paper* (the Directions Paper) released publicly on 1 June 2018.

Note that QRC will be raising the following concerns, among others, with DES as part of its consultation on the Amendment Regulation.

6.1. Waste levy zone

The Directions Paper provided that the waste levy zone encompasses 38 Local Government Areas (LGAs) across Queensland, which represents over 90% of Queensland's population. On 17 September 2018, DES advised the Committee that LGAs with a population of 10,000 and over had been included in the waste levy zone. However, it remains unclear why Government has selected population as the sole indicator for deciding the waste levy zone when, for example, the generation of waste streams outside of municipal solid waste is not always directly linked to population. Further, the basis for which Government has selected this population threshold has not been disclosed.

QRC recommends that the Committee seek clarification as to Government's use of population as an indicator to justify the waste levy zone and the threshold (10,000 or greater) selected.

In addition, Government has claimed to have recognised the "*special needs of remote Queensland communities...*" in developing the waste levy zone and as such "*removes the administrative cost of collecting, remitting and reporting against the levy*" in these areas. Despite this position, Government has captured the Mount Isa LGA in the levy zone. QRC suggests Government has failed to appreciate that Mount Isa is at a disadvantage over all other areas within the levy zone due to its remoteness and limited waste infrastructure.

QRC recommends that the Committee seek clarification as to Government's consideration of the Mount Isa LGA as a remote community when developing the waste levy zone (i.e factors beyond population). Further, QRC suggests that the Committee recommend the Mount Isa LGA be excised from the waste levy zone as provided under the Amendment Regulation.

6.2. Category 1 and 2 regulated waste

The definitions for the regulated waste categories, on which the levy rates are calculated, is unclear. The Amendment Regulation refers to Category 1 and Category 2 regulated waste as the meaning given by the EP Regulation, however these definitions do not currently exist in the Regulation.

QRC understands that DES is undertaking a review of the Regulated Waste Classification and Waste-Related ERA frameworks, which is to support the introduction of the waste levy. Although the Decision Regulatory Impact Statement (July 2018) for this work provides the two risk-based regulated waste categories, as proposed in the Amendment Regulation, the definitions are not yet reflected in any consultation draft for the EP Regulation leaving a disconnect when assessing the impact of the Bill.

Businesses require accurate information, in a timely manner, to prepare for the future of waste levy costs. As drafted, and in the absence of any related regulation being made available, the Bill and Amendment Regulation do not provide a basis for Category 1 and Category 2 regulated waste types to enable calculation of a waste levy.

QRC suggests that the Committee recommend any related regulation underpinning the Category 1 and Category 2 regulated waste definitions be made publicly available, or further works be undertaken to define these categories prior to the introduction of the levy.

7. RECOMMENDATIONS AND CLARIFICATIONS

QRC submits the following clarifications and recommendations to the Committee as detailed in the body of this submission:

Clarification 1: Clarify that subsection (b) in the definition of 'waste facility' under the existing WRR Act should be read having regard to Section 19A of the EP Act.

Clarification 2: Clarify Government's use of population as an indicator to justify the waste levy zone and the threshold (10,000 or greater) selected.

Clarification 3: Clarify Government's consideration of the Mount Isa LGA as a remote community when developing the waste levy zone (i.e factors beyond population).

Recommendation 1: Clause 20(4) of the Bill, which seeks amendments to the existing definition of 'waste facility' under the WRR Act, should be amended to reflect the proposed drafting options in **Section 1.2**.

Recommendation 2: The application of the waste levy on residue waste should be removed from the Bill.

Recommendation 3: The definition of 'waste management ERA' should be amended to reflect the revised listing of Prescribed Waste Management ERAs as it is soon to be amended in the EP Regulation.

Recommendation 4: Consistent with the recommendation of the Environment and Communications Committee leading the Senate inquiry into the waste and recycling industry in Australia, revenue from the waste levy should be directed fully towards measures that reduce the creation of consumption and waste, and that increase the recycling of waste materials.

Recommendation 5: Government should make the modelling (or other assessment) underpinning the waste levy and strategy proposals publicly available, as should have been done through a formal Regulatory Impact Statement process. In the absence of this information, Government should undertake further work to better inform the levy before pursuing legislative change.

Recommendation 6: The Committee recommend that the Mount Isa LGA be excised from the waste levy zone as provided under the Amendment Regulation.

Recommendation 7: The Committee recommend that any related regulation underpinning the Category 1 and Category 2 regulated waste definitions be made publicly available, or further works be undertaken to define these categories prior to the introduction of the levy.

8. CONCLUSION

Overall, while QRC does not oppose the policy basis for the waste levy, we are not in a position to fully support the Bill until we have greater certainty from Government that identified unintended consequences will be minimised as far as practicable.

QRC would welcome the opportunity to discuss our submission further with the Committee during its consideration of the Bill. Chelsea Kavanagh, Manager Environment and Frances Hayter, Policy Director Environment, have carriage of environment policy matters and can be contacted at _____ and _____

Yours sincerely



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Chief Executive