



LEGISLATIVE ASSEMBLY OF NEW SOUTH WALES

Committee on Environment and Regulation

REPORT 2/55 – JUNE 2014

REPORT ON THE MANAGEMENT AND DISPOSAL OF WASTE ON PRIVATE LANDS





LEGISLATIVE ASSEMBLY

LEGISLATIVE ASSEMBLY COMMITTEE ON
ENVIRONMENT AND REGULATION

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PRIVATE LANDS

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The motto of the coat of arms for the state of New South Wales is "Orta recens quam pura nites". It is written in Latin and means "newly risen, how brightly you shine".

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Membership

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Terms of Reference

That the Committee inquire into the management and disposal of waste on private lands. In particular, the Committee will focus on:

- (a) the health and safety risks posed by inadequate management and disposal of waste, overgrowth and excess vegetation, pests and odour;
- (b) the effectiveness of current regulatory arrangements and powers to compel clean-ups on private land and manage derelict buildings;
- (c) the adequacy of inspection and enforcement procedures, including relevant sanctions and powers to recover costs;
- (d) possible measures to improve the management of waste on private land;
- (e) the extent of illegal dumping and the impact on local government authorities of requirements to remove dumped waste; and
- (f) any other related matters.

Chair's Foreword

I am pleased to present the report of the Committee on Environment and Regulation into the management and disposal of waste on private lands.

When the Committee originally prepared our terms of reference it is fair to say that we had in mind an inquiry likely to chart a fairly direct and undramatic course through various regulations, statutes and programs leading to equally routine recommendations. Our experience, however, has been quite the opposite.

While our recommendations have things to say about regulations and programs, at the centre of our inquiry have been two unexpected, but substantial aspects which highlight important distinctions between the management of private and public lands, and the way we need to think about private landholders whose management of their own properties becomes a matter of concern to others.

Firstly, our consideration of the public interest in managing private lands has raised important questions about the competing rights of landowners; those who own or occupy land and have every expectation of doing so for their own enjoyment, and those who have the same expectations on adjoining land. While there are some clear points of public interest in the management of private land and pollution control, public health and public safety, a number of the submissions we received and witnesses we heard at our two hearings made compelling and emotional cases regarding less quantifiable impacts of private land management in the areas of amenity, enjoyment and harm.

Secondly, as our inquiry progressed it became clear that one aspect of private land management over which there has been considerable debate about the need for greater regulation may not be amenable to regulation in the first instance or at all. I am referring to domestic hoarding and squalor which is the result of a landowner's incapacity, whether mental, physical, aged or financial, to manage their own property in their own best interests, let alone those of their neighbours.

The domestic hoarding and squalor cases which were brought to the attention of the Committee, by both affected neighbours and by advocates for landowners whose activities had come to the attention of regulators, were in the end so personal and potentially distressing that we resolved to redact from published submissions any information which identified private property, and to hear all private citizens appearing at our two hearings *in camera*.

Our recommendations focus on two main areas. Firstly, the local governments who made submissions and gave evidence generally made concerted bids for more effective and streamlined regulatory powers to govern waste on private lands. The Committee detected a significant level of frustration amongst councils caught between the competing demands of some landowners for their neighbours to clean up their land and other landowners resistant to any level of outside interference in the way they enjoy their private properties.

Councils felt that their discretion regarding different approaches to private land management questions is detracted from by lack of legislative clarity. They felt that clear legislative

definitions and guidelines would assist them and the public to better implement and understand waste management with the objective of producing quicker and less costly results. The Committee has recommended a staged approach to addressing the deficiencies in the current regulatory arrangements to see if better practice and outcomes can be achieved incrementally.

Secondly, the Committee heard from councils, the community sector and private citizens that where hoarding and squalor was evident, regulatory interventions often had a negative impact on the problem, and that a social approach with state-wide application was required. The Committee has recommended that protocols be developed to achieve this state-wide and potentially national approach.

The Committee also considered a range of other matters raised in submissions and evidence in regard to which it has made several recommendations for further investigation or regulatory changes.

I would like to thank the Deputy Chair of the Committee on Environment and Regulation, Mrs Tanya Davies MP whose patient and perceptive examination of the evidence assisted the Committee to focus on areas of importance within the broad scope of information and opinion presented to us. I would also like to thank the Hon Thomas George MP, the Hon Carmel Tebbutt MP and Mr Jamie Parker MP for their informed and empathetic contributions to our deliberations.

On behalf of the Committee I would like to thank everyone who made a submission and gave evidence to the inquiry. We benefitted from the contributions of many experts and professionals with great experience in local government, the welfare and tertiary sectors, and community advocacy, as well as from interested citizens who gave up their own time to travel long distances to meet with us. I would also like to acknowledge the contribution of staff members to the inquiry.

A handwritten signature in blue ink, appearing to read 'Chris Patterson', is positioned above the printed name and title.

Chris Patterson MP
Chair

Executive Summary

The Committee resolved to examine the management and disposal of waste on private lands according to six terms of reference. The Committee aimed to consider the issue in terms of health and safety, current regulations and powers, inspection and enforcement, management improvement, illegal dumping, and other related matters.

The Committee has made a number of recommendations to address deficiencies in the current regulatory arrangements, establish a new regime to manage hoarding and squalor, and investigate certain matters, including:

- The preparation of guidelines for councils to manage waste more effectively and consistently, and to recover the costs of enforcing compliance.
- The consideration of statutory amendments to improve the current regulatory arrangements.
- Addressing unsightliness where it affects private property.
- The development of a holistic program for managing domestic hoarding and squalor on a state-wide basis, including triage and support arrangements, a tool kit and education for responders, and dedicated funding.
- The development of principles to be applied when agencies require access to Aboriginal land.
- The preparation of guidelines for councils to manage derelict buildings more effectively.
- Clarifying the management of the health and safety impacts of clandestine drug laboratories.

Chapter One of this report explains the background to this inquiry and how the Committee established the terms of reference, called for submissions and held public hearings.

Chapter Two explores questions which the Committee considered important in order to understand how to balance the property rights and obligations of landowners with community expectations.

Chapter Three examines the evidence of local councils, stakeholders and individuals regarding the current regulatory arrangements, contrasts the two main regulatory instruments, and recommends a staged approach to achieving improvements in regulation.

Chapter Four examines the evidence regarding hoarding and squalor and recommends a new management regime with a non-regulatory focus.

Chapter Five examines illegal dumping and related matters, including the treatment of asbestos, the impact of the waste levy, orphan waste and HAZMAT arrangements, illegal dumping on Aboriginal land, and community education, and makes recommendations for operational reviews and further investigations.

Chapter Six examines the interstate transportation of waste, derelict buildings, and clandestine drug laboratories, and makes recommendations for regulatory and operational changes.

List of Findings and Recommendations

FINDING 1 _____ 4

The Committee finds that there is a strong and justified community expectation for effective and timely regulation of waste management and disposal on private lands.

FINDING 2 _____ 35

In examining the evidence concerning the Local Government Act 1993 and the Protection of the Environment Operations Act 1997 the Committee finds that:

- The regulatory environment for the management and disposal of waste on private lands is complicated by the existence of the two Acts; and
- The two Acts have major differences in the way they are structured, define their areas of interest, establish powers, and preserve rights.

FINDING 3 _____ 37

The Committee finds that the Local Government Act and the Protection of the Environment Operations Act can be distinguished on the grounds that it is more appropriate to deal with domestic situations by applying the Local Government Act, and non-domestic situations by applying the Protection of the Environment Operations Act.

RECOMMENDATION 1 _____ 38

The Committee recommends that the Division of Local Government in the Department of Premier and Cabinet, in consultation with Local Government NSW, the Environment Protection Authority, Environmental Health Australia, and other relevant state and local government stakeholders, prepare, as a priority, Guidelines for the Management and Disposal of Waste on Private Lands, which provide thorough policy and operational guidance including distinguishing between situations to which the Local Government Act or the Protection of the Environment Operations Act should be applied.

RECOMMENDATION 2 _____ 41

The Committee recommends that the Division of Local Government in the Department of Premier and Cabinet consult with Local Government NSW, the Environment Protection Authority, Environmental Health Australia, and other relevant state and local government stakeholders to propose amendments to the Local Government Act 1993 which provide for:

- Appropriate offences, including tiered offences and a sliding scale of penalties if warranted.
- Appropriate notice and warrant provisions which preserve rights and ensure effective regulation.
- Effective orders of appropriate duration.
- Clear and consistent definitions, schedules and prescriptions of waste, including an effective definition of 'residential'.

- The expansion of Order 10 under section 124 to include unsightliness not in the vicinity of a public place.
- Effective cost recovery.

FINDING 4 _____ 50

The Committee finds that domestic hoarding and squalor is a significant and complex issue for householders, neighbours, councils, government agencies and other organisations across NSW, which requires a sophisticated and holistic interagency response in a broader social context rather than just a regulatory one.

RECOMMENDATION 3 _____ 51

The Committee recommends that the Division of Local Government in the Department of Premier and Cabinet consult with Catholic Community Services, the RSPCA, Fire and Rescue NSW, NSW Health, Ageing Disability and Homecare, Housing NSW, the Land and Housing Corporation, and the other members of the Hoarding and Squalor Taskforce, Local Government NSW, and other relevant stakeholders to develop and implement a state-wide program for managing domestic hoarding and squalor.

RECOMMENDATION 4 _____ 51

The Committee recommends that the program described in Recommendation 3 include the following components:

- State-wide coverage
- Mandatory reporting
- Formal agreements between government and non-government agencies to ensure inter-agency coordination
- Education and training, including the production and distribution of a tool-kit to equip local councils and other government and community responders with the information and tools they need to address domestic squalor and hoarding
- A telephone hotline and associated measures to ensure pathways are established and maintained which provide ready access to advice and services for hoarders and their families/carers, the neighbours of hoarders and other affected residents, and government and non-government officials responsible for incident management and care
- Triage arrangements to ensure cases are reported and dealt with effectively and expertly, and referred in a timely manner, with special regard to the early and effective identification and treatment of mental illness.

RECOMMENDATION 5 _____ 51

The Committee recommends that the hoarding and squalor management program described in Recommendation 4 have a dedicated funding source, and that given the applicability of the program to managing issues which occur in all states and territories, the NSW Government seek Commonwealth funding and support for this program.

RECOMMENDATION 6 _____ 51

The Committee recommends that Housing NSW be required to inspect its properties on an annual basis to ensure cases of hoarding and squalor, and other tenant welfare issues, are identified and managed proactively.

RECOMMENDATION 7 _____ 66

The Committee recommends that the Office of Environment and Heritage in the Department of Premier and Cabinet review the funding levels and application arrangements for councils accessing NSW Environmental Trust funds to assist with the management and removal of asbestos and other hazardous orphan waste that have been illegally dumped.

RECOMMENDATION 8 _____ 66

The Committee recommends that Fire and Rescue NSW review the operational response to hazmat incidents, in consultation with Local Government NSW and the NSW Police Force.

RECOMMENDATION 9 _____ 68

In order to better manage access to Aboriginal lands, the Committee recommends that:

- NSW Government agencies and local councils cooperate with Local Aboriginal Land Councils to help manage illegal dumping on Aboriginal lands: and
- the NSW Government, the NSW Aboriginal Land Council and Local Government NSW jointly formulate principles which can be applied consistently to all agreements with Ausgrid, Railcorp, Transgrid, local councils and any other NSW Government agencies requiring access to easements, utilities and roads on Aboriginal land.

RECOMMENDATION 10 _____ 68

The Committee recommends that the NSW Rural Fire Service include in its Annual Report details of how many Bush Fire Management Committees include a member from the Local Aboriginal Land Council.

FINDING 5 _____ 73

The Committee finds that the Environment Protection Authority is investigating the interstate transportation of waste and any impact on NSW waste management strategies.

RECOMMENDATION 11 _____ 76

The Committee recommends that the Division of Local Government in the Department of Premier and Cabinet, and the Department of Planning consult with Local Government NSW and Environmental Health Australia to prepare guidelines which outline the operation of the Environmental Planning and Assessment Act 1979 in managing derelict buildings, with particular regard to ensuring public health and safety, and ensuring that costs incurred by councils can be recovered from building owners.

FINDING 6 _____ 80

The Committee finds that local councils do not have the expertise or resources to take lead responsibility for managing clandestine drug laboratories.

RECOMMENDATION 12 _____ 80

The Committee recommends that the NSW Government clarify the status of the *Clandestine Drug Laboratory Remediation Guidelines 2011*, and that statutory and operational responsibility for leading the management of clandestine drug laboratories be vested in the Environment Protection Authority.

Glossary

CCTV	Closed-circuit television
EHA	Environmental Health Australia
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EPA	Environment Protection Authority
HAZMAT	Hazardous materials
LALC	Local Aboriginal Land Council
LG Act	<i>Local Government Act 1993</i>
POEO Act	<i>Protection of the Environment Operations Act 1997</i>
RID squad	Regional illegal dumping squads

Chapter One – Introduction

TERMS OF REFERENCE

- 1.1 On 30 May 2013, the Committee resolved to inquire into the management and disposal of waste on private lands.
- 1.2 The inquiry was self-referred by the Committee which resolved to focus on six terms of reference covering health and safety, regulatory arrangements, inspection and enforcement, management improvement, illegal dumping and other related matters.
- 1.3 The full terms of reference can be found on page iv.

CONDUCT OF THE INQUIRY

Submissions

- 1.4 The Committee called for public submissions by advertising in the *Sydney Morning Herald* on 19 June 2013. The Committee also wrote to key stakeholders inviting them to make a submission. The closing date for submissions was 29 July 2013.
- 1.5 The Committee received 40 submissions. 27 submissions were received from local councils with further submissions received from Local Government NSW, the peak body for local government in New South Wales, and Environmental Health Australia, the peak body for environmental health officers in New South Wales. Of the 27 councils who made a submission, 14 were Sydney metropolitan councils and 13 were from outside Sydney, while 25 had populations greater than the NSW median and only 2 had populations below the median.
- 1.6 A number of submissions, from both agencies and individuals, identified private property by way of description and/or photographs. The Committee resolved to redact all references which identified private property or third parties from published submissions, and resolved to make four submissions confidential to the Committee.
- 1.7 A list of submission makers may be found in Appendix Two. The submissions that the Committee resolved to publish may be found on the Committee's website: <http://www.parliament.nsw.gov.au/environmentandregulation>
- 1.8 When it examined the submissions received the Committee recognised the preponderance of submissions, notably those from councils, which discussed the terms of reference from a regulatory focus. Many of these submissions, however, explicitly acknowledged that there was an important non-regulatory element to the questions posed by the terms of reference, namely the rights of landholders and the capacity of landholders to comply with regulations and/or community standards. A smaller number of submissions focussed directly on these issues, including some which critiqued the regulatory system from a landholder rights perspective. Consequently the Committee identified a second group of

stakeholders who were invited to provide evidence on questions concerning rights and obligations, social issues, and non-regulatory approaches.

Public Hearings

- 1.9 The Committee held two public hearings in Sydney on 21 October 2013 and 28 October 2013. 27 witnesses provided evidence to the Committee. These included an elected councillor and council staff, industry representatives, community sector employees, NSW state agency representatives, and private citizens.
- 1.10 Conscious of the considerable number of local government submissions (nearly 20% of councils in New South Wales made a submission), the Committee resolved to invite interested councils to give evidence in roundtable style. Eight councils and Local Government NSW expressed interest in participating in the roundtable and attended the public hearing on Monday 21 October 2013 for a two hour discussion with the Committee. This format allowed the Committee to test individual submissions and hear a range of expert views from a variety of regulatory participants from across the state.
- 1.11 A ninth council was represented at the 28 October hearing. Of the 9 councils which appeared to give verbal evidence 6 were from Sydney and 3 from outside Sydney.
- 1.12 The Committee received four submissions from private citizens which addressed their own or third parties' experiences with waste management on private lands and the intervention of regulators. A fifth private citizen was identified by a Committee member as a person with direct experience of hoarding and squalor on an adjoining property. Four of these individuals were invited to give evidence to the Committee. Consistent with its resolution to redact submissions which identified private property and/or third parties, the Committee resolved to hear all private citizens appearing before the Committee *in camera*.
- 1.13 A list of witnesses who appeared in open sessions before the Committee may be found at Appendix Three.
- 1.14 The transcripts of evidence from the public hearings may be found at the Committee's website:
<http://www.parliament.nsw.gov.au/environmentandregulation>
- 1.15 The Committee thanks the individuals and organisations who participated in the inquiry.

Chapter Two – Property Rights and Responsibilities

- 2.1 This chapter explores questions around the management and disposal of waste on private lands and, in particular, its public regulation in the context of the rights and responsibilities which come with property ownership. This is a complex issue which involves balancing competing concerns. While the Committee found evidence during its inquiry of a general community expectation that private lands should be well managed, this must also be considered in the context of private ownership and the rights and responsibilities of landholders; and from a broader social perspective in cases where some landholders, through no fault of their own, lack the capacity to adequately manage lands themselves.
- 2.2 In accordance with the inquiry terms of reference, the Committee has concentrated its inquiry on private land, that is, land that is privately owned rather than owned by a public authority or the Crown.
- 2.3 The Committee received a significant amount of evidence about the competing demands of private landholders, particularly residential landholders. Some evidence emphasised a need for sufficient public regulation to ensure that landholders manage lands to a minimum standard, while other evidence upheld the right of landholders to enjoy private property without outside interference.
- 2.4 It is these competing perspectives that local councils and other regulators are often called upon to mediate, and where the evidence received by the inquiry suggested the current regulatory arrangements may be deficient.

The Regulatory Perspective

- 2.5 The terms of reference for the inquiry were focussed on the health and safety risks of inadequate land management, the effectiveness of current regulatory arrangements, and how they could be improved.
- 2.6 The majority of submissions to the inquiry were received from local councils. Consistent with the regulatory focus of the terms of reference, these submissions mostly considered the terms of reference from a regulatory perspective. Many sought legislative and operational changes aimed at better equipping councils to ensure landholders comply with a general community expectation that private lands be well managed.
- 2.7 The main regulatory tools that councils and the Environment Protection Authority use to regulate management and disposal of waste on private lands in NSW are contained in the *Local Government Act 1993* and the *Protection of the Environment Operations Act 1997*. These two pieces of legislation are discussed in detail in Chapter 3. Derelict buildings are regulated by the *Environmental Planning and Assessment Act 1979* which is discussed in Chapter 6.
- 2.8 In commenting on the effectiveness of the current regulatory arrangements and proposing changes, the primary focus of local government evidence was whether

regulation was effective ie did it achieve the desired outcome; and efficient ie did it obtain value from the use of public resources. A secondary focus of local government evidence was whether regulation upheld or diminished the rights of landholders.

Community Expectations

- 2.9 While the Committee received only a small number of submissions from community stakeholders, the local government submissions provided evidence which established that there is a general community expectation that private lands should be well managed, and that regulators should intervene to achieve this:
- Hornsby Shire Council indicated that it investigates approximately 150 complaints per year about overgrown vegetation on private lands.¹
 - Ballina Shire Council indicated that in 2012-13 it received approximately 130 complaints relating to excess vegetation, pests and odour.²
 - Dubbo City Council indicated that in 2012-13 it responded to approximately 100 complaints/customer requests relating to overgrown, unsightly, unhealthy or derelict private properties.³
 - Warringah Council indicated that in 2012-13 it received 208 complaints in relation to matters associated with overgrown vegetation, pets, stockpiles of excess building materials, cars etc.⁴
- 2.10 Several submissions received from private citizens, however, critiqued the regulatory system for managing waste on private lands, focussing directly on landholder rights and the capacity of landholders to comply with regulatory/community standards, especially in hoarding situations where mental health issues are present. As these submissions identified private property and third parties, the Committee resolved to keep them confidential. However, the Committee has considered them carefully in its deliberations.

FINDING 1

The Committee finds that there is a strong and justified community expectation for effective and timely regulation of waste management and disposal on private lands.

The Non-Regulatory Perspective

- 2.11 As well as the regulatory emphasis in the evidence of local government participants during the inquiry, evidence received from some local government participants also acknowledged an important non-regulatory element to the questions posed by the inquiry's terms of reference namely, the rights of

¹ Submission 3, Hornsby Shire Council, p1

² Submission 5, Ballina Shire Council, p1

³ Submission 26, Dubbo City Council, p1

⁴ Submission 33, Warringah Council, p1

landholders and the capacity of landholders to comply with regulations and/or general community standards.

- 2.12 For example, on the issue of balancing the regulation of private land with landholder rights, Mr Geoffrey Green, Manager, Environment and Health, Camden Council told the Committee:

Council officers struggle to balance the expectations of all sections of the community. In Camden, and I am sure everywhere else, you have house-proud people on one side of the fence and not so house-proud people on the other side.⁵

- 2.13 Camden Council made a similar point in its written submission to the Committee, arguing it is not always appropriate for councils to interfere in the enjoyment of private land where they receive a complaint from a neighbouring landholder:

It is apparent that sometimes the more minor accumulations of items or unsightliness appear to be the cause of annoyance for neighbouring properties. It is these properties that officers experience difficulties in justifying health and safety concerns. It is considered that unsightliness is not a matter of health and safety and should not be considered in the realm of local government to regulate.⁶

- 2.14 In addition to questioning how far councils should go to regulate the management of waste on private lands, some councils made the point that regulation is not always the answer and can sometimes be counter-productive. For example, in the context of hoarding and squalor on private land by mentally ill landholders, Marrickville Council stated:

Forced clean-ups cost a great deal of money and resources. Legal enforcement rarely provides a solution to a hoarding problem ... a hoarding and squalor conference attended by Council staff in 2012 overwhelmingly identified that hoarding is a mental health issue first and foremost, and the accumulation of materials is a manifestation of that illness. Forcing hoarders to remove materials does not solve the problem and can escalate the illness and hoarding problem. In other words, the conference identified that any solution to this problem must first and foremost address the underlying mental health issues of those involved.⁷

Questions About Rights and Capacity

- 2.15 The submissions to the inquiry that discussed the terms of reference from a non-regulatory perspective, urging due consideration for private property rights and landholder capacity issues, raised some broader questions for the Committee than simply how to enforce compliance with waste management legislation. These included:

- The liberty versus amenity question: to what extent should public bodies regulate the management of waste on private lands, and thus the way in which people enjoy private property? Is it ever appropriate to regulate unsightliness?

⁵ Mr Geoffrey Green, Manager Environment and Health, Camden Council, transcript of evidence, 21 October 2013, p8

⁶ Submission 13, Camden Council, p3

⁷ Submission 36, Marrickville Council, pp2-3

- The powers question: how extensive should the powers of regulatory authorities be to enforce compliance with waste management legislation?
- The capacity question: when is a regulatory response appropriate and when does waste management need to be considered from a broader social perspective?

2.16 To assist to answer these questions and balance the regulatory focus of the majority of submissions, the Committee resolved to invite stakeholders with an interest in rights issues to give evidence to the inquiry. For a general rights-based perspective on public regulation the Committee invited Dr Martin Bibby, Board Member of the NSW Council for Civil Liberties to give evidence. For a perspective on domestic hoarding and squalor the Committee invited the following expert stakeholders to give evidence:

- Professor John Snowdon, Psychiatrist, Concord Hospital
- Officers of Catholic Community Services which provides a hoarding and squalor assistance program, funded by the Commonwealth, to certain areas of NSW. The Committee heard evidence from Ms Janis Redford, General Manager, Ms Margaret Pistevos, Manager Community Services, and Ms Maria Splitt, Senior Coordinator, Hoarding and Squalor Program
- Mr Stephen Coleman, Chief Executive Officer of the RSPCA, which responds to complaints in relation to animal hoarding cases.

The Liberty Versus Amenity Question

2.17 To assist the Committee to answer its question about the extent to which public bodies should regulate the management and disposal of waste on private lands, Dr Bibby of the NSW Council for Civil Liberties called upon the work of 19th century English philosopher John Stuart Mill. In his submission to the Committee, Dr Bibby stated:

In dealing with [waste management] matters, Councils should be expected to be governed by John Stuart Mill's enunciation of the principle of liberty: "... that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of others, is self-protection. That the only purpose for which power can rightfully be exercised over any member of a civilised community against his will is to prevent harm to others". In the absence of such harm, people should be allowed to live as they wish.⁸

2.18 Dr Bibby went on to note that, in performing their regulatory functions, councils must balance waste management objectives with individuals' civil liberties. Dr Bibby stated:

It is understandable that councils, as regulators, will have a focus on ensuring that they have powers to ensure compliance with requirements relating to managing waste. However, policy-makers must have a broader set of objectives underpinning their policy development including that councils' powers must be proportionate to

⁸ Submission 40, NSW Council for Civil Liberties Inc., p1

the problem, and that individuals' civil liberties must not be impinged on except to the extent necessary to prevent the impinging on others' liberties.⁹

- 2.19 Dr Bibby also clarified that Mill's enunciation of the principle of liberty must be modified, and that outside interference in the liberties of an individual are justified, where such individuals lack full mental capacity:

When is paternalism appropriate? It is appropriate with children because they do not understand their position yet. It is appropriate with people with mental illness because they are not in a position to fully rationally determine what they are doing ... Mental illness cases are difficult and, yes, there will be grounds for intervening when somebody has got a mental illness in order to protect them from harm. Precisely what should be permitted and who should do this is another question, which is I think more complicated.¹⁰

- 2.20 Public interference in the waste management and disposal decisions of people with mental illness is discussed later in this chapter under the heading 'the Capacity Question'. This section concentrates on public interference in the waste management and disposal decisions of adults with full mental capacity.

General Principle of Non-interference

- 2.21 There is a general principle that public authorities should not interfere with the liberties of adults of full mental capacity, except to prevent harm to others, and to the extent necessary to prevent them impinging on others' liberties.
- 2.22 Applied to the management of waste on private lands, councils should not interfere with residential landholders' enjoyment of private property except to prevent harm to others including people living in adjoining properties and the public more generally.
- 2.23 This principle underpins the current powers of councils and public authorities to interfere in waste management matters where there is a demonstrated health, safety or environmental risk. It also underpins many other instances of public interference in the enjoyment of private property and neighbour disputes, for example, fencing requirements for backyard swimming pools¹¹ or the power for councils to issue a nuisance order to the owner of a dog that barks persistently.¹²

Prevention of Harm

- 2.24 In accepting the principle that public authorities should only act to prevent harm, there was no general agreement evident in submissions received as to what actually constitutes harm in the waste management context. While inquiry participants agreed that cases involving health, safety and environmental risks clearly involved harm that justified interference by public authorities, there was disagreement about whether unsightliness matters involved such harm.

⁹ Submission 40, NSW Council for Civil Liberties Inc., pp1-2

¹⁰ Dr Martin Bibby, Board Member, NSW Council for Civil Liberties, transcript of evidence, 28 October 2013, p5

¹¹ See *Swimming Pools Act 1992* and *Swimming Pools Regulation 2008*

¹² See section 32A of the *Companion Animals Act 1998*

2.25 For example, responding to an argument that the liberties of the neighbours are affected by having to live next to extremely unsightly conditions Dr Bibby stated:

Their enjoyment of life is affected. I do not know that I would describe it as their liberties.¹³

2.26 In commenting on Order 10 under section 124 of the *Local Government Act 1993*, (which allows councils to order landholders, in cases where articles or matter are stored on their property so as to create unsightly conditions, *and the land is in the immediate vicinity of a public place*, to remove or stack the articles or matter, to erect fences or screens, or to plant trees) Dr Bibby also stated that councils should be slow to order people to dispose of their property or to tidy their property unless it creates a health or safety risk.¹⁴

2.27 On the other hand, a private citizen who gave evidence *in camera* to the Committee about extremely unsightly conditions on a neighbouring residential property described the effect on his wellbeing from being confronted by these conditions day after day, and stated that the Committee had a real chance to make a difference.

2.28 Unsightly conditions may also cause financial loss for adjoining landholders.¹⁵ A residential property is usually the largest investment a person will make in his or her life, but the neighbours of landholders who allow their properties to become extremely unsightly may have little chance of selling their property for a reasonable price or indeed at all.¹⁶

Public Regulation of Unsightliness

2.29 In discussing whether the harm that can be caused by unsightly conditions is sufficiently quantifiable to allow and justify its public regulation, Dr Bibby stated:

It is going to be extremely difficult to draw lines – extremely difficult. “I do not like the ivy you have allowed to grow over the building. It is unsightly, it is not trimmed”. It will be a real challenge to your legal branch. I do not think one should be compelling people to do things in relation to unsightliness.¹⁷

2.30 Mr Shannon McKiernan, Coordinator, Environmental Health and Protection, Gosford City Council made a similar point:

I do not think council’s role is to be the pretty police. There needs to be some rules behind that. Consistency is the key for local government officers and environmental health officers. Without some hard-core rules you would be all over the shop, even with your own local government, let alone across the State.¹⁸

¹³ Dr Martin Bibby, Board Member, NSW Council for Civil Liberties, transcript of evidence, 28 October 2013, p6

¹⁴ Dr Martin Bibby, Board Member, NSW Council for Civil Liberties, transcript of evidence, 28 October 2013, p2

¹⁵ Submission 31, Liverpool City Council, p1

¹⁶ Sutherland Shire Council Domestic Squalor and Hoarding Policy, tendered to the Committee by Mr Brett Richardson, Manager, Environment Protection and Regulation Services, Sutherland Shire Council, p5 notes the impact of hoarding and squalor on local area property values.

¹⁷ Dr Martin Bibby, Board Member, NSW Council for Civil Liberties, transcript of evidence, 28 October 2013, p9

¹⁸ Mr Shannon McKiernan, Coordinator, Environmental Health and Protection, Gosford City Council, transcript of evidence, 21 October 2013, p9

2.31 Similarly, the Committee heard that there are limits to what regulation can achieve in balancing the concerns of landholders in unsightliness matters. For example, Mr Adam Gilligan, City of Newcastle stated:

... while I would support having more flexibility to identify things simply on the basis of being poorly maintained, there is a question and a resourcing issue to councils: do they want to manage that through significant regulatory tools?...There is some capacity to improve the tests here, but also to improve the avenues that effective residents have available to them. It may well be that a councillor says, "I appreciate your concerns. Yes, there is a statutory test that has been met because your neighbour has not mowed their lawn often enough, but we still do not believe that is something that we need to invest ratepayer resources in and we encourage you to use an alternate strategy". That might be a chamber magistrate, mediation with a neighbour, or those sorts of tools that might also achieve an outcome.¹⁹

The Powers Question

2.32 Councils have a level of discretion in how actively they perform regulatory functions under the *Local Government Act 1993* (for example, serving a clean-up order) and the level of discretionary activity depends on available resources and community priorities.²⁰ More broadly, the granting of some level of discretion to public officials to discharge their regulatory responsibilities is a well-established practice necessary to ensure that regulatory systems are sufficiently flexible to deal with each case in the most suitable way.

2.33 As discussed above, there is already capacity for councils to regulate unsightly private properties where they can be seen from a public place.²¹ The Committee heard no evidence that councils are administering this order in an over-zealous manner. In any case, administrative guidelines could underpin any new regulatory powers (such as an indicative schedule of limits for items that are commonly hoarded on private property or which take into account the duration that material has been on the property), a right of appeal from decisions could be considered, and options to review them following implementation could also be examined.

2.34 In considering whether to extend regulation of unsightly conditions, consistent with the discussion in this chapter, however, the following should be kept in mind:

- Any new powers should be proportionate to the problem involving the least possible encroachment on the liberties of landholders to prevent them encroaching on the liberties of others. In the unsightliness context, this may mean screening options are preferable to orders mandating removal of items by landholders. This is discussed further in chapter 3.
- The focus of any new powers should be on providing more flexibility to deal with unsightliness matters and to balancing the competing concerns of parties in the context of a range of options including non-regulatory ones like

¹⁹ Mr Adam Gilligan, Manager Compliance Services, City of Newcastle, transcript of evidence, 21 October 2013, p9

²⁰ Local Government Acts Taskforce, *A New Local Government Act for NSW Discussion Paper*, 4 April 2013, p54

²¹ Chapter 7, Part 2, section 124, *Local Government Act 1993*

mediation. They should not mandate a regulatory response which, in any case, would not be possible from a resourcing perspective and which may exacerbate neighbour disputes in certain cases.

- 2.35 Given the above, the Committee has made recommendations in Chapter 3 that the NSW Government consult with stakeholders on how to extend current powers to regulate unsightly conditions on private land in NSW.

The Capacity Question

- 2.36 Dr Bibby and the stakeholders with expertise in domestic hoarding and squalor (the rights-focussed witnesses) also assisted the Committee to explore the capacity question: when is a regulatory response appropriate and when does waste management need to be considered from a broader social perspective?
- 2.37 The capacity question arises in hoarding and squalor situations where a landowner has mental health issues and therefore lacks capacity to manage their land, which may give rise to health and safety risks for themselves, neighbours and communities. Professor Snowdon indicated that perhaps 50 per cent to 65 per cent of the people who live in such conditions have a mental disorder requiring psychiatric assistance.²²
- 2.38 Like Marrickville Council, the rights-focussed witnesses highlighted that where a hoarder has a mental illness a purely regulatory response (ie forcing a hoarder to clean up or council cleaning a property itself and recouping the costs) is often inappropriate and often fails to provide a permanent solution. It is the underlying mental health issue that must be addressed. Dr Bibby stated:

There is no point whatever in taking a heavy-handed approach to people with mental disorder and supposing that more power to force them to do things will resolve the issues ... If they can be cured then the problem is going to go away. If they cannot be cured, the problem is not going to go away, no matter how heavy-handedly they are treated, so increasing councils' powers does nothing for that problem.²³

- 2.39 The rights-focussed witnesses also stressed that sometimes councils and other authorities do not intervene in a hoarding and squalor matter that is causing serious health and safety risks *not* because they lack the legislative power to do so, but because of a lack of knowledge and ability to deal with the problem holistically, taking the mental health aspect into account. In this case it is not greater regulatory powers for councils and other authorities, but the right linkages with mental health services that are needed to solve a waste management problem. Professor Snowdon stated:

...we have the Local Government Act, we have the environmental health legislation. Action can be taken but I have been astonished over the years how often the local council in particular or the Housing Department has not taken action where they could have done. I think there are two groups that need to be considered: the neighbours and others who are affected by the unhygienic or dangerous situation and the person themselves. We need to know that they have the capacity to make a

²² Professor John Snowdon, Concord Hospital, transcript of evidence, 28 October 2013, p26

²³ Dr Martin Bibby, Board Member, NSW Council for Civil Liberties, transcript of evidence, 28 October 2013, pp2 & 4

decision to live like that. If they do not have capacity they need help and somebody should step in to do something.²⁴

2.40 Thus, in arguing for a broader social response to waste management where there are landholder capacity issues, the rights-focussed witnesses stressed the need for the following:

- Greater education and clear protocols for first responders (for example, councils) and the public about how best to respond to a hoarding issue, referral agencies etc.²⁵
- Greater collaboration between relevant agencies and community organisations to deal with hoarding matters more effectively and holistically (for example, councils; NSW Health; Ageing, Disability and Homecare; Fire and Rescue NSW; Police; Housing NSW; the RSPCA and non-government organisations such as Catholic Community Services with relevant expertise).²⁶
- Consistent, state-wide coverage of programs and services to assist hoarders.²⁷

2.41 In addition to mental health, other landholder capacity issues may be present, and thus the capacity question arises where a landholder is too elderly or infirm to manage waste on their land. Again, a broader social response to waste management may be required in such situations. Indeed, the City of Newcastle suggested the Government might consider funding a low-cost service for such landholders to access maintenance for their properties.²⁸

Committee Comment

The Liberty Versus Amenity Question

2.42 In the Committee's view, there is an argument for expanding the regulatory tools available to councils to help address unsightly conditions that trespass on the liberties of other people. The Committee accepts that the stress and loss of enjoyment of life suffered by those living next door to extremely unsightly conditions can be classified as harmful and a trespass on the liberties of these people.

2.43 The Committee also accepts that the harm caused by unsightly conditions is less quantifiable than harm caused by factors such as a health or safety risk, and that in regulating unsightly conditions public officials would necessarily have to make a subjective value judgment.

²⁴ Professor John Snowdon, Concord Hospital, transcript of evidence, 28 October 2013, pp24-25

²⁵ See for example Ms Margaret Pistevos, Manager Community Services, Catholic Community Services, transcript of evidence, 28 October 2013, p22

²⁶ See for example Ms Janis Redford, General Manager, Catholic Community Services, transcript of evidence, 28 October 2013, p20

²⁷ See for example Ms Margaret Pistevos, Manager Community Services, Catholic Community Services, transcript of evidence, 28 October 2013, p20

²⁸ Submission 25, City of Newcastle, p1

The Powers Question

- 2.44 The Committee accepts that regulatory functions should be balanced with individuals' civil liberties and that regulators' powers should be proportionate to the problem and the least possible encroachment on the liberties of landholders to prevent them encroaching on the liberties of others. This has implications for bids made by councils during the inquiry for an increase in powers more generally.
- 2.45 For example, the Committee does not consider current requirements for councils to obtain a warrant to enter private lands to be unreasonable, although the process for obtaining a warrant to inspect a property may need to be examined to make obtaining a warrant easier where there is reasonable suspicion of a contravention. This and other issues, such as reversal of the onus of proof around what constitutes waste to allow councils to deem items to be waste unless a landholder adduces evidence to the contrary, are discussed in detail in chapter 3.

The Capacity Question

- 2.46 The Committee accepts the evidence from the rights-focussed witnesses about the need for waste management issues to be considered from a broader social perspective where landholder capacity issues exist. For this reason, chapter 4 of this report, which deals with domestic hoarding and squalor in detail, proposes a new state-wide program for managing domestic hoarding and squalor.

Chapter Three – Current Regulatory Arrangements

- 3.1 This chapter examines the current regulatory arrangements which govern the management and disposal of waste on private lands.
- 3.2 Firstly, it outlines the main regulatory instruments available for regulating the management and disposal of waste on private lands, namely the *Local Government Act 1993* and the *Protection of the Environment Operations Act 1997*. The chapter includes a comparison of the two Acts, and extracts of the second reading speeches which address the intentions of the framers of the two Acts.
- 3.3 Secondly, it examines the evidence provided to the Committee in both submissions and at public hearings regarding the current regulatory arrangements, identifying the key themes relating to the similarities and differences between the two Acts, and proposals for change. It subdivides this examination into the issues raised by local government, and the issues raised by other stakeholders (the Environment Protection Authority and the community).
- 3.4 Lastly, the chapter makes recommendations for a staged approach to addressing deficiencies in regulation and practice which the Committee believes will improve the management and disposal of waste on private lands, or which envisage further investigations to better understand issues for future resolution.
- 3.5 This chapter does not examine the evidence concerning the *Environmental Planning and Assessment Act 1979* which relates to the issue of derelict buildings and is addressed in Chapter 6.
- 3.6 Nor does this chapter examine the following issues which are dealt with in Chapters 4, 5 and 6:
- Domestic hoarding and squalor.
 - Illegal dumping.
 - Interstate transportation of waste.
 - Clandestine drug laboratories.

REGULATORY INSTRUMENTS

Local Government Act 1993

- 3.7 The *Local Government Act 1993* establishes local government in New South Wales. It provides for the structure, funding and functions of local government including a broad range of responsibilities for managing waste on both public and private lands.

3.8 Section 124 of the Act²⁹ establishes Orders by which councils may order a person to do or refrain from doing a specified activity to protect public health and safety. Section 124 Orders appear in the Act in a table where a person may be ordered to do or refrain from doing something specified in Column 1 in circumstances specified in Column 2 where the person is described in Column 3. The orders most relevant to the management and disposal of waste on private lands are:

- Order 10: An order to the owner or occupier of premises, where land is in the immediate vicinity of a public place and is used for the storage of articles or matter so as to create or be likely to create unsightly conditions; to remove or stack articles or matter, to erect fences or screens, or to plant trees.
- Order 21: An order to an owner or occupier of land or premises, where the land or premises is not in a safe or healthy condition, to do or refrain from doing such things as are specified in the order to ensure that land is, or premises are, placed or kept in a safe or healthy condition.
- Order 22: An order to the owner or occupier of land or premises, where waste is present or generated and is not being dealt with satisfactorily or managed under a licence, to store, treat, process, collect, remove, dispose of or destroy waste.
- Order 22A: An order to the owner or occupier of premises, where waste is causing or likely to cause a threat to public health or the health of any individual, to remove or dispose of waste that is on any residential premises or to refrain from keeping waste on those premises.³⁰

3.9 The Act also provides for the enforcement of such regulation including council powers of entry and inspection in certain circumstances³¹, a council power to carry out the terms of an order itself and recover costs through sale of materials or debt recovery proceedings³², and through the imposition of penalties.³³ It also contains certain rights to appeal against a council-issued order to the Land and Environment Court.³⁴

Definition of waste

3.10 The *Local Government Act 1993* defines **waste** as:

- (a) effluent, being any matter or thing, whether solid or liquid or a combination of solids and liquids, which is of a kind that may be removed from a human waste storage facility, sullage pit or grease trap, or from any holding tank or other container forming part of or used in connection with a human waste storage facility, sullage pit or grease trap, or

²⁹ Chapter 7, Part 2, section 124, *Local Government Act 1993*

³⁰ Chapter 7, Part 2, section 124, *Local Government Act 1993*

³¹ Chapter 8, Part 2 *Local Government Act 1993*

³² Section 678 *Local Government Act 1993*

³³ See for example section 628 *Local Government Act 1993*

³⁴ Section 138 *Local Government Act 1993*

- (b) trade waste, being any matter or thing, whether solid, gaseous or liquid or a combination of solids, gases and liquids (or any of them), which is of a kind that comprises refuse from any industrial, chemical, trade or business process or operation, including any building or demolition work, or
- (c) garbage, being all refuse other than trade waste and effluent, and includes any other substance defined as waste for the purposes of the *Protection of the Environment Operations Act 1997*, and a substance is not precluded from being waste merely because it is capable of being refined or recycled.

Protection of the Environment Operations Act 1997

- 3.11 The *Protection of the Environment Operations Act 1997* establishes a framework for protecting the environment in New South Wales. Chapter 5 of the Act lists environment protection offences and allocates responsibility for regulating these offences between the Environment Protection Authority and local councils. Section 142A establishes the pollution of land as an offence, and section 144 creates an offence for the use of a place as a waste facility without lawful authority.
- 3.12 The Act allows the regulatory authority to issue a prevention notice if it reasonably suspects that any activity has been or is being carried on in an environmentally unsatisfactory manner at any premises or by any person. Prevention notices require action specified in the notice, such as disposal of waste, to be taken and there is a right of appeal against the notice to the Land and Environment Court.³⁵
- 3.13 The Act also contains certain waste-related offences including wilful or negligent disposal of waste causing or likely to cause harm to the environment³⁶ These offences are backed by a regime of significant penalties.

Definition of land pollution

- 3.14 The Act defines **land pollution** as ‘placing in or on, or otherwise introducing into or onto, the land (whether through an act or omission) any matter, whether solid, liquid or gaseous:
 - (a) that causes or is likely to cause degradation of the land, resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems, or actual or potential loss or property damage, that is not trivial, or
 - (b) that is of a prescribed nature, description or class or that does not comply with any standard prescribed in respect of that matter,but does not include placing in or on, or otherwise introducing into or onto, land any substance excluded from this definition by the regulations.

³⁵ Chapter 4, Part 4.3 *Protection of the Environment Operations Act 1997*

³⁶ Section 115 *Protection of the Environment Operations Act 1997*

Definition of waste

- 3.15 The Act defines **waste** to include:
- (a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment, or
 - (b) any discarded, rejected, unwanted, surplus or abandoned substance, or
 - (c) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, processing, recovery or purification by a separate operation from that which produced the substance, or
 - (d) any processed, recycled, re-used or recovered substance produced wholly or partly from waste that is applied to land, or used as fuel, but only in the circumstances prescribed by the regulations, or
 - (e) any substance prescribed by the regulations to be waste.
- 3.16 Under the Act a substance is not precluded from being waste 'merely because it is or may be processed, recycled, re-used or recovered'.

A comparison of the two pieces of legislation

- 3.17 The Committee has attached a detailed comparison table at Appendix One, which compares the provisions of the *Local Government Act 1993* (LG Act) and the *Protection of the Environment Operations Act 1997* (POEO Act). This comparison is summarised below.

Relevant orders

- 3.18 Orders 21, 22 and 22A, section 124 of the LG Act refer to waste in a health and safety context, and Order 10 of the LG Act relates to screening of unsightly material. Orders under sections 91 and 96 of the POEO Act refer to pollution and environmentally satisfactory outcomes.

Procedures for issuing orders

- 3.19 Under section 132 of the LG Act, before giving an order, except an emergency order, councils must give notice of intent including the terms of the order and the compliance period, and indicate how the terms may be appealed. The POEO Act does not specify procedures which must be observed before issuing orders.

Duration of orders

- 3.20 An emergency order 22A under section 124 of the LG Act has a duration of 5 years, but the Act is silent on the duration of any other orders. The POEO Act does not specify the duration of orders but sections 91 and 97 provide for penalties for continuing offences.

Penalties

- 3.21 Section 628(2) of the LG Act prescribes a maximum penalty of 20 penalty units (\$2,200) for failing to comply with an order. Sections 91 and 97 of the POEO Act prescribe maximum penalties for non-compliance of \$1,000,000 and \$120,000 per day for a corporation, and \$250,000 and \$60,000 per day for an individual.

Escalation of offences

- 3.22 The LG Act does not prescribe any escalation for repeat offences. The POEO Act provides for 3 tiers of offence with custodial penalties at the most serious level. Tier 2 and 3 offences provide for a daily penalty for each day an offence continues.

Powers of entry

- 3.23 Section 191 of the LG Act allows an authorised council officer to enter land subject to prior written notice. Under section 200 entry to residential premises can occur only with consent or a search warrant. Section 111 of the POEO Act allows entry to premises without notice and without any residential restrictions.

Enforcement

- 3.24 Section 678 of the LG Act allows a council to give effect to orders in the event of non-compliance, and that costs incurred may be recovered by court action. Section 104 of the POEO Act allows a council to serve a cost compliance notice to recover monitoring and compliance actions, and sections 106 and 107 provide that cost compliance notices may be registered as charges against land.

Definitions

- 3.25 The LG Act defines waste, but does not define unsafe and unhealthy which are the basis of clean-up orders. The POEO Act defines waste and all terms relevant to clean-up notices.

Second reading speeches

- 3.26 The Committee also considered the second reading speeches for the two pieces of legislation in order to understand how the statutes were framed.

Local Government Bill

- 3.27 In his second reading speech on 11 March 1993 the Minister for Local Government and Minister for Cooperatives, the Hon Gerry Peacocke MP said:

Chapter 7 dealing with the regulatory functions has been amended in a number of areas. I intend to highlight only the main changes to this chapter.

Part 1 of the chapter deals with approvals and a number of small but important changes have been made to this part of the bill. First, matters relating to the treatment of waste, the storage of waste that may be harmful to human health or to the environment, and the disposal of waste on land other than at a waste depot have been omitted from the matters requiring approval, as they are dealt with under other legislation such as environmental protection legislation or by the orders regime set out later in the chapter.

...

In the table of orders which sets the overall framework for councils' enforcement capacity, there are a number of changes, particularly to orders 11, 14, 18, 22, 23 and 24. These have been made primarily on the basis of advice received and mainly refine and improve the order provisions previously drafted.

Second, a new division has been inserted, setting down fair procedures to be observed before giving orders. This has been inserted because orders in many cases will affect peoples' rights, sometimes to a substantial extent.

Essentially the new provisions in this division will apply the normal rules of natural justice except where there is an emergency or where there is a life-threatening hazard or a threat to public health or safety.³⁷

Protection of the Environment Operations Bill

3.28 In her second reading speech on 13 November 1997 the Minister for the Environment, the Hon Pam Allan MP

The bill encourages the growing partnership between the EPA and local councils with respect to environmental protection. The powers of local councils are strengthened so that councils will have most of the same powers as the EPA when dealing with activities for which they are responsible. This represents a significant improvement on the existing situation, which has, on occasion, left councils with weak powers to respond to local environmental issues. The Carr Government has also signalled with this bill that it is not all right to abuse the environment. This bill will significantly increase the penalties that may be imposed by the courts for the mid-range, or tier 2, offences. We want to send the strong signal to the offenders and the court that offences against the environment are not to be taken lightly, so we have doubled the tier 2 penalties, with the maximum increasing now from \$125,000 to \$250,000.

A very important feature of the bill is the way in which it clearly sets out the responsibilities of the EPA and local councils which will improve administrative efficiency. In general, the EPA will be responsible for three kinds of activities: activities listed on the schedule to the bill, being activities with regional or significant potential for environmental impact; any activity in relation to which a licence to regulate water pollution is issued; and any activities carried out by public authorities or the State. Local councils will be responsible for local activities within their council area. This ensures there will be one regulator for any particular activity. This represents a real improvement on the existing situation under the Clean Air Act and the Noise Control Act, which allow both the EPA and councils to regulate the same activity or premises for different purposes. Clearly delineating the roles of the EPA and local councils will avoid duplication, minimise confusion and make sure that resources are properly targeted to achieve the best environmental outcomes in the most effective way.³⁸

ISSUES RAISED BY LOCAL GOVERNMENT

3.29 In summary, the local government evidence exhibited a high degree of consensus regarding the superiority of the *Protection of the Environment Operations Act 1997* over the *Local Government Act 1993* as a regulatory instrument in terms of clarity, ease of operation, effectiveness and cost. While councils had a range of

³⁷ <http://www.parliament.nsw.gov.au/prod/PARLMENT/hansArt.nsf/0/CA256D11000BD3AA4A256459001E31D0#>

³⁸ http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LA19971113040?open&refNavID=HA4_1

views on how to improve the regulatory arrangements for management and disposal of waste on private lands, a common view amongst councils was that the provisions of the LG Act would be improved as regulatory instruments by more closely aligning them with the POEO Act.

Health and safety risks

- 3.30 Councils described a range of situations in which they are called upon to manage waste on private lands. The Committee was not made aware of any standard or state-wide definitions or descriptions of issues or situations to which the health and safety provisions of the LG Act applied, but Holroyd City Council provided a detailed list of scenarios and the health and safety risk they posed, which was consistent with the evidence of other councils.³⁹

Figure 1 - Common scenario type v. potential health and safety risk

Common Scenario Type	Potential Health and Safety Risk
Accumulation of general waste/material	Odour, Dust, Vermin, Fire Safety, Health & Safety - Council staff/property occupier/neighbour
Illegal dumping of general waste	Odour, Vermin, Fire Safety, Health & Safety - Council staff/property occupier/neighbour
Illegal dumping of hazardous/contaminated waste, including but not limited to asbestos and asbestos containing material.	Vermin, Contamination, Fire Safety, Health & Safety - Council staff/property occupier/neighbour
Inappropriate disposal of waste in Council's residential garbage service	Health & Safety - Council staff, Contamination, Health & Safety – Staff at waste facility
Overgrown vegetation	Vermin, Fire Safety
Unauthorised fill on private land	Dust
Clandestine drug laboratories	Odour, Fire Safety, Health & Safety – Council staff/property occupier/ neighbour
Derelict dwellings	Vermin, Fire Safety, Health & Safety – Council staff/property occupier/ neighbour

- 3.31 Added to this list were several scenarios experienced by non-metropolitan councils including disposal of farm waste, and illegal dumping and landfilling on rural properties.⁴⁰ Liverpool City Council proposed that bringing material such as soil or fill onto land without approval be subject to a new offence called 'importation of illegal landfill without approval'.⁴¹
- 3.32 Ballina Shire Council submitted that many products carried health and safety risks to people and the environment if stored inappropriately, citing asbestos, chemicals and heavy metals. Council also advised that the complaints it receives

³⁹ Submission 23, Holroyd City Council p2

⁴⁰ See for example Submission 2, Snowy River Shire Council; and Submission 15 Bathurst Regional Council

⁴¹ Submission 31, Liverpool City Council, p2

regarding vegetation, odour and animals are generally couched in public health terms, and that the inappropriate storage of any waste, including putrescibles, animal waste and building materials can have health and safety consequences.⁴²

- 3.33 Hoarding and squalor was a scenario which many councils emphasised as requiring special consideration. This matter is dealt with in Chapter 4.

Current regulatory arrangements and powers

- 3.34 Councils provided detailed evidence regarding the effectiveness of current regulatory arrangements and powers to compel clean-ups under both main regulatory instruments, including examples of situations which they had managed to illustrate their comments.

The legislation

- 3.35 The LG Act came under particular criticism from councils for being too complex and time consuming in comparison with the POEO Act.
- 3.36 Councils were not always clear about the distinctions between the two Acts and how to choose between them when seeking to address a waste management and disposal issue. Mr Geoffrey Green, Manager Environment and Health, Camden Council told the Committee:

... the POEO Act predominantly looks at effects on the environment. The storage of waste may in actual fact be an environmental issue, whereas the Local Government Act predominantly deals with whether or not the storage of waste is in a safe and healthy condition ... the two pieces of legislation are really poles apart in relation to their structure, their clarity and their application. The Local Government Act for all its worth over the years has grown to an extent that it becomes very uncertain for local government officers ... when we take action under the POEO we are quite deliberate and quite certain that we have our proof and you go forward with a level of confidence whereas under the Local Government Act ... there is uncertainty in there.⁴³

- 3.37 Most councils felt that the LG Act could be improved through better definitions, more timely notice provisions, the capacity for orders to stay in force for longer periods, and the drafting of guidelines to provide councils and communities greater certainty in applying the current regulations. The POEO Act was seen as containing more useful provisions particularly with regard to environmental protection notices.
- 3.38 Gosford City Council was one of many which described the current arrangements as time consuming and expensive.⁴⁴ Hornsby Shire Council described some sections of the Local Government Act as being 'of little assistance'.⁴⁵
- 3.39 Albury City Council described the current regulatory arrangements and powers 'as barriers to effective action'.⁴⁶ Council was concerned that the limitations to

⁴² Submission 5, Ballina Shire Council, p1

⁴³ Mr Geoffrey Green, Manager Environment and Health, Camden Council, transcript of evidence, 21 October 2013, p4

⁴⁴ Submission 21, Gosford City Council, p2

⁴⁵ Submission 3, Hornsby Shire Council, p1

effective action imposed by the legislation made the community frustrated and regulators reluctant to act. Council cited difficulties in defining material as waste, and assembling cases which satisfied legal requirements, as inhibiting regulators acting in a timely way to meet community expectations.

- 3.40 A number of local government submissions called for harmonising the LG Act with the provisions of the POEO Act, if not the drafting of a new integrated statute.⁴⁷

Definitions of health, safety and waste

- 3.41 Many councils were concerned that definitions were inconsistent between the two main pieces of legislation, and in the case of the LG Act, insufficient for the purpose of providing legal certainty.
- 3.42 Councils cited the difficulty of proving materials were waste, when on the one hand the community commonly held they were waste yet on the other the landowner assigned them value. In the absence of a definition of waste in the Local Government Act which could be linked to particular materials, councils were left to assess whether the situation of stored materials which had given rise to a complaint resulted in a health and safety risk to the public. The terms 'health' and 'safety', however, are undefined in the Local Government Act, yet are subject to interpretation and legal review.
- 3.43 Councils reported that the restrictive definition of waste under the LG Act prevented them from issuing a clean-up order in many circumstances.⁴⁸
- 3.44 Councils can generally order a clean-up of private land where they can prove a health, safety or environmental threat. However, such matters can be difficult to prove and require concrete evidence, for example, in the case of a health threat, evidence of a vermin infestation.⁴⁹
- 3.45 Where councils cannot prove such a threat, land owners may argue unsightly conditions such as large amounts of materials stored on a property, or overgrown vegetation, do not constitute 'waste' within the meaning of the Act; and in such circumstances, councils have few powers to order a clean-up.
- 3.46 Camden Council submitted that the definition of waste in the LG Act was inadequate.⁵⁰ Council cited the problem of having to prove that an accumulation of material was in fact waste, as well as having to then show that the material constituted a health and safety hazard rather than a public nuisance which is not a consideration under the legislation.
- 3.47 Albury City Council advised:

⁴⁶ Submission 20, Albury City Council, p2

⁴⁷ See for example submission 37, Campbelltown City Council, p3

⁴⁸ See for example submission 16, Environmental Health Australia, pp4-5; and submission 35, Local Government NSW, p4

⁴⁹ Submission 7, Strathfield Council, p2

⁵⁰ Submission 13, Camden Council, p4

There is...a level of uncertainty regarding storage of equipment and materials on private property...the majority of property owners are considerate and wish to maintain a high level of amenity in a neighbourhood. There are however many who do not and will actively oppose any request to remove or enclose items that others would clearly identify as 'junk'...The information needed for an action to be successful can be onerous and demanding...⁵¹

- 3.48 Marrickville Council expanded on the question of the definition of waste. It described situations which come before Council where neighbours complain about the accumulation of material on properties which they describe as waste, but to which the owners assign value. Council listed vehicle parts; building rubble; metal pieces; appliances; and timber, paper and cardboard as typical of materials they find on investigation and which under the current definitions of waste they find difficult to classify as a health and safety risk despite the impact on adjoining properties.⁵²
- 3.49 Marrickville Council also cited overgrown vegetation as the source of many complaints to council, but that the LG Act did not define vegetation as a public health and safety matter.⁵³ While the complaints concerned the health and safety issues posed by overgrown vegetation such as harbouring of vermin, this was difficult to prove on inspection by council officers who could only conclude that the vegetation presented a nuisance, and not a public health and safety matter as required by the Act.
- 3.50 Responding to the Committee's questions at its first public hearing, Mr George Lerantges, Team Leader Compliance at Marrickville Council, expanded on this issue:
- We find it difficult to take action under the Local Government Act by the fact that it is an absolute requirement that the land is in an unhealthy or unsafe condition. We do not make that assumption. The officers go on the land to look for evidence of what can place the land in an unhealthy or unsafe condition. Is there vermin activity? Are there odours ...? For example, are there pools where mosquitos are breeding? That is the evidence that we feel we need in order to then progress with the issue of an order under the Local Government Act.⁵⁴
- 3.51 Mr Gilligan of the City of Newcastle cited lack of clear definitions as producing inconsistency in the way councils interpreted and applied the legislation, and as acting as a disincentive to issuing clean-up orders because of a lack of confidence that cases would stand up in court.⁵⁵
- 3.52 The question of whether vegetation is waste illustrates an area where in the absence of clarity, councils take inconsistent approaches. As discussed above, some councils stressed that overgrown vegetation was not of itself a public health and safety issue.⁵⁶ Other councils reported using their discretion to judge

⁵¹ Submission 20, Albury City Council, p2

⁵² Submission 36, Marrickville Council, p2

⁵³ Submission 36, Marrickville Council, p1

⁵⁴ Mr George Lerantges, Team Leader Compliance, Marrickville Council, transcript of evidence, 21 October 2013, p3

⁵⁵ Mr Adam Gilligan, Manager Compliance Services, City of Newcastle, transcript of evidence, 21 October 2013, p9

⁵⁶ For example see Submission 13, Camden Council; and Submission 36, Marrickville Council

whether vegetation was a likely public health and safety risk, and issuing orders accordingly.⁵⁷ One council reported that it issued notices for vegetation removal even though the legislative provisions were unhelpful, based on its experience that many owners were cooperative,⁵⁸ while another council described its notices as in effect ‘a reminder service’.⁵⁹

A statutory test for unsightliness

- 3.53 As another approach to addressing definitions, some councils called for an alternative test to be available when assessing the health and safety risk of stored material. These councils reported that many of the complaints they received related to the untidiness or unsightliness of adjacent properties. They proposed that a definition of untidy, poorly maintained or unkempt properties would give councils certainty when dealing with situations where the community had an expectation that councils would act, but where assessing health and safety was problematic.⁶⁰ Such a statutory test would be akin to the creation of a public nuisance provision such as residents have with noise abatement and would allow councils to address or continue to address such issues as vegetation and property maintenance.
- 3.54 Warringah Council proposed that a new offence of ‘not maintaining lands and buildings in an appropriate manner’ be introduced to deal with unsightliness.⁶¹
- 3.55 Not all councils supported this extension of health and safety to include unsightliness and raised concerns about resourcing an expanded role. Marrickville Council was reluctant to connect overgrown vegetation with unhealthy or unsafe conditions,⁶² and Mr McKiernan representing Gosford City Council queried whether councils should be involved at all in assessing appearance without clear rules.⁶³

Waste schedules and the onus of proof

- 3.56 A further suggested improvement was that waste should be defined by prescription. The LG Act could be amended to include schedules of permitted or prohibited waste types and volumes, and durations within which certain wastes could or could not be stored.⁶⁴
- 3.57 In its submission to the inquiry, the City of Newcastle stated:

Defining waste [under the *Local Government Act 1993*] could be improved ... so that an item is waste if Council deems it so, unless evidence is adduced to the contrary. Criteria for certain types of waste could be mandated, based on the volume or

⁵⁷ For example see Submission 7, Strathfield Council; and Submission 8, The Hills Shire Council

⁵⁸ Submission 3, Hornsby Shire Council, p1

⁵⁹ Mr Shannon McKiernan, Coordinator Environmental Health and Protection, Gosford City Council, transcript of evidence, 21 October 2013, p6

⁶⁰ Mr Adam Gilligan, Manager Compliance Services, City of Newcastle, transcript of evidence, 21 October 2013, p6

⁶¹ Submission 33, Warringah Council, p2

⁶² Submission 36, Marrickville Council, p1

⁶³ Mr Shannon McKiernan, Coordinator Environmental Health and Protection, Gosford City Council, transcript of evidence, 21 October 2013, p9

⁶⁴ Submission 32, Eurobodalla Shire Council, p7

nature of the waste. A schedule of limits could be used, ie no more than 10 tyres per residential premises, prescribed storage requirements, restrictions on the area/proportion of premises put to waste storage, how the waste is to be stored.⁶⁵

3.58 The availability of prescriptions of what constitutes waste for the purposes of the LG Act would reverse the onus of proof, so that it would be the responsibility of the landholder to demonstrate that material deemed to be waste was in fact not waste.⁶⁶

3.59 An alternative to statutory prescriptions was the idea that guidelines should be available to councils assisting with the interpretation of legislation. This is discussed below.

The level of proof required

3.60 The level of proof required to commence an action under the LG Act, and comparisons with the POEO Act, was an issue for many councils. Mr Geoffrey Green, Manager Environment and Health at Camden Council, told the Committee:

The burden of proof between the two (pieces of legislation) is quite distinct and there is quite a lot of confusion between the two and which one should be used.⁶⁷

3.61 Mr Green concurred with the view of many councils that issuing orders under section 124 of the LG Act is time consuming, saying:

The element of proof – that beyond reasonable doubt that particular circumstance creates a safe-and-healthy-condition issue – really fills the mind with uncertainty as to whether or not you are going to be able to substantiate that further action in court.⁶⁸

3.62 Mr Gilligan of the City of Newcastle also drew the Committee's attention to the question of proof:

... the definitions ... are much clearer in the POEO than they are in the Local Government Act ... 'unsafe' and 'unhealthy' are not actually terms defined in the Local Government Act whereas water pollution, a pollution incident, land pollution ... are defined terms in POEO. It is much clearer for us to determine whether or not we have a met a statutory test under that legislation than it is under the Local Government Act.⁶⁹

Interpretation guidelines

3.63 The formulation of guidelines to assist council officers interpret the legislation, and encourage consistent application across councils, was proposed by a number of councils. Campbelltown City Council submitted that:

⁶⁵ Submission 25, City of Newcastle, p2

⁶⁶ Submission 25, City of Newcastle, p2

⁶⁷ Mr Geoffrey Green, Manager Environment and Health, Camden Council, transcript of evidence, 21 October 2013, p3

⁶⁸ Mr Geoffrey Green, Manager Environment and Health, Camden Council, transcript of evidence, 21 October 2013, p4

⁶⁹ Mr Adam Gilligan, Manager Compliance Services, City of Newcastle, transcript of evidence, 21 October 2013, p4

... industry-wide guidelines with practical examples may be useful in the consistent handling of waste management issues and the implementation of any streamlined order process.⁷⁰

3.64 Ballina Shire Council submitted that the provision of clear guidelines regarding more complex waste management scenarios would be helpful. Council suggested these guidelines could be prepared by a state agency or a working group of expert officers, and address best legislative tools, legal precedents, and case studies. Council used the example of the Environment Protection Authority (EPA) publication *Noise Guide for Local Government* to illustrate its proposal.⁷¹

3.65 Sutherland Shire Council proposed that:

Clear guidelines should be provided to enforcement staff on the process to be followed in the identification and removal of waste illegally deposited on private land so that such process is consistent across the state.⁷²

3.66 Mr Gilligan of the City of Newcastle gave support to the use of guidelines as a way to assist officers exercise their discretion under the legislation. He suggested that departmental guidelines sitting beneath the legislation could outline basic standards which council officers could use to determine whether a breach had occurred.⁷³

3.67 Several councils including Sutherland Shire and Armidale Dumaresq⁷⁴ drew the Committee's attention to their own internal guidelines which assist their own staff to make prompt, consistent and effective decisions. Sutherland Shire tendered its Hoarding and Squalor Policy as an example.⁷⁵

Inspection and enforcement procedures

3.68 Councils nominated many areas where inspection and enforcement procedures, especially under the LG Act, were inadequate, including:

- Uncertain and inadequate powers of entry.
- Time consuming notice provisions.
- Inadequate penalties and cost recovery provisions.

Powers of entry

3.69 Many councils argued for increased powers under the LG Act to enforce compliance with waste management requirements including increased inspection powers and less restrictive powers of entry. Eurobodalla Shire Council, however,

⁷⁰ Submission 37, Campbelltown City Council, p2

⁷¹ Submission 5, Ballina Shire Council, p3

⁷² Submission 38, Sutherland Shire Council, p5

⁷³ Mr Adam Gilligan, Manager Compliance Services, City of Newcastle, transcript of evidence, 21 October 2013, p11

⁷⁴ Submission 19, Armidale Dumaresq Council, p2

⁷⁵ <http://www.parliament.nsw.gov.au/Prod/Parlment/committee.nsf/0/E1757728168C4849CA257C23001A3EFE>

advised the Committee that it did not support additional powers for authorised officers to enter private properties.⁷⁶

3.70 As described above Section 191 of the LG Act allows an authorised council officer to enter land subject to prior written notice. Under section 200 entry to residential premises can occur only with consent or a search warrant. By comparison, Section 111 of the POEO Act allows entry to premises without notice and without any residential restrictions.

3.71 Ballina Shire Council advised that the powers of entry afforded to councils were unclear. Council advocated that the powers be clarified and strengthened to reduce the risk that council actions will be dismissed by courts on technical grounds.⁷⁷ Armidale Dumaresq Council also made the point that technical incorrectness in the wording of an order can result in a court overturning that order.⁷⁸

3.72 Several councils argued that the requirements for warrants to be obtained before officers entered properties were too restrictive. Armidale Dumaresq Council advised that the requirement for a warrant to enter residential premises meant that response times and the potential for harm to be caused, were increased.⁷⁹ The City of Newcastle submitted that the entry problem arises because the definition of ‘premises used for residential purposes’ is unclear, and suggested that access to the yards of dwellings should be available without notice or warrants.⁸⁰

3.73 The question of the difficulty in obtaining access was expanded upon in evidence given to the Committee at its first public hearing. Mr Simon Evans, Manager Compliance and Certification at Hornsby Shire Council explained that Council had received legal advice regarding the conditions which an applicant needed to satisfy before being granted a warrant. Mr Evans read from the advice:

“In order to make a successful application for a warrant, council would need to set out the terms of the order under the Act that have been or are being contravened in or on the premises. At present this is difficult to argue as council has not established such a contravention because it cannot issue the order until the inspection takes place.”⁸¹

3.74 Mr Evans described this as ‘a Catch 22’.⁸²

3.75 Mr Adam Gilligan representing the City of Newcastle expanded on this question to the Committee.

⁷⁶ Cr Lindsay Brown, Mayor of Eurobodalla, letter dated 17 March 2014

⁷⁷ Submission 5, Ballina Shire Council, p2

⁷⁸ Submission 19, Armidale Dumaresq Council, p2

⁷⁹ Submission 19, Armidale Dumaresq Council, p3

⁸⁰ Submission 25, City of Newcastle, p2

⁸¹ Mr Simon Evans, Manager Compliance and Certification, Hornsby Shire Council, transcript of evidence, 21 October 2013, p11

⁸² Mr Simon Evans, Manager Compliance and Certification, Hornsby Shire Council, transcript of evidence, 21 October 2013, p11

The ambiguity is what that [premises used for residential purposes] really means. Does it mean the bit where you sleep? Does it mean habitable rooms? Or does it mean the residential backyard ... you are not using it for industrial or commercial purposes so therefore it must be residential.⁸³

- 3.76 Mr Gilligan stated that the current arrangements would be made more efficient if council officers could avoid obtaining warrants unless they were proposing to enter dwellings.⁸⁴

Some greater clarity [in the legislation] which would provide appropriate protection for residents to ensure that they have not got council officers wandering through their bedrooms but allow council officers reasonable access to the backyard to access...things like overgrown land...It would certainly be far more efficient if we could avoid the need for warrants unless we wish to enter an actual dwelling.⁸⁵

- 3.77 Alternative definitions of residential premises were proposed to clarify the application of warrant provisions and powers of entry, including the definition of residential contained in the original *Local Government Act 1919* ie 'the residential portion of a building'.⁸⁶

Emergency orders

- 3.78 Councils advised that the question of powers of entry to effect emergency orders under the LG Act were no more effective. Waverley Municipal Council submitted that the emergency orders available to councils under the LG Act were inadequate due to the lack of effective powers of entry⁸⁷ and Holroyd City Council advised that it had never issued an emergency order 22A under section 124 of the LG Act.⁸⁸

- 3.79 Once a clean-up order has been issued to a residential landholder and they refuse to comply with the order, a council may carry out the terms of the order itself.⁸⁹ However, the council cannot enter residential property to do so without the permission of the landholder or under the authority of a court-issued warrant.⁹⁰ In the words of Waverley Municipal Council:

It is our experience... solicitors have to be engaged to gain a Court Order to enter upon the land and carry out the terms of the Order. The terms of this Court Order are...subsequently appealed undermining the prompt resolution to an urgent health matter.⁹¹

⁸³ Mr Adam Gilligan, Manager Compliance Services, City of Newcastle, transcript of evidence, 21 October 2013, p11

⁸⁴ Mr Adam Gilligan, Manager Compliance Services, City of Newcastle, transcript of evidence, 21 October 2013, p11

⁸⁵ Mr Adam Gilligan, Manager Compliance Services, City of Newcastle, transcript of evidence, 21 October 2013, p11

⁸⁶ Mr Geoffrey Green, Manager Environment and Health, Camden Council, transcript of evidence, 21 October 2013, p12

⁸⁷ Submission 9, Waverley Municipal Council, p1

⁸⁸ Submission 23, Holroyd City Council, p3

⁸⁹ Section 678 *Local Government Act 1993*

⁹⁰ Section 200, *Local Government Act 1993*

⁹¹ Submission 9, Waverley Municipal Council, p1

- 3.80 Mr Shannon McKiernan, Coordinator Environmental Health and Protection, Gosford City Council described how the use of emergency orders allowed councils to overcome the restrictive nature of sections of the LG Act, but:

... it is only effective if you can enter to actually take the waste out.⁹²

- 3.81 Mr McKiernan described situations where orders had been issued and contractors had been engaged to remove waste, but in the absence of consent from landowners to enter properties councils were unable to effect orders in a timely and cost effective way.⁹³

Notice provisions and duration of orders

- 3.82 Many councils argued regulatory processes to compel clean-ups on private lands should be less complex and time-consuming. As described above section 132 of the LG Act requires that before giving an order, except an emergency order, councils must give notice of intent including the terms of the order and the compliance period, and indicate how the terms may be appealed. By comparison the POEO Act does not specify procedures which must be observed before issuing orders.

- 3.83 Campbelltown City Council argued against the requirement to give notice in the case of a continuing offence:

The process of issuing notices and orders can on occasion seem unnecessarily complex and the procedures could be simplified, particularly with respect to ongoing offences. For instance, in most cases a clean-up is directed...by way of service of a notice of intention followed by an order... to recommence the order process [in the case of an ongoing offence] a further notice of intention needs to be issued.... If there is a need [under the legislation] to issue a fresh order to the offender or the responsible party for the same ongoing offence then there should be no need to precede the issue of the order with a notice of intent for a matter that the offender or the responsible party is already aware of and [has] been given previous opportunity to make representation or resolve.⁹⁴

- 3.84 The requirement for an order to be issued at each stage even for repeat offences was highlighted as adding unnecessary time and bureaucracy to waste management.⁹⁵ Mr McKiernan representing Gosford City Council described the notice provisions as equivalent to a warning letter and an 'extra layer of red tape',⁹⁶ adding:

⁹² Mr Shannon McKiernan, Coordinator Environmental Health and Protection, Gosford City Council, transcript of evidence, 21 October 2013, p12

⁹³ Mr Shannon McKiernan, Coordinator Environmental Health and Protection, Gosford City Council, transcript of evidence, 21 October 2013, p12

⁹⁴ Submission 37, Campbelltown City Council, p 2

⁹⁵ Mr George Lerantges, Team Leader Compliance, Marrickville Council, transcript of Evidence, 21 October 2013, p6

⁹⁶ Mr Shannon McKiernan, Coordinator Environmental Health and Protection, Gosford City Council, transcript of evidence, 21 October 2013, p6

... the notice of intention provision is a reminder for most people that do not live in the shire that "I have to arrange for a contractor to do work again."⁹⁷

3.85 Similarly, some councils noted that once an order to clean up waste has been issued to a residential landholder and the landholder does not comply with the order, a council may carry out its terms itself.⁹⁸ However, many properties are cleaned up by councils at significant cost before returning to their original state a few months later.

3.86 To counteract this problem, some councils argued that clean-up orders issued under the Act should include a requirement for premises to be *maintained* in a clean state without the need for further orders.⁹⁹ For example, Mr George Lerantges of Marrickville Council stated:

...if you get overgrown vegetation or waste on land that keeps coming back, I think there has got to be something about the land being maintained...[currently] you get an outcome, if it regrows or happens again, you have to go through the whole process again from the beginning, so that is something that is worth considering.¹⁰⁰

3.87 While witnesses conceded that emergency orders (Order 22A) issued under the LG Act remained in effect for 5 years, the lack of a provision for non-emergency orders to remain in place for any period of time was highlighted. Warringah and Kogarah Councils both expressed concern that orders had insufficient duration.¹⁰¹ Mr David Ackroyd, Manager Communities Unit, Sutherland Shire Council said that the requirement to issue a notice of intention at each stage of a long running case where the landowner had mental problems 'slows the whole process down' and 'served no purpose but red tape'.¹⁰²

3.88 On the other hand, Mr Green representing Camden Council said that the notice provisions provided natural justice to landowners, especially in the most difficult cases, such as hoarding and squalor where both an understanding of the problem and a capacity to respond to a clean-up order may be limited.¹⁰³

Penalties

3.89 The adequacy of the penalty provisions under both the LG Act and the POEO Act figured prominently in council evidence. Many councils called for higher penalties for a range of offences under the LG Act, both as a deterrent and in recognition of the costs borne by the community.

3.90 There was consensus amongst local government representatives that penalties under the LG Act were inadequate and that both the penalties prescribed by the

⁹⁷ Mr Shannon McKiernan, Coordinator Environmental Health and Protection, Gosford City Council, transcript of evidence, 21 October 2013, p7

⁹⁸ Section 678 *Local Government Act 1993*

⁹⁹ See for example discussion between councils, transcript of evidence, 21 October 2013, pp6-8

¹⁰⁰ Mr George Lerantges, Team Leader Compliance, Marrickville Council, transcript of evidence, 21 October 2013, p6

¹⁰¹ Submission 33, Warringah Council, p2; Submission 18, Kogarah Council, p1

¹⁰² Mr David Ackroyd, Manager Communities Unit, Sutherland Shire Council, transcript of evidence, 21 October 2013, p7

¹⁰³ Mr Geoffrey Green, Manager Environment and Health, Camden Council, transcript of evidence, 21 October 2013, p7

POEO Act and the manner of their being applied was the superior option. As described above Section 628(2) of the LG Act prescribes a maximum penalty of 20 penalty units (\$2,200) for failing to comply with an order. By comparison, sections 91 and 97 of the POEO Act prescribe maximum penalties for non-compliance of \$1,000,000 and \$120,000 per day for a corporation, and \$250,000 and \$60,000 per day for an individual.

3.91 Camden Council submitted that the penalty provisions of the LG Act are minimal for some offences and do not act as a financial disincentive.¹⁰⁴ Most local government submissions held that the costs of enforcing orders under the LG Act typically outweighed the costs which councils could recover by way of fines and charges against the property. Increasing penalties, streamlining the way they could be applied, and recovering councils' costs were frequent submissions.

3.92 Mr Green of Camden Council pointed out that the cost of taking matters to court exceeds the penalties available, telling the Committee:

With the Local Government Act it is \$2,200 if you take it to court. Taking it to court will cost Council \$3,000 or \$4,000 on a first return, unless you have your own in-house legal advisors, whereas with POEO the penalties are significantly different.¹⁰⁵

3.93 Dubbo City Council submitted that actions under section 124 of the LG Act require Council to commit significant resources, but with limited recourse to recoup costs from landowners.¹⁰⁶ Warringah Council described their experience of regulating repeat offenders under the current arrangements as one of low compliance and high cost.¹⁰⁷

3.94 Armidale Dumaresq Council advised that enforcement provisions under the POEO Act are adequate to compel clean-up on private lands and recover the cost. In the case of the LG Act, however, Council called for increased fines for multiple offences, noting that currently many cost recovery exercises are insufficient to cover Council's costs.¹⁰⁸

3.95 Ms Deborah Lenson of Eurobodalla Shire Council told the Committee:

I think this goes back to the difference between the Local Government Act and the Protection of the Environment Operations Act. We know there are discrepancies between the two... I think perhaps larger penalties may actually get us high compliance as well as a stronger educational message in regard to the illegal activities. If that message is upfront with the community we may get higher levels of compliance.¹⁰⁹

¹⁰⁴ Submission 13, Camden Council, p9

¹⁰⁵ Mr Geoffrey Green, Manager Environment and Health, Camden Council, transcript of evidence, 21 October 2013, p4

¹⁰⁶ Submission 26, Dubbo City Council, p1

¹⁰⁷ Submission 33, Warringah Council, p2

¹⁰⁸ Submission 19, Armidale Dumaresq Council, p3

¹⁰⁹ Ms Deborah Lenson, Divisional Manager Environmental Services, Eurobodalla Shire Council, transcript of evidence, 21 October 2013, p17

- 3.96 Eurobodalla Shire Council advocated for the aligning of fees and fines associated with the issue of orders, notices and penalty infringement notices across the two main acts.¹¹⁰
- 3.97 Ms Susy Cenedese, Strategy Manager for Local Government NSW, the peak body representing local government in New South Wales, expanded on this idea:
- ... one provision that the Protection of the Environment Operations Act has is penalties for continuing offences ... for each day that work is not undertaken the penalty basically is increased. That might be something that could be looked at similarly for the Local Government Act.¹¹¹

Cost recovery

- 3.98 Holroyd City Council was concerned that cost recovery under the LG Act was a separate action to waste management, and that current cost recovery mechanisms are unclear.¹¹² The cost to a council of completing a clean-up was quoted as being as high as \$50,000,¹¹³ and the capacity to recover costs with certainty was described as giving councils confidence to proceed with actions.
- 3.99 The POEO Act model which allows for the issue of compliance cost notices was suggested as a possible model.¹¹⁴ Councils acknowledged the possibility of recovering costs as a charge on land to be recovered when land is sold, but there was considerable debate about the practicalities of this option. Sutherland Shire Council proposed that the LG Act be clarified to remove ambiguity regarding this option.¹¹⁵
- 3.100 Council representatives also put forward the POEO Act model of allowing the recovery of administration costs as one which should be incorporated into the LG Act.¹¹⁶ Under this model repeat offenders become liable for administration costs each time a notice is issued, providing an incentive for compliance.¹¹⁷
- 3.101 Hornsby Shire Council advised that while it experiences a fairly high rate of compliance with council orders, enforcement procedures in cases of non-compliance are costly and time consuming. Council compared cases of low and high risk to public health, and the decision whether to issue non-compliance notices or commence legal action to enforce orders. In the latter situation, while Council acknowledged it had powers to rectify problems, seeking cost recovery was an additional legal cost. Council noted that many cases of non-compliance reflect the fact that the offending landowners do not have the capacity to comply for whatever reason, and issuing fines or taking legal action to recover costs may

¹¹⁰ Submission 32, Eurobodalla Shire Council, p6

¹¹¹ Ms Susy Cenedese, Strategy Manager, Local Government NSW, transcript of evidence, 21 October 2013, p17

¹¹² Submission 23, Holroyd City Council, p8

¹¹³ Mr Adam Gilligan, Manager Compliance Services, City of Newcastle, transcript of evidence, 21 October 2013, p13

¹¹⁴ Mr Geoffrey Green, Manager Environment and Health, Camden Council, transcript of evidence, 21 October 2013, p13

¹¹⁵ Mr David Ackroyd, Manager Communities Unit, Sutherland Shire Council, transcript of evidence, 21 October 2013, p15

¹¹⁶ Mr Shannon McKiernan, Coordinator Environmental Health and Protection, Gosford City Council, transcript of evidence, 21 October 2013, p14

¹¹⁷ Mr Adam Gilligan, Manager Compliance Services, City of Newcastle, transcript of evidence, 21 October 2013, p14

only exacerbate the problem.¹¹⁸ Council also considered the problem of illegal dumping on private land and the issue of the legal responsibility falling upon landowners who had no role in the dumping. The issue of illegal dumping is dealt with in Chapter 5.

- 3.102 Further, a number of councils submitted that they have few resources to dedicate to waste management on private lands and advocated against changes to the current arrangements without funding being made available or cost recovery being secured.¹¹⁹

ISSUES RAISED BY OTHER STAKEHOLDERS

- 3.103 The Committee received 11 submissions which were not from local government and affiliated bodies. In addition to inviting selected people and agencies who made written submissions to give evidence at public hearings, the Committee also invited two private citizens, a government agency, and representatives of a non-government working group to give evidence.
- 3.104 In this section the Committee reports the evidence of non-local government stakeholders where it relates to the local government regulatory environment.

Environment Protection Authority

- 3.105 The Environment Protection Authority (EPA) did not provide a written submission to the Committee, but representatives of the EPA appeared before the Committee at the public hearing held in Sydney on Monday 28 October 2013.
- 3.106 Much the EPA evidence concerned high level state-wide programs to encourage recycling and discourage illegal dumping. Mr Stephen Beaman, Director of Waste and Resource Recovery at the EPA told the Committee that the EPA's primary concern in relation to waste management and disposal on private land is illegal dumping.¹²⁰ He outlined the regulatory framework which the EPA administers including the Protection of the Environment Operations Act and Regulations, and the identification of the EPA and other bodies such as councils as Appropriate Regulatory Authorities under section 6 of the Act.
- 3.107 Mr Beaman's description of the roles and responsibilities of local councils under the POEO Act¹²¹ was consistent with the evidence of local councils on this issue. In particular, he confirmed that local councils have access to the same regulatory powers as the EPA to investigate, issue notices, order clean-ups and prevention, and prosecute offences.¹²²

¹¹⁸ Submission 3, Hornsby Shire Council, p2

¹¹⁹ See for example Submission 10, Junee Shire Council; and Submission 2, Snowy River Shire Council

¹²⁰ Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p34

¹²¹ Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p34

¹²² Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p38

Community evidence

- 3.108 The Committee received written submissions from six members of the community, and invited a seventh to give evidence at a public hearing, on the subject of the role of local government. This evidence expressed contrasting views as to whether local government regulation of waste management and disposal on private lands was too harsh or too lax. Given the sensitivity of much of this evidence where it identified private property and third parties, including both private landowners and public officials, the Committee resolved to make the submissions of private citizens confidential to the Committee and hear their evidence *in camera*. Much of this evidence relates to cases of hoarding and squalor which is discussed in Chapter 4. Evidence relating to the role of local government, however, is discussed below.
- 3.109 One submission which the Committee did not make confidential addressed the general impact on adjoining properties of poor waste and disposal management on private lands. The author submitted that local councils need to have powers to clean up poorly managed properties and recover the costs from property owners.¹²³

Confidential and in camera evidence

- 3.110 The Committee also received a submission from a private citizen describing the impact of living next door to a residential property subject to poor waste management and disposal.
- 3.111 Additionally, the Committee received three detailed submissions from private citizens concerning what they felt was the over-reach of a particular council in seeking firstly to order private landowners to clean-up their properties through the application of the POEO Act, and then to pursue non-compliance through court action. The Committee invited two of these citizens to give *in camera* evidence.
- 3.112 In total, the Committee invited four private citizens to give evidence and in accordance with its resolution regarding confidentiality, heard these witnesses *in camera* and did not publish the transcripts.
- 3.113 As described, much of the evidence given by these witnesses is relevant to the issue of hoarding and squalor which is discussed in Chapter 4. It is relevant to this discussion, however, to record the evidence concerning the role of local government which the Committee took into account in making its recommendations below.
- 3.114 Witness A was a private landowner whose neighbours had hoarded domestic waste on their property for more than a decade such that the waste filled their dwelling, and both front and back yards to fence height. The witness told the Committee that this waste was unsightly and in his view, a health and safety risk, but that his neighbours had not been receptive to negotiation due to what the witness believed was their poor mental health. Witness A described the harm he and his family had suffered as a result of the untidy nature of the adjoining

¹²³ Submission 1, Ms Ann Brennan, p1

property including rubbish falling into his yard, odour, loss of amenity and perceived loss of property value, and fear of fire.

3.115 The advice of the local council, as related by the witness, was that without proof of health and safety risk it did not have jurisdiction to intervene. Witness A described continuing contact with council over many years during which the council took limited steps to assess health and safety risk, but before the matter was resolved the waste stored at the adjoining property caught fire and both houses were rendered uninhabitable. At the time of giving evidence the witness and his family had been living away from their home for several months while damages were assessed and repairs arranged.

3.116 Witness B was a private landowner whose neighbour had stored an aircraft in a residential backyard for five years. The witness told the Committee that the aircraft was derelict and unsightly, and dominated the outlook from his house and garden. Despite negotiating with the neighbour for its removal, and several commitments to do so, the derelict aircraft remained. The witness described the harm he and his family suffered as a result of their loss of amenity and enjoyment due to the ever present nature of a large unsightly object which in their view overwhelmed their property.

3.117 The advice of the local council, as related by the witness, was that it did not have jurisdiction to intervene because the aircraft presented no health and safety risk and could not be seen from the street. The witness contended that aircraft should be placed on a schedule of waste which could not be stored on residential properties.

3.118 Witnesses C and D submitted that their local council had acted harshly in its prosecution of a third party under the *Protection of the Environment Operations Act 1997* for operating waste depots on their private properties. The waste in question was domestic-type waste including household and building materials, and vehicles, in large quantities.

3.119 The witnesses believed that the council's decision to apply this legislation was heavy handed in a domestic situation and criminalised behaviour which did not warrant such treatment. They believed that the defendants' behaviour was likely the result of their poor mental and physical health, and that the defendants lacked the financial means to both comply with orders and clean up their land, and defend themselves adequately in court.

COMMITTEE COMMENT

3.120 A key issue for the Committee's consideration was the broad discretion which councils have to choose between the POEO Act and the LG Act depending on the circumstances of the case before them.

3.121 In their submissions councils generally recognised the distinction between the two Acts, one relating to environmental impact and one relating to public health and safety. Yet there was also evidence that the two Acts could be applied to the same situations depending on the discretion of the officers involved and the level of proof they felt they could achieve, and that some councils were confused about which Act to apply.

- 3.122 A strong theme in council evidence noted by the Committee, however, was that while councils clearly preferred the POEO Act model in terms of its clarity, ease of use, effectiveness, and capacity to recover costs, councils mostly used the LG Act and consequently reported their frustration and their communities' frustration with its lack of clarity, untimeliness, ineffectiveness and cost. Given the preferment for the POEO Act the evidence might have been expected to show a predilection by councils towards applying it, but the evidence appears to be that most councils are relying on the LG Act despite its drawbacks.
- 3.123 Certainly the community witnesses who sought local council action to address poor waste management on private lands told the Committee that their expectations were unmet, while the community witnesses who criticised council action for being heavy handed were describing action taken under the POEO Act.

FINDING 2

In examining the evidence concerning the Local Government Act 1993 and the Protection of the Environment Operations Act 1997 the Committee finds that:

- **The regulatory environment for the management and disposal of waste on private lands is complicated by the existence of the two Acts; and**
- **The two Acts have major differences in the way they are structured, define their areas of interest, establish powers, and preserve rights.**

- 3.124 The second reading speeches, reported above, are instructive in understanding why the two Acts are so different. Regarding the LG Act, Minister Peacocke points out that the changes to the legislation are a refinement based on previously drafted sections. Steps have been taken in amending the Act to emphasise rights and fair procedures in all but the most hazardous of situations. The Minister's emphasis is on balance, caution, and a consultative and evolutionary approach.
- 3.125 Regarding the POEO Act, Minister Allan emphasises clarity, stronger powers and sending a message to polluters through higher penalties. A division of responsibilities between the EPA and councils is established based on administrative efficiency and a hierarchy of responsibilities. The Minister says that the legislation will ensure resources target achieving 'the best environmental outcomes in the most effective way'.
- 3.126 The Committee concludes that the LG Act has evolved over decades into a complex and arguably cumbersome document which sets out the entire scope of local government in New South Wales, of which regulating waste is a very small part. It is timely that the government is reviewing the Act.
- 3.127 The POEO Act represents the response of the government and the community to growing concern at environmental degradation and a wish to act decisively. The Act uses direct and powerful language to emphasise that environmental management is a serious responsibility for governments and communities in partnership.
- 3.128 In accepting the evidence that local government may be confused about how to distinguish between the two Acts, the Committee considered whether the two

Acts could be distinguished on the face of their intents and contents, and any confusion alleviated by clarifying the application of the Acts through identifying different and separate waste management and disposal scenarios to which one Act and not the other applied.

- 3.129 The obvious point of distinction is that the LG Act applies to public health and safety, and the POEO Act to environmental pollution. Yet the Acts provide for significantly harsher penalties and significantly fewer protections of the rights of landowners in support of achieving environmental protection than in ensuring public health and safety. While different individual scenarios may exhibit different levels of harm and seriousness, the Committee does not consider public health and safety as inherently less serious considerations than environmental protection.
- 3.130 The Committee also considered the evidence of the community's expectations for the regulation of waste management and disposal on private lands. Councils reported significant levels of complaint regarding waste management on adjoining land. The individual witnesses who gave evidence to the Committee *in camera* outlined their expectations that councils act on their behalf to address poor management and improve community conditions. Even those witnesses who were critical of council actions did not dispute that there is a role for councils in regulating private land management.
- 3.131 The choice by a regulator to apply one Act or the other has important impacts on the notice a landowner receives, the level of access a landowner experiences on their property, and the size of the penalty to which a landowner may be subject. The Committee has considered whether the two Acts can be distinguished on the simple grounds that the LG Act is intended to deal with domestic situations and the POEO Act with the non-domestic.
- 3.132 The Committee notes that the Acts do not contain any information to suggest that this distinction was envisaged by their drafters. The evidence provided to the Committee suggested, however, that despite the preferences expressed by councils for the POEO Act, their overwhelming practice is to apply the LG Act to the scenarios of waste management and disposal on private land, which comprised the majority of examples which came to the Committee's attention. The Committee presumes that this reflects long standing local government practice, but also a culture which accepts that the LG Act is applicable to domestic scenarios and the POEO Act to pollution scenarios.
- 3.133 In concluding this the Committee noted comments in a judgement in the Land and Environment Court where a council had applied the POEO Act to a domestic scenario. In this case the judge commented that the definitions of waste and waste facilities under the POEO Act were extremely broad and should be applied cautiously in residential situations. The judge thought that a more proportionate approach in a residential scenario was the use of clean-up orders issued under section 124 of the LG Act.¹²⁴

¹²⁴ Gerondal v Eurobodalla Shire Council [2009] NSWLEC 160 (25 September 2009)

- 3.134 In referring to the judge's comments, the Committee draws no conclusions about the outcome of this case or the actions of the council involved, but rather seeks to identify evidence which assists the Committee to consider whether there are real and practical distinctions between the LG Act and the POEO Act.
- 3.135 The Committee also notes that confusion does not arise just from the issue of considering which Act applies to which scenario. The Committee considered the evidence of councils regarding the management of overgrown vegetation, for example, which is a scenario governed entirely by the LG Act. The evidence showed that the lack of clarity within the Act and the level of discretion which councils enjoy, has fostered a range of interpretations and practices for managing vegetation resulting in inconsistent application of the regulations to similar circumstances.
- 3.136 While individuals and communities may have different expectations of how vegetation and other waste issues will be managed, the Committee considers that the evidence presented on this issue demonstrates inconsistency rather than community responsiveness. In a matter as routine as the management of overgrown vegetation, the Committee believes that councils and communities should be able to interpret and apply regulations with confidence.

FINDING 3

The Committee finds that the Local Government Act and the Protection of the Environment Operations Act can be distinguished on the grounds that it is more appropriate to deal with domestic situations by applying the Local Government Act, and non-domestic situations by applying the Protection of the Environment Operations Act.

A STAGED APPROACH TO CHANGE

- 3.137 The Committee notes the evidence that the management and disposal of waste on private lands might be more effectively regulated by a single piece of legislation. The Committee accepts that the LG Act appears to be poorly suited to taking quick action regardless of the seriousness of the circumstances, but notes the suggestions that the POEO Act may not be an appropriate tool in domestic situations.
- 3.138 The Committee is also concerned to ensure that a correct balance is struck between the rights of neighbouring landowners, and that private disputes are not elevated without good reason to the sphere of public regulation.
- 3.139 The Committee concludes that the better course to addressing the deficiencies in the current regulatory arrangements is to take a staged approach by first testing the efficacy of some of the less radical proposals made in evidence to see if better practice can be achieved incrementally.

Stage 1 - Guidelines

- 3.140 In the Committee's view the first stage is to consider what advice councils and communities require to better interpret the two Acts and apply them effectively. The Committee heard evidence that state agencies already prepare guidelines for councils to use when interpreting and applying legislation, such as the EPA's

Noise Guide for Local Government. The Division of Local Government in the Department of Premier and Cabinet prepares circulars, practice notes and guidelines to assist councils. Indeed, section 23A of the Local Government Act provides that the Director-General may prepare, adopt or vary guidelines relating to the exercise by a council of any of its functions, and councils must take any relevant guidelines issued under section 23A into considering before exercising their functions.

- 3.141 The Committee considers that given the evidence received, the production of guidelines to assist councils exercise their responsibilities to manage waste on private lands and recover costs is an important step in overcoming confusion and inconsistent practices, and satisfying the community that their reasonable expectations can and will be met.

Community standards

- 3.142 While the Committee heard evidence that councils are inconsistent in the way they interpret and apply the two Acts, the Committee accepts that there may not be a single community standard which can be applied. Councils should and do exercise their discretionary powers sensitive to the expectations of their communities. The Committee understands that community standards and expectations differ between one community and another, such as between urban and rural communities. Consistency is not a goal which should be achieved by a 'one-size-fits-all' approach where some communities wish to set their own standards.

Scarce resources

- 3.143 Further, the Committee does not wish to recommend measures which open the floodgates to complaints and create a demand for resources which councils and communities are unable to commit. The Committee notes evidence from several councils that they have difficulty resourcing the demands they receive now. The Committee hopes that by clarifying and streamlining the current regulatory arrangements, resources which are now directed to costly, inefficient, and often unsuccessful waste management exercises might be better utilised, and freed up to be applied to any additional demand which may arise.

RECOMMENDATION 1

The Committee recommends that the Division of Local Government in the Department of Premier and Cabinet, in consultation with Local Government NSW, the Environment Protection Authority, Environmental Health Australia, and other relevant state and local government stakeholders, prepare, as a priority, Guidelines for the Management and Disposal of Waste on Private Lands, which provide thorough policy and operational guidance including distinguishing between situations to which the Local Government Act or the Protection of the Environment Operations Act should be applied.

Stage 2 – Legislative amendments

- 3.144 The second stage in addressing deficiencies in the current system is to consider the differences between the two main Acts and whether legislative amendments are required to address them. The absence of definitions of public health and

public safety, and the consequent uncertainty councils have in determining what these terms mean, and what evidence they need to prosecute health and safety issues with confidence that they will be upheld in court, is a serious deficiency which may not be overcome with guidelines.

- 3.145 It may not be necessary for the two Acts to be harmonised with regard to definitions, but given current uncertainty and overlap, the two Acts would be improved through harmonisation.
- 3.146 In considering how to amend the Acts, the Committee notes that the POEO Act acknowledges that some matters are more serious than others by establishing three tiers of offences and a scale of penalties. The LG Act does not contain such provisions.
- 3.147 On the other hand, the LG Act acknowledges that individuals have rights to receive notice of councils' intentions, to appeal these, to consent or not consent to access to their properties, and to rely on the courts to adjudicate on whether access should be granted by warrant. The POEO Act is mostly silent on these questions.
- 3.148 The Committee notes the evidence that continuing offences should attract a sliding scale of penalties, and that orders under the LG Act should have a duration which allows both a compliance and maintenance element to be imposed and monitored. The Committee also notes the evidence that notice need be given only at the commencement of a process, but should be given where a warrant will continue to be a requirement for access.
- 3.149 The Committee believes that if the argument can be made that there should be a sliding scale of offences and penalties, then there should also be a sliding scale of rights protection measures. In reviewing the legislation the Committee recommends that the government work with stakeholders to formulate amendments which incorporate appropriate protections of the rights of landowners so that an acceptable balance with the rights of the community is struck depending on the severity of the health, safety or environmental scenario which is unfolding.

Unsignliness and Order 10

- 3.150 The Committee believes that there is a legitimate case for the expansion of Order 10 under the LG Act regarding unsightliness.
- 3.151 Order 10 under section 124 of the Local Government Act provides for untidy material to be removed, stacked, covered or screened where it is unsightly in the vicinity of a public place. The Committee heard little evidence of the use of Order 10, but considers it a useful order and one whose more widespread use could be encouraged, both to address unsightliness, and also as an incentive to the owners of unsightly material to remove it rather than incur the expense of screening it.
- 3.152 The local government evidence provided to the Committee was divided on whether unsightliness should be a ground for council regulation. Some councils felt that in the absence of public health and safety issues, unsightliness was outside their jurisdiction, while others acknowledged that unsightliness was a

significant driver of community complaints and councils responded by seeking to bring the matter into their regulatory ambit by demonstrating that the unsightly matter was also unhealthy, unsafe, or polluting.

- 3.153 In considering whether to expand the application of Order 10 to address unsightliness which did not occur in the vicinity of a public place, but affected private properties only, such as the case described by *in camera* Witness B, the Committee has concluded that the situation described by Witness B was one where he and his family had suffered harm.
- 3.154 Quantifying this harm as the result of constant visual assailment, as opposed to noise or odour which can be measured by agreed and well understood methods, is not something the Committee feels expert to do. However, the Committee believes that if such a scenario can cause harm, and would be actionable by councils if it occurred in the vicinity of a public place, then it is logical to extend the provisions of Order 10 in the way Witness B expected.
- 3.155 The Committee acknowledges the evidence from councils that many such cases are really in the nature of neighbourhood disputes with councils expected to adjudicate. Implicit in this evidence is the view that councils are not the appropriate mediators and a more practical mechanism is the creation of a new nuisance offence dealing with visual nuisance or visual pollution which could be mediated or litigated. The Committee is sympathetic to this view, but does not believe that only one avenue need be taken. Both an extension to the provisions of Order 10 and the creation of a new offence may be appropriate.
- 3.156 In recommending the extension of Order 10 the Committee recognises that councils will be placed in situations of having to adjudicate between disputing neighbours. In reality this is simply an extension of disputes which are covered by Order 10 in the front yard of properties, ie in the vicinity of a public place, to the backyard. Nevertheless, the Committee understands that this may expose councils to a significant number of additional regulatory demands.
- 3.157 While the discretion of councils will be as important in deciding what situations demand the application of Order 10 to backyards as front yards, the Committee accepts the evidence of councils and others that a checklist or an approach based on quantifiable impacts will be helpful to applying Order 10. For example, some of the propositions put forward included:
- A schedule of materials, items, objects or waste types which would attract Order 10 eg keeping an aircraft in a residential backyard might automatically attract Order 10.
 - A schedule of the amounts of materials, items, objects or waste types which would attract Order 10 eg keeping one unroadworthy car in a residential backyard might be acceptable; keeping five might automatically attract Order 10.
 - The duration of time that waste material had been stored.
 - The proportion of land or lot area covered by waste material eg overgrown vegetation might automatically attract Order 10.

3.158 As previously discussed, the Committee believes that an order to address waste material under Order 10, such as to screen the material, may be sufficient incentive to the owner of the material to remove it rather than invest in a screen.

3.159 The Committee also notes that when considering the extension of Order 10, these are scenarios which do not invoke health, safety or environmental concerns, and that the highest level of protection of landowner rights regarding notice, appeal and access to private property should be preserved. On the other hand, the Committee notes that the application of waste schedules and other measures to quantify breaches may effect a reasonable reversal of the onus of proof where the owner of material deemed by the council to be waste and in breach of the regulations must argue that the material is not waste.

RECOMMENDATION 2

The Committee recommends that the Division of Local Government in the Department of Premier and Cabinet consult with Local Government NSW, the Environment Protection Authority, Environmental Health Australia, and other relevant state and local government stakeholders to propose amendments to the Local Government Act 1993 which provide for:

- **Appropriate offences, including tiered offences and a sliding scale of penalties if warranted.**
- **Appropriate notice and warrant provisions which preserve rights and ensure effective regulation.**
- **Effective orders of appropriate duration.**
- **Clear and consistent definitions, schedules and prescriptions of waste, including an effective definition of 'residential'.**
- **The expansion of Order 10 under section 124 to include unsightliness not in the vicinity of a public place.**
- **Effective cost recovery.**

Stage 3 – New legislation

3.160 A third stage in addressing deficiencies in the current regulatory environment is wholesale review of the current legislation with a view to preparing a new statutory instrument capable of integrating the environmental, health and safety aspects of private land management. While the Committee received some evidence advocating this course, the Committee believes that this is not warranted until the other options recommended above have been explored.

Chapter Four – Domestic Hoarding and Squalor

- 4.1 As outlined in previous chapters of this report, a significant issue raised by local government and private citizen participants during the inquiry was that of domestic hoarding and squalor. As outlined in chapter 2, this prompted the Committee to invite witnesses with expertise in this area to give evidence to the Committee. This chapter explores problems with the current response to hoarding and squalor on private properties in NSW and proposes a new management regime be investigated to deal with the issue more effectively and holistically.

DEFINITION

- 4.2 Domestic squalor involves extreme uncleanliness and/or hoarding and can also involve neglect of personal and domestic hygiene.¹²⁵ Hoarding itself refers to the accumulation of items and materials for later use.¹²⁶
- 4.3 Strictly speaking, hoarders can be distinguished from those who simply accumulate items because hoarders accumulate the items *for future use* and have a great resistance to discarding them – those who merely accumulate do not have such a resistance to clean-ups.¹²⁷ Common things hoarded and accumulated on private property in NSW include disused household goods, vehicle parts, building rubble, metal pieces, appliances, timber, paper, cardboard¹²⁸ and even animals¹²⁹.
- 4.4 While many people hoard a small amount, the type of hoarding and accumulation that the Committee concentrated on during the course of its inquiry involved cases where rubbish management is so unsatisfactory that it may cause complaints from neighbours, fire hazards, harbourage for vermin, and/or other health concerns.
- 4.5 Of the people who accumulate items, the majority, perhaps 50 per cent to 65 per cent, have a mental disorder¹³⁰ such as hoarding disorder, obsessive compulsive disorder, dementia, alcoholism or other frontal lobe pathology, schizophrenia or personality problems¹³¹ requiring psychiatric assistance.

¹²⁵ Family and Community Services, Ageing, Disability and Homecare website, <http://www.haccohs.adhc.nsw.gov.au>, viewed 10 January 2014

¹²⁶ Professor John Snowdon, Concord Hospital, transcript of evidence 28 October 2013, p26

¹²⁷ Professor John Snowdon, Concord Hospital, transcript of evidence 28 October 2013, p26

¹²⁸ Submission 36, Marrickville Council, p2

¹²⁹ Mr Steven Coleman, Chief Executive Officer, RSPCA, transcript of evidence 28 October 2013, p20

¹³⁰ Professor John Snowdon, Concord Hospital, transcript of evidence 28 October 2013, p26

¹³¹ Professor John Snowdon, Concord Hospital, transcript of evidence 28 October 2013, pp22 & 26

PREVALENCE

- 4.6 While no data was supplied to the Committee on the prevalence of domestic hoarding and squalor across the State, 8 of the 27 local government submissions to the inquiry raised the issue¹³², and it generated much discussion at the roundtable of local government participants conducted at Parliament House on 21 October 2013. In addition, Gosford City Council referred in its submission to findings by health specialists that there has been a significant increase in domestic hoarding and that this trend is likely to continue.¹³³
- 4.7 At the local government roundtable, Mr David Ackroyd, Manager of the Communities Unit at Sutherland Shire Council, indicated that although hoarding and squalor is not prevalent in the Sutherland area, its impacts can be significant:
- ...the cases of squalor and hoarding that we deal with are very limited. I have got to say you can count them on the fingers of one hand in an area like the Sutherland Shire, which is a reasonably affluent area. However, the impact that those have on the surrounding communities can be enormous. Potentially not dealing with the issues not only leaves the individual with health and safety concerns in the actual residential property but also brings about potential conflicts with the neighbours...People who have never been involved with the police potentially become involved in assaults and escalating situations.¹³⁴
- 4.8 In similar vein, Albury City Council noted the effect hoarding and squalor can have on neighbouring properties, whole neighbourhoods and, in some circumstances, whole villages or towns. The council noted these conditions can cause disease and neighbourhood disputes, large numbers of ongoing complaints to council¹³⁵, and 'require intensive resources from Council [i.e. to enforce clean-ups] due to the continual cycle of compulsive behaviour'.¹³⁶ Hoarding and squalor can also cause:
- Family and support network impacts: disengagement with the community, removal of dependent children and/or removal of animals from a property.
 - Eviction and possible homelessness.
 - Financial impacts for local area property values.¹³⁷
- 4.9 As outlined in chapter 2, the Committee also received a small number of submissions from private citizens that critiqued the regulatory system for managing waste on private lands. They focussed directly on landholder rights

¹³² See submission 13, Camden Council; submission 19, Armidale Dumaresq Council; submission 20, Albury City Council; submission 21, Gosford City Council; submission 33, Warringah Council; submission 35, Local Government NSW; submission 36, Marrickville Council; and submission 38, Sutherland Shire Council

¹³³ Submission 21, Gosford City Council, p2

¹³⁴ Mr David Ackroyd, Manager Communities Unit, Sutherland Shire Council, transcript of evidence, 21 October 2013, p2

¹³⁵ Submission 20, Albury City Council, pp1&4

¹³⁶ Submission 20, Albury City Council, p4

¹³⁷ Sutherland Shire Council Domestic Squalor and Hoarding Policy, tendered to the Committee by Mr Brett Richardson, Manager, Environment Protection and Regulation Services, Sutherland Shire Council, p5

and the capacity of landholders to comply with regulatory/community standards, especially in hoarding situations where mental health issues are present.¹³⁸

STAKEHOLDERS

- 4.10 The Committee heard that there are a number of bodies across NSW – government, community and private sector – with an interest in domestic hoarding and squalor, and that their involvement, and defining their roles clearly, is essential to addressing the issue in a holistic way.
- 4.11 Some community agencies are funded by the Commonwealth Government to coordinate appropriate responses to squalor and hoarding in NSW. For example, Catholic Community Services runs a Commonwealth Government funded hoarding and squalor program in Sydney, the Hunter, Illawarra and the Southern Highlands.
- 4.12 Under this program Catholic Community Services:
- provides advice on how to deal with individual cases of domestic hoarding and squalor;
 - provides education, training and workshops across NSW for agencies and organisations on how best to deal with domestic hoarding and squalor; and
 - has developed a hoarding and squalor toolkit, in conjunction with the City of Sydney, available online with links to guidelines for personnel who are required to intervene in cases of domestic hoarding and squalor, and links to relevant referral services e.g. accommodation services, animal services, cleaning services, pest control companies and legal and financial services.¹³⁹
- 4.13 Mr Ackroyd of Sutherland Shire Council also indicated to the Committee that the Benevolent Society has been funded to conduct trials on how better to respond to hoarding.¹⁴⁰
- 4.14 As above, another community organisation with an interest in hoarding and squalor is the RSPCA because some people who live in these conditions also hoard animals.¹⁴¹ Given the link between domestic hoarding and squalor and mental health, the Mental Health Coordinating Council, the peak body for community mental health organisations in NSW also has an interest in the issue.¹⁴²

¹³⁸ As discussed in chapter 2, these submissions identified private property and third parties, and the Committee has therefore resolved to keep them confidential. Nonetheless, the Committee has considered them carefully in its deliberations.

¹³⁹ Catholic Community Services and City of Sydney Hoarding and Squalor Toolkit website, <http://squalorandhoarding.catholiccommunityservices.com.au/> viewed 13 January 2014

¹⁴⁰ Mr David Ackroyd, Manager Communities Unit, Sutherland Shire Council, transcript of evidence, 21 October 2013, 21 October 2013, p20

¹⁴¹ Mr Steven Coleman, Chief Executive Officer, RSPCA, transcript of evidence, 28 October 2013, p20

¹⁴² Ms Janis Redford, General Manager, Catholic Community Services, transcript of evidence 28 October 2013, p31; see also Mental Health Coordinating Council website, <http://www.mhcc.org.au>, viewed 15 January 2014

- 4.15 In addition, the involvement of a number of government agencies is essential to address domestic hoarding and squalor. While councils and the police are often the first responders to a complaint, other relevant agencies include:
- Fire and Rescue NSW, as large amounts of accumulated items can pose a serious fire risk;¹⁴³
 - NSW Health, owing to the fact that a large proportion of people who accumulate items have a mental disorder¹⁴⁴ and/or are hospitalised for physical conditions like falls and infections related to living in hoarding and squalor;¹⁴⁵
 - Ageing, Disability and Homecare, owing to the link between accumulating items and dementia¹⁴⁶ and because the elderly and infirm more generally are sometimes less able to adequately manage waste on their land¹⁴⁷; and
 - Housing NSW and the Land and Housing Corporation, as some people who are living in hoarding and squalor are public or social housing tenants.¹⁴⁸

CURRENT RESPONSE

- 4.16 The Committee heard from a number of inquiry participants about problems with the current system for addressing hoarding and squalor in NSW. These problems are discussed below.

Coordination between agencies

- 4.17 As discussed in chapter 2, the Committee heard that a traditional regulatory approach (forcing a hoarder to clean up or council cleaning a property itself and recouping the costs), rarely provides a long-term solution to domestic hoarding and squalor. As reported, Dr Bibby of the NSW Council for Civil Liberties told the Committee that taking a heavy-handed approach to a problem likely caused by mental disorder does not resolve the problem.¹⁴⁹
- 4.18 In short, hoarding is not a stand-alone issue for councils to deal with but a complex one requiring a far more sophisticated interagency response. Ms Janis Redford of Catholic Community Services told the Committee:

...I think generally there is insufficient understanding across government broadly about the complexity of dealing with squalor and hoarding... there are many areas where there is no specialised funding and a lack of coordination across government

¹⁴³ See for example Professor John Snowdon, Concord Hospital, transcript of evidence, 28 October 2013 pp19-20; and Ms Maria Splitt, Senior Coordinator, Catholic Community Services, and Ms Janis Redford, General Manager, Catholic Community Services, transcript of evidence, 28 October 2013, p28

¹⁴⁴ Professor John Snowdon, Concord Hospital, transcript of evidence, 28 October 2013, p26

¹⁴⁵ Ms Margaret Pistevos, Manager Community Services, Catholic Community Services, transcript of evidence, 28 October 2013, p29

¹⁴⁶ Professor John Snowdon, Concord Hospital, transcript of evidence, 28 October 2013, pp23 & 26

¹⁴⁷ Submission 25, Newcastle City Council, p1

¹⁴⁸ Professor John Snowdon, Concord Hospital, transcript of evidence, 28 October 2013, p28

¹⁴⁹ Dr Martin Bibby, Board Member, NSW Council for Civil Liberties, transcript of evidence, 28 October 2013, pp2 &

agencies...there needs to be collaboration between government agencies – Housing, Health, Ageing et cetera – and there needs to be dedicated resources and an understanding that it is more complex than simply putting a skip out the front of a house and hoping that the problem will go away quickly because it generally does not go away if that is the approach that is taken.¹⁵⁰

- 4.19 Mr Steven Coleman of the RSPCA gave the Committee another example of a lack of interagency coordination in hoarding matters, this time around information-sharing:

...from [the RSPCA's] perspective as long as the welfare needs are addressed in terms of the animals, by and large that is where our role stops...even though we might see other hoarding issues that are unrelated to animals, what obligation do we have right now to report that? The answer is nothing. We have no obligation. I do not know whether that is right either.¹⁵¹

- 4.20 In its submission to the inquiry, Sutherland Shire Council emphasised the need for formal agreements to ensure all relevant agencies participate in the solution to hoarding and squalor, and to clearly delineate their responsibilities. The submission stated:

Taking meaningful action...requires work across agencies with differing mandates and priorities. Overcoming barriers between agencies requires the development of strong mandated partnerships between community services, health services, enforcement staff and the Police It requires the development of clear memorandums of understanding, the sharing of client/patient information and the willingness of stakeholders to work together in partnership...¹⁵²

- 4.21 Given the serious consequences of hoarding and squalor, the Committee also heard that where there is clear physical deterioration of a person, mandatory reporting of hoarding and squalor may be an option to avoid situations where an agency dealing with one aspect of the problem (e.g. the RSPCA with animal hoarding) does not engage other agencies which can also assist the hoarder in other aspects.¹⁵³

Education and training

- 4.22 The Committee also heard of a need for greater education and training to assist agencies and communities to deal with domestic hoarding and squalor. For example, Ms Margaret Pistevos, Catholic Community Services stated:

It is very difficult, especially for councils operating within a customer service frame and answering a complaint about smelly garbage. The council would not know the context of the issue. There needs to be ground-level education about services available within local communities.¹⁵⁴

¹⁵⁰ Ms Janis Redford, General Manager, Catholic Community Services, transcript of evidence, 28 October 2013, p20

¹⁵¹ Mr Steven Coleman, Chief Executive Officer, RSPCA, transcript of evidence, 28 October 2013, p25

¹⁵² Submission 38, Sutherland Shire Council, p4

¹⁵³ Ms Margaret Pistevos, Manager Community Services, Catholic Community Services, transcript of evidence, 28 October 2013, p29

¹⁵⁴ Ms Margaret Pistevos, Manager Community Services, Catholic Community Services, transcript of evidence, 28 October 2013, p22

- 4.23 Professor John Snowdon also indicated that sometimes councils, as first responders to a hoarding issue, elect to do nothing because it is too expensive and they are unaware of any broader solutions that may exist:

Some councils would quite like to help but it is going to cost them much too much money...It is going to cost them \$60,000 and their budget already has been blown for the year so they cannot do it. It is not that they are resisting, but they feel, "Well, we don't have to do this", and therefore they do not refer. What would be good is if they had been able to get onto a triage point to talk about what were the things that could be done in that situation.¹⁵⁵

- 4.24 Professor Snowdon described how such a triage point, run by people with expertise in domestic hoarding and squalor, would take the pressure off traditional first responders like councils and police, sorting out which cases need attention and farming out duties to the appropriate agencies.¹⁵⁶

- 4.25 The Committee also heard that there is a need for more education and training about hoarding and squalor for other agencies and organisations. For example, Professor Snowdon stated:

A lot of doctors, health services and even community services do not understand or know much about hoarding or why people live in disgusting, filthy conditions. Some of us do, and it would be good to ensure that the people who know what to do can arrange for something to be done. People need to be referred. You could get a social worker at Concord Hospital, for example, who does not have a clue about squalor. She may be newly trained, and then the cases do not get referred.¹⁵⁷

Coverage

- 4.26 Other evidence to the Committee indicated that there is currently no state-wide coverage by organisations (such as Catholic Community Services) funded by government to coordinate appropriate responses to squalor and hoarding in NSW. Speaking about Catholic Community Services, Ms Pistevos stated:

We have four locations where we operate our hoarding and squalor program [Sydney, the Hunter, the Illawarra and the Southern Highlands] but in between those locations it is isolated incidents from other people and various providers have the task of doing it. There is no collaboration between us at a regional level or at any legislative level really...You may have a client in one region experiencing the same problems as another region and that particular local government area may not be aware of hoarding and squalor issues. Collaboration and funding and resources certainly at the State level needs to be discussed.¹⁵⁸

- 4.27 Ms Redford also highlighted the value of a telephone advice line to assist people who live in more isolated areas where there are limited services. In the context of the State Government's elder abuse telephone support line she stated:

¹⁵⁵ Professor John Snowdon, Concord Hospital, transcript of evidence, 28 October 2013, pp26-27

¹⁵⁶ Professor John Snowdon, Concord Hospital, transcript of evidence, 28 October 2013, p21

¹⁵⁷ Professor John Snowdon, Concord Hospital, transcript of evidence, 28 October 2013, p21

¹⁵⁸ Ms Margaret Pistevos, Manager Community Services, Catholic Community Services, transcript of evidence, 28 October 2013, p20

...the State Government has recently funded a State-wide elder abuse telephone support line. It is a service that we operate, funded by Ageing, Disability and Home Care. Anyone in the State can ring that service. It does not have to be an agency, it can be a council, a neighbour or a friend...We can provide useful, practical advice to people over the phone and ensure that there is a localised response to that particular issue, to keep those people safe in their own homes.¹⁵⁹

- 4.28 Ms Mercy Splitt's evidence indicated that this model may be transferable to a hoarding and squalor context.

One example of that is, because Catholic Community Services is known Australia-wide for providing support with situations of hoarding and squalor, we get a lot of phone calls Australia-wide...I receive those calls and I have spoken over the phone with hoarders from Western Australia. They say, "I am a hoarder. What can I do?" I speak with them by phone about some little processes...It definitely does work and we see that whenever we do an interview or there is some sort of publication, a lot of calls come in saying, "Everything that you said in that interview was me. Can you help me?"¹⁶⁰

- 4.29 Related to the above issue of education and training, Ms Redford also advocated a state-wide approach to equipping councils with the necessary information to address hoarding and squalor. She stated:

The City of Sydney gave us a grant a number of years ago to develop a tool kit for the City of Sydney. We are now talking to Burwood Council in particular about developing that tool kit to address their particular set of agencies and what resources are available. But to do that on an ad hoc basis is not going to achieve anything. It needs to be a coordinated state-wide approach to equipping councils with the information they need. I think it would be a really good starting point to get councils to the point where they have got the information they need, they know where to refer, and that gives them somewhere to go in those situations when they are not sure what to do.¹⁶¹

- 4.30 Indeed, the Committee was informed that Catholic Community Services is in the process of drafting a Hoarding and Squalor Taskforce Paper in consultation with Professor Snowdon; the RSPCA; the Fire Brigade; the Mental Health Coordinating Council; NSW Health; and Ageing, Disability and Homecare. The paper contains research and information about the current state of the system for responding to domestic hoarding and squalor in NSW and will recommend different protocols, practices and training to improve the situation.¹⁶²

Public and Social Housing

- 4.31 The Committee also heard evidence that the options for dealing with hoarding and squalor where the relevant resident is a public or social housing tenant are unique and that again the response is sometimes inadequate. It is understood the Department of Family and Community Services is responsible for public

¹⁵⁹ Ms Janis Redford, General Manager, Catholic Community Services, transcript of evidence, 28 October 2013, p30

¹⁶⁰ Ms Mercy Splitt, Senior Coordinator, Catholic Community Services, transcript of evidence, 28 October 2013, p30

¹⁶¹ Ms Janis Redford, General Manager, Catholic Community Services, transcript of evidence, 28 October 2013, p27

¹⁶² Ms Janis Redford, General Manager, Catholic Community Services, transcript of evidence, 28 October 2013, p31

housing through Housing NSW and for social housing through the Land and Housing Corporation.¹⁶³ Professor Snowden stated:

...the Housing Department is...the landlord and they do not need to use the law [i.e. clean-up orders under the *Local Government Act 1993* or the *Protection of the Environment Operations Act 1997*]. They can say to their tenant – they can use the Tenancy Act and things like that – but one thing that I think ought to be documented here is that quite often the Housing people have not inspected places that are rented from them for maybe many months and maybe sometimes years, yet there is a shocking accumulation of stuff that they have not done anything about. I think it should be incumbent on the Housing Department. In some parts it is okay. In some, it is certainly not.¹⁶⁴

- 4.32 In addition, Professor Snowden raised concerns that where public and social housing needs to be cleaned urgently, there must be public funds available to achieve this.¹⁶⁵

Elderly and Infirm

- 4.33 The Committee also heard evidence that domestic hoarding and squalor is an issue for the elderly and infirm unable to manage their properties for health and financial reasons. Newcastle City Council suggested the Government might consider funding a low cost service for such landholders to access maintenance for their properties.¹⁶⁶

COMMITTEE COMMENT

- 4.34 The Committee accepts the evidence provided to it throughout the inquiry that domestic hoarding and squalor is a significant issue for residents, councils, government agencies and other organisations across NSW. It is also a complex issue requiring a sophisticated, interagency response. A standalone regulatory response by councils to this issue is insufficient and a broader social approach is necessary.
- 4.35 The Committee also accepts that while the incidences of hoarding and squalor in the community are relatively few, their impact is serious for the significant number of people who can be affected.

Dedicated funding

- 4.36 The Committee notes that the most effective response reported to the Committee ie the program implemented by Catholic Community Services, receives Commonwealth funding, and considers that in order to address the fragmentation of incident management that has occurred in the past, dedicated funding to support a holistic, coordinated, state-wide response will be essential.

¹⁶³ Department of Family and Community Services website, http://www.facs.nsw.gov.au/about_us/our_structure, viewed 15 January 2014

¹⁶⁴ Professor John Snowden, Concord Hospital, transcript of evidence, 28 October 2013, p28

¹⁶⁵ Professor John Snowden, Concord Hospital, supplementary statement, 4 November 2013, pp1-2

¹⁶⁶ Submission 25, City of Newcastle, p1

Interests of Neighbours

- 4.37 The Committee considers the management of hoarding and squalor to be an issue which extends to both hoarders and to their neighbours, and that in considering how to improve the management of hoarding and squalor, the interests of both classes of residents need to be recognised and addressed.

Hoarding and Squalor Taskforce Paper

- 4.38 The Committee notes that the Hoarding and Squalor Taskforce Paper is being prepared and will make an essential contribution to the development of a solution to the problems identified by the inquiry. In this regard the Committee accepts and endorses the principles and procedures being considered for inclusion in the Paper, as presented in evidence to the Committee, which include:

- State-wide coverage
- Coordination of government and non-government agencies
- Education and training for responders and the broader community, including the production and distribution of a tool-kit
- A telephone hotline and associated measures to ensure ready access to advice and services for hoarders and their families/carers, the neighbours of hoarders and other affected residents, and government and non-government officials responsible for incident management and care
- Triage arrangements to ensure cases are reported and dealt with effectively and expertly, and referred in a timely manner.

Mandatory reporting

- 4.39 The Committee also notes the suggestion that where hoarding and squalor cases come to the attention of government and non-government agencies, through incidents such as hospital admission or animal mistreatment, a mandatory reporting requirement should be applied. While the Committee understands the argument that mandatory reporting can impact on both the rights of individuals and the agency workers on whom the responsibility falls, the Committee accepts that the support for mandatory reporting came from witnesses expert in managing hoarding and squalor. On balance the Committee believes that mandatory reporting is appropriate given the seriousness of the cases brought to the Committee's attention and the inconsistent outcomes achieved by the traditional regulatory responses to hoarding and squalor. Mandatory reporting coupled with the principles and procedures outlined above will, in the view of the Committee, create pathways leading to improved reporting and management of hoarding and squalor in a social context and ensure hoarding and squalor cases are addressed quickly, effectively and sympathetically on a state-wide basis.

FINDING 4

The Committee finds that domestic hoarding and squalor is a significant and complex issue for householders, neighbours, councils, government agencies and other organisations across NSW, which requires a sophisticated and holistic interagency response in a broader social context rather than just a regulatory one.

RECOMMENDATION 3

The Committee recommends that the Division of Local Government in the Department of Premier and Cabinet consult with Catholic Community Services, the RSPCA, Fire and Rescue NSW, NSW Health, Ageing Disability and Homecare, Housing NSW, the Land and Housing Corporation, and the other members of the Hoarding and Squalor Taskforce, Local Government NSW, and other relevant stakeholders to develop and implement a state-wide program for managing domestic hoarding and squalor.

RECOMMENDATION 4

The Committee recommends that the program described in Recommendation 3 include the following components:

- State-wide coverage
- Mandatory reporting
- Formal agreements between government and non-government agencies to ensure inter-agency coordination
- Education and training, including the production and distribution of a tool-kit to equip local councils and other government and community responders with the information and tools they need to address domestic squalor and hoarding
- A telephone hotline and associated measures to ensure pathways are established and maintained which provide ready access to advice and services for hoarders and their families/carers, the neighbours of hoarders and other affected residents, and government and non-government officials responsible for incident management and care
- Triage arrangements to ensure cases are reported and dealt with effectively and expertly, and referred in a timely manner, with special regard to the early and effective identification and treatment of mental illness.

RECOMMENDATION 5

The Committee recommends that the hoarding and squalor management program described in Recommendation 4 have a dedicated funding source, and that given the applicability of the program to managing issues which occur in all states and territories, the NSW Government seek Commonwealth funding and support for this program.

RECOMMENDATION 6

The Committee recommends that Housing NSW be required to inspect its properties on an annual basis to ensure cases of hoarding and squalor, and other tenant welfare issues, are identified and managed proactively.

Chapter Five – Illegal Dumping

- 5.1 This chapter examines illegal dumping and related matters, including the treatment of asbestos, the impact of the waste levy, orphan waste and HAZMAT arrangements, illegal dumping on Aboriginal land, and community education.
- 5.2 The inquiry's fourth term of reference focussed on illegal dumping on private lands and the impact on local government of requirements to remove dumped waste. Much of the evidence, however, focussed on illegal dumping and its impacts whether on private or public lands.
- 5.3 Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority defined illegal dumping for the Committee:
- ...illegal dumping...is the unlawful disposal of any waste that is larger than litter to land or waters. Illegal dumping is where waste materials are dumped, tipped or otherwise deposited on private or public land when it has been done unlawfully, meaning it has been done without an appropriate planning approval or environment protection licence. Illegal dumping may vary from small bags of rubbish or household waste in an urban environment to large-scale dumping of material such as construction and demolition waste in more isolated areas, such as bushlands and rural settings. Such waste may also contain materials such as asbestos.¹⁶⁷
- 5.4 The accumulation of waste by people on their own properties is examined in previous chapters. This chapter concentrates on illegal dumping by third parties on private land.

Regulation

- 5.5 The *Protection of the Environment Operations Act 1997* provides for a tiered range of illegal dumping offence provisions and penalties, as follows:
- (g) Tier 1 offence: disposal of waste in a manner that harms or is likely to harm the environment. A person found guilty of this offence is liable to a maximum penalty of a \$1 million fine and/or 7 years imprisonment, while a corporation found guilty of the offence is liable to a maximum penalty of a \$5 million fine.¹⁶⁸
- (h) Tier 2 offences:
- Use of land as a waste facility without lawful authority. A person found guilty of this offence is liable to a maximum penalty of a \$250,000 fine and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues. A corporation found guilty of the

¹⁶⁷ Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p34

¹⁶⁸ *Protection of the Environment Operations Act 1997*, sections 115 and 119

offence is liable to a maximum penalty of \$1 million and, in the case of a continuing offence \$120,000 for each day the offence continues.¹⁶⁹

- Unlawful transporting or depositing of waste. A person found guilty of this offence is liable to a maximum penalty of a \$250,000 fine; and a corporation is liable to a maximum penalty of \$1 million.¹⁷⁰
 - Failure to comply with a clean-up notice issued under section 91 of the Act. A person found guilty of this offence is liable to a maximum penalty of a \$250,000 fine and a further penalty of \$60,000 for each day the offence continues; while a corporation is liable to a maximum penalty of \$1 million and a further penalty of \$120,000 for each day the offence continues.¹⁷¹
- (i) Tier 3 offence: the Act also provides for on-the-spot fines to be issued for certain illegal dumping offences. For example:
- Instead of instituting court proceedings for use of land as a waste facility, a council or Environment Protection Authority officer can exercise discretion and instead issue an on-the-spot fine of \$1,500 maximum for an individual and \$5000 for a corporation.¹⁷²
 - Instead of instituting court proceedings regarding unlawful transporting or depositing of waste a council or Environment Protection Authority officer can exercise discretion and instead issue an on-the-spot fine of \$750 maximum for an individual and \$1,500 for a corporation. If the waste includes hazardous items or asbestos, or any other waste greater than 1 cubic metre or 2 tonnes in weight, the maximum on-the-spot fine that can be issued is \$1,500 for an individual and to \$5000 for a corporation.¹⁷³
 - Instead of instituting court proceedings regarding failure to comply with a clean-up order issued under section 91 of the Act, a council or Environment Protection Authority officer can exercise discretion and instead issue an on-the-spot fine of \$750 maximum for an individual and \$1,500 maximum for a corporation¹⁷⁴.

These tier 3 on-the-spot fines can be paid or defended in court.¹⁷⁵

¹⁶⁹ *Protection of the Environment Operations Act 1997*, sections 144

¹⁷⁰ *Protection of the Environment Operations Act 1997*, section 143

¹⁷¹ *Protection of the Environment Operations Act 1997*, section 91(5)

¹⁷² See sections 144 and 222 of the *Protection of the Environment Operations Act 1997*, and clause 80 and schedule 6 of the *Protection of the Environment Operations Regulation 2009*

¹⁷³ See section 143 of the *Protection of the Environment Operations Act 1997* and clause 8 and schedule 6 of the *Protection of the Environment Operations Regulation 2009*

¹⁷⁴ See section 91 of the *Protection of the Environment Operations Act 1997* and clause 8 and schedule 6 of the *Protection of the Environment Operations Regulation 2009*

¹⁷⁵ Section 223 *Protection of the Environment Operations Act 1997*

Cost and extent

- 5.6 Of the 27 local councils that made submissions to the Committee's inquiry, 20 made comments in relation to illegal dumping. Of these 10 were metropolitan councils and 10 were non-metropolitan councils.

Responsibility and cost

- 5.7 The Committee was informed that where waste is dumped on public land and the perpetrator cannot be identified, the relevant council has responsibility for cleaning it up. However, where waste is dumped on private land by unknown parties it is the responsibility of the landowner.¹⁷⁶
- 5.8 In some cases councils may leave it entirely to the landowner to decide whether to dispose of waste dumped by a third party while in other cases, because waste is of a certain type or amount, councils will issue a notice or order for removal (under the *Local Government Act 1993*¹⁷⁷ or the *Protection of the Environment Operations Act 1997*¹⁷⁸) and intervene with a penalty notice, legal proceedings or entry to undertake works if there is non-compliance.¹⁷⁹
- 5.9 The costs of clean-ups are considerable. Environmental Health Australia, the peak body for environmental health officers in NSW, informed the Committee that while disposal costs vary according to the disposal facility used they are usually more than \$200 per tonne.¹⁸⁰ Strathfield Council stated that where the material disposed of is asbestos the cost is even greater – approximately \$500 for a wheelbarrow full.¹⁸¹ Other costs of illegal dumping include environmental, health and safety costs¹⁸², education programs to reduce the incidence of illegal dumping,¹⁸³ and policing, investigation and prosecution costs.¹⁸⁴

Prevalence

- 5.10 Evidence placed before the Committee also indicated illegal dumping is a widespread problem in NSW. In its submission to the inquiry the Australian Sustainable Business Group quoted the New South Wales State of the Environment report produced by the NSW Environment Protection Authority:

For example, in 2010-11, the Western Sydney RID [Regional Illegal Dumping] Squad (of seven local councils) investigated 4,716 illegal dumping incidents involving approximately 226,000 tonnes of waste. Investigations resulted in the issue of 93 clean-up notices and 733 penalty notices.¹⁸⁵

¹⁷⁶ See for example Submission 30, Shellharbour City Council, p1

¹⁷⁷ *Local Government Act 1993*, Orders 21 or 22A, section 124

¹⁷⁸ A clean-up or prevention notice under sections 91 and 96 of the *Protection of the Environment Operations Act 1997*

¹⁷⁹ Submission 13, Camden Council, p8

¹⁸⁰ Submission 16, Environmental Health Australia, p11

¹⁸¹ Submission 7, Strathfield Council, p2

¹⁸² See for example submission 5, Ballina Shire Council, p1 which includes a discussion of hazardous materials that are not properly disposed of.

¹⁸³ Submission 16, Environmental Health Australia, p11

¹⁸⁴ Submission 5, Ballina Shire Council, p4; see also submission 26, Dubbo City Council, p2

¹⁸⁵ Submission 24, Australian Sustainable Business Group, p1

5.11 The Australian Sustainable Business Group went on to observe:

Given that the Western Sydney Regional Illegal Dumping Squad makes up only part of the Sydney area, the total scale of illegal dumping can only be considered substantial.¹⁸⁶

5.12 Local Government NSW, the peak body for local government in NSW, also roughly estimated that the cost to local government of managing illegal dumping in NSW may now be close to \$14 million per year.¹⁸⁷

5.13 Campbelltown City Council reported that it received 2,738 complaints relating to illegal dumping in 2012/13.¹⁸⁸ The City of Newcastle indicated in its submission that it spends over \$100,000 per annum removing and disposing of dumped rubbish.¹⁸⁹ Similarly, Dubbo City Council stated:

A further issue for council is the increasing incidents of waste being dumped on public lands and roadsides...During 2012-2013 Council responded to approximately 166 incidents of rubbish dumping which required an average 250-260 hours per annum of staff resources that could be better utilised elsewhere. This is an unreasonable cost impost on a community.¹⁹⁰

Private land

5.14 A number of councils specifically indicated that illegal dumping on private land is a significant issue in their areas:

- Hornsby Council indicated it investigates approximately 25 major illegal landfill complaints per year relating to private property¹⁹¹ and that, more generally, a number of land owners within the Shire are victims of illegally dumped waste and fill on their properties for which they are then legally and financially responsible.¹⁹²
- Ballina Shire Council indicated that there is a considerable burden on Council relating to waste dumping on private land which has not yet been quantified.¹⁹³
- Strathfield Council indicated that it receives weekly complaints of asbestos dumped on public and private land.¹⁹⁴
- The Hills Shire Council indicated that over recent years it has had a number of reports of illegal dumping including the unlawful transportation and dumping of waste on private property.¹⁹⁵

¹⁸⁶ Submission 24, Australian Sustainable Business Group, p2

¹⁸⁷ Submission 35, Local Government NSW, p7

¹⁸⁸ Submission 37, Campbelltown City Council, p4

¹⁸⁹ Submission 25, City of Newcastle, p3

¹⁹⁰ Submission 26, Dubbo City Council, p2

¹⁹¹ Submission 3, Hornsby Shire Council, p1

¹⁹² Submission 3, Hornsby Shire Council, p2

¹⁹³ Submission 5, Ballina Shire Council, p4

¹⁹⁴ Submission 7, Strathfield Council, p2

- Camden Council indicated concerns about illegal dumping of asbestos on public and private land have increased.¹⁹⁶
 - Southern Councils Group, the peak organisation representing local government in the Illawarra and South Coast regions indicated that illegal dumping is an increasing problem on public and private land.¹⁹⁷
- 5.15 Three non-metropolitan councils also raised the issue of ‘farm dumps’ in their areas. Bathurst Regional Council indicated that there is anecdotal evidence such dumps are widespread in the region with most in locations that concentrate the flow of contaminants, for example, in or near water courses. Common material deposited includes household waste, chemical, oil and fuel drums, foam, plastic, tyres, animal carcasses, wood, cardboard, green waste, vehicle and machinery parts, electrical equipment, white goods and furniture.¹⁹⁸ Junee Shire Council also indicated farm dumps are common in its shire especially since the closure of many rural landfill sites.¹⁹⁹
- 5.16 Similarly, Snowy River Shire Council stated that many farmers bury waste on their own property and that while illegal dumping on public land costs the council about \$5,000 to \$10,000 per year this is most likely insignificant compared to the amount of illegally operated landfills that exist on private properties.²⁰⁰
- 5.17 Both Snowy River and Junee Shire Councils indicated they have insignificant resources to police the problem with Snowy River stating that the only way to pinpoint landfills is from the air.²⁰¹

Penalties

- 5.18 Some local government participants in the inquiry favoured an increase in penalties to deter illegal dumping,²⁰² suggesting that current penalties are an insufficient deterrent because the cost of disposal means, in the case of bigger loads of waste, that it may be cheaper to dump materials and pay the fine. Mr McKiernan of Environmental Health Australia said:

For the person who has just thrown three bags out and a little one that has fallen off the back of a trailer or something, I think the \$750 is probably onerous, but there is no graduated enforcement response of how much waste – whether it is over a tonnage or something. There is no real degree in the type of pollution or offence. It is just \$750 or \$1,500 for a company.

...

¹⁹⁵ Submission 8, The Hills Shire Council, p1

¹⁹⁶ Submission 13, Camden Council, p3

¹⁹⁷ Submission 32a, Southern Councils Group, p1

¹⁹⁸ Submission 15, Bathurst Regional Council, p1

¹⁹⁹ Submission 10, Junee Shire Council, p1

²⁰⁰ Submission 2, Snowy River Shire Council, p1.

²⁰¹ Submission 2, Snowy River Shire Council, p1; Submission 10, Junee Shire Council p1

²⁰² See for example submission 8, The Hills Shire Council, p3; and comments of Ms Susy Cenedese, Strategy Manager, Local Government NSW and Mr Geoffrey Green, Manager, Environment and Health, Camden Council, transcript of evidence 21 October 2014, p24

To put it into context, for doing something without consents, such as building a shed...the minimum is \$1,500 and \$3000. That is an automatic reaction: "I won't do that because it's going to cost too much."... Fifteen hundred dollars seems a lot and that is for a company and basically every company challenges it. But the \$750, people seem to pay that.²⁰³

5.19 As discussed above, however, there is in NSW a graduated enforcement regime according to the volume and type of waste dumped. The maximum on-the-spot fine that can be issued for unlawful transporting or depositing of waste is \$750 for individuals and \$1,500 for corporations *unless* the waste includes hazardous items or asbestos, *or any other waste greater than 1 cubic metre or 2 tonnes in weight* in which case the maximum on-the-spot fine that can be issued is \$1,500 for an individual and \$5,000 for a corporation.²⁰⁴

5.20 In addition, if a regulator chooses to institute court proceedings instead of issuing an on-the-spot fine for this offence, as above, the maximum penalties are very large: \$250,000 for an individual and \$1 million for a corporation.²⁰⁵ However, some inquiry participants indicated pursuing court action is often so expensive the fines handed down by the courts do not cover costs.²⁰⁶ A partial remedy for this would be increasing the level of fines that could be issued on-the-spot.

5.21 On the issue of penalties, Mr Beaman of the Environment Protection Authority stated:

...\$5,000 for an on-the-spot fine is a fairly substantial penalty...The court imposed fines range between \$250,000 and \$1 million as a maximum, so they are quite substantial. They are for our tier two offences, then our tier three offences, which are the ones that the EPA conducts and they are the ones that have to have a wilful or negligent component to it, the maximum is seven years jail and \$5 million for a corporation as the maximum.²⁰⁷

5.22 Mr Beaman also indicated that, of all the jurisdictions across Australia, NSW has the highest penalties for illegal dumping offences.²⁰⁸ In addition, Mr Beaman referred to new laws that came into effect on 1 October 2013 providing custodial sentences of up to 2 years for repeat waste offenders who are caught more than twice in 5 years²⁰⁹ – previously such offences could only be punished by a fine.²¹⁰

²⁰³ Mr Shannon McKiernan, Director Environmental Health Australia, transcript of evidence, 21 October 2013, pp33-34

²⁰⁴ See section 143 of the *Protection of the Environment Operations Act 1997* and clause 8 and schedule 6 of the *Protection of the Environment Operations Regulation 2009*

²⁰⁵ *Protection of the Environment Operations Act 1997*, section 143

²⁰⁶ See for example submission 16, Environmental Health Australia, p8

²⁰⁷ Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p40

²⁰⁸ Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p40

²⁰⁹ Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p40

²¹⁰ See explanatory note to *Protection of the Environment Operations Amendment (Illegal Waste Disposal) Bill 2013*

Increased Penalties

- 5.23 On 28 May 2014 the Hon Rob Stokes MP, Minister for the Environment announced a range of measures to strengthen environmental protection including increased penalties. The Minister said that fines for the ten most serious environmental offences would now range from \$1,500 to \$15,000 for a corporation and from \$750 to \$7,500 for an individual. In his media release the Minister described these fines as ‘the highest penalties for any environmental regulator in Australia’. The Minister described the changes as better reflecting community expectations.²¹¹

Impact of NSW Waste and Environment Levy

- 5.24 Another matter that was frequently raised by inquiry participants in the context of illegal dumping was the impact of the NSW Waste and Environment Levy.
- 5.25 Under section 88 of the *Protection of the Environment Operations Act 1997*, licensed waste facilities are required to pay a contribution for each tonne of waste received for disposal at the facility. According to the Environment Protection Authority website, the levy aims to reduce the amount of waste being disposed of and to promote recycling and resource recovery in NSW.²¹²
- 5.26 The levy applies in the ‘regulated area’ of NSW which comprises the Sydney Metropolitan area, the extended regulated area (Illawarra and Hunter regions) and, since 1 July 2009, the regional regulated area, which includes the north coast local government areas from Port Stephens to the Queensland border as well as the Blue Mountains and Wollondilly local government areas.²¹³
- 5.27 The levy is currently set at \$107.80 per tonne of waste for the Sydney Metropolitan Area and extended regulated area, and \$53.70 per tonne for the regional regulated area.²¹⁴

The Waste Levy and Illegal Dumping

- 5.28 During the course of the inquiry, a number of participants linked the waste levy with illegal dumping. For example, in its submission Wyong Shire Council stated:
- Currently, the general public who manage their waste appropriately are paying a penalty for higher disposal costs. The intention of the waste levy is to encourage recycling and avoid unnecessary disposal of waste. Unfortunately, the increase in disposal fees has encouraged illegal dumping to occur Shire wide.²¹⁵
- 5.29 Given this view, some participants argued the levy should be reduced to encourage disposal of waste at a licensed facility.²¹⁶ For example, Cr Bruce MacKenzie, Mayor of Port Stephens told the Committee:

²¹¹ <http://www.epa.nsw.gov.au/resources/MinMedia/EPAMinMedia14052802.pdf>

²¹² Environment Protection Authority website, <http://www.epa.nsw.gov.au/wr/index.htm>, viewed 4 March 2014

²¹³ Environment Protection Authority website, <http://www.epa.nsw.gov.au/wr/index.htm>, viewed 4 March 2014

²¹⁴ Environment Protection Authority website, <http://www.epa.nsw.gov.au/wr/index.htm>, viewed 4 March 2014

²¹⁵ Submission 4, Wyong Shire Council, p2

²¹⁶ See for example submission 4, Wyong Shire Council, p2; or submission 8, Hills Shire Council, p8

We should be encouraged to recycle but the way it is being handled is ludicrous. It would make more sense to reduce the levy so it is more economically viable to dispose of real waste and re-use.²¹⁷

- 5.30 Others focussed their comments on hazardous waste such as asbestos, arguing that the levy should be reduced for this type of waste in particular as it cannot be recycled.²¹⁸ This argument was clearly articulated by Mr Adam Gilligan, Manager Compliance Services, City of Newcastle:

One of the key costs in disposing of waste lawfully is the waste levy imposed by the NSW Government. The levy is designed to encourage reuse of material and take it out of the waste stream so it does not end up in landfill. You cannot reuse asbestos so it makes no sense at all to apply a levy to the disposal of it because there are no alternatives and in fact we should be encouraging lawful disposal and making it as cheap as possible...²¹⁹

- 5.31 The City of Newcastle also advocated a waste levy exemption for councils where they become responsible for disposal of dumped waste because the perpetrator cannot be found:

Council spends over \$100,000 per annum removing and disposing of dumped rubbish. A waste levy exemption for this material would be beneficial to Councils and encourage removal of waste in bushland areas.²²⁰

Data on the Effect of the Levy

- 5.32 In contrast to evidence linking the levy with illegal dumping, the Committee also received evidence that there is currently insufficient data to determine whether this link actually exists. At a Committee hearing on 28 October 2013, Mr Beaman of the Environment Protection Authority stated:

The Government commissioned KPMG to do probably the first independent review in 41 years of the waste levy. Part of the terms of reference was to test the perceived linkage between the levy and illegal dumping. We found it a challenge to gain any accurate information on the nature and extent of illegal dumping...The KPMG review very specifically said to local government, "Bring your data to us..." Bring us some information." People say, "It just does" and KPMG said, "Give us some facts, where are the facts? Where is your data and we will put it on the table to government?" Unfortunately, through no fault of local government, there was no hard and fast data.²²¹

- 5.33 Mr Beaman stated that, as part of the Government's Illegal Dumping Strategy, (discussed further below), the Environment Protection Authority is improving its database to include a standardised data and reporting system across NSW

²¹⁷ Cr Bruce MacKenzie, Mayor of Port Stephens, transcript of evidence, 28 October 2013, p11

²¹⁸ See for example submission 5, Ballina Shire Council, p3; submission 13, Camden Council, p8; Submission 23, Holroyd City Council, p10

²¹⁹ Mr Adam Gilligan, Manager Compliance Services, City of Newcastle, transcript of evidence, 21 October 2013, p23

²²⁰ Submission 25, City of Newcastle, p2

²²¹ Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p35

enabling data to be collected to determine whether there is in fact a link between the levy and illegal dumping.²²²

- 5.34 Mr Beaman also indicated that there is evidence linking the levy with positive waste outcomes:

I think the benefits of the waste levy are that we have seen such dramatic increases in resource recovery and recycling. My opening statement talked about, say for household recycling, that it has gone from 26% in 2000 to 56%. We have had a doubling in the space of 10 years and that has been a pretty impressive increase in resource recovery not solely attributable to the levy but the levy has set that pricing signal and that has corrected that market failure where you are making recycling more cost competitive against landfill.²²³

- 5.35 However, following the Committee hearing, Wyong Shire Council forwarded a supplementary submission to the Committee containing data indicating that volumes of waste received at an unnamed licensed waste facility/facilities are dropping by 1.77% for every 1% increase in the waste levy, providing evidence that levy increases are linked to increases in illegal dumping.²²⁴

- 5.36 A graph included in the submission highlights the optimum disposal price (\$162.91 per tonne). Wyong Shire Council contends that any increase in average price per tonne of waste beyond this optimum point will result in a decrease in total income at licensed waste facilities (and hence a decrease in the section 88 waste levy collected also).²²⁵

- 5.37 The submission seeks a 3 year trial of a reduced waste levy of between \$30 and \$70 per tonne which it contends will decrease illegal dumping and increase the depositing of waste in licensed facilities thereby increasing the amount of levy collected.²²⁶

Asbestos and the Levy

- 5.38 The Committee heard that the KPMG Review had also recently examined the issue of exempting asbestos from the levy as advocated by the above stakeholders and had recommended against it. Mr Beaman stated:

You asked about the asbestos issue and the levy. That was canvassed a lot during the KPMG review. KPMG recommended not to lift the levy on asbestos. One issue of that is people misusing the system. If you made waste that contained asbestos levy free, clearly there was an opportunity for people to salt loads with asbestos and then seek the cheaper disposal. What the Government said it would do, and which we are finalising now, is run a series of pilots around the State. We are looking at six or seven locations around the State where we trial different price settings with local government on asbestos generated by home renovators...How can you get them the right information and then incentivise good behaviour by having a different price

²²² Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p35

²²³ Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p39

²²⁴ Submission 4a, Wyong Shire Council, p2

²²⁵ Submission 4a, Wyong Shire Council, p3

²²⁶ Submission 4a, Wyong Shire Council, p5

setting, whether it is no levy applying, and trialling a couple of different models to work out the best solution?²²⁷

A Holistic Response to Illegal Dumping

5.39 The Committee also received evidence that the levy does not exist in a vacuum and that it must work in combination with other strategies including policing, infrastructure and community education to increase recycling and minimise illegal dumping. For example, Mr Andrew Doig, Chief Executive Officer of the Australian Sustainable Business Group told the Committee:

Any new tariff that you put on you also have to invest in the policing of that tariff system to ensure that the revenue is collected appropriately²²⁸ ... better policing will lead to better collection of the levy and hopefully less illegal dumping ...²²⁹

5.40 Given the importance of a holistic approach, the Committee was pleased to note evidence provided by the Environment Protection Authority about the six prongs of the Government's Illegal Dumping Strategy a draft of which is open for public comment until 30 April 2014. The six prongs are:

- Building partnerships with local communities that can tell authorities where illegal dumping is occurring.
- Building an evidence base through better data collection and analysis.
- Strategic enforcement including building a more connected relationship with local government so it is aware of which tools to use in which circumstances.
- Education – getting the message to local communities about the cost and risks of illegal dumping.
- Infrastructure for people to drop off unwanted material.
- Community engagement, motivating people at the local level to do the right thing, report and come up with local programs.²³⁰

5.41 In addition to this overarching strategy, the Committee was pleased to note more specific evidence about State Government funded initiatives underway to deal with illegal dumping in an holistic way. For example, on the subject of infrastructure Mr Beaman stated:

As part of Waste Less, Recycle More, the Government has announced \$70 million for drop-off centres. So you make a facility available where people can wrap it up, put it in the boot of their car, take it somewhere and have it easily handled levy free...We are saying to local government that we will pay for the infrastructure for these drop-

²²⁷ Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p36

²²⁸ Mr Andrew Doig, Chief Executive Officer, Australian Sustainable Business Group, transcript of evidence, 21 October 2013, p50

²²⁹ Mr Andrew Doig, Chief Executive Officer, Australian Sustainable Business Group, transcript of evidence, 21 October 2013, p52

²³⁰ Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, pp40-41

off centres...we are looking at paints, oils, batteries, fluoro tubes...The idea by 2021 is to have 86 of these drop-off centres around the state where you can go free of charge and drop off this material.²³¹

- 5.42 Similarly, in relation to policing, the Committee was pleased to note evidence that more regional illegal dumping squads (RIDs) are being launched across the state. RID Squads are co-funded by the Environment Protection Authority and Local Government and aim to:
- Encourage a more strategic, coordinated approach to illegal dumping (i.e. a regional approach to prevent organised dumping networks that are shut down by one council moving to the next area).
 - Investigate incidents and take action against offenders.
 - Organise clean-ups.
 - Track down illegal landfills.
 - Identify changes and trends in illegal dumping across a regional area.
 - Deter and educate community members about illegal dumping.²³²

5.43 The first RID squad was established in 1999 in Western Sydney comprising Bankstown, Fairfield, Holroyd, Liverpool, Penrith, the Hills, and Parramatta Councils.²³³ A second RID squad has recently been launched in the Southern Councils Group area from Wollongong to Bega. The Environment Protection Authority also advised the Committee that it intends to establish a third one in Sydney running through the central band of Sydney east of Parramatta.²³⁴

Committee Comment

- 5.44 Given the evidence that:
- there are substantial penalties for illegal dumping in NSW, and increased fines for environmental offences have been announced;
 - there is a graduated regime of penalties according to type and amount of waste dumped; and
 - new penalties have been introduced for repeat waste offences

the Committee makes no recommendation for increased penalties for illegal dumping offences at this time.

²³¹ Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p37

²³² NSW Environment Protection Authority website viewed 5 March 2014, <http://www.epa.nsw.gov.au/warr/RIDSquads.htm>; see also Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p41

²³³ NSW Environment Protection Authority website viewed 5 March 2014, <http://www.epa.nsw.gov.au/warr/RIDSquads.htm>

²³⁴ Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p42

Similarly, the Committee accepts that on-the-spot illegal dumping fines are currently set at a substantial level, particularly for hazardous materials. Larger fines than this should require automatic judicial oversight. Therefore, the Committee does not favour increasing the amounts that individuals and companies can be fined on-the-spot at this time.

- 5.45 The Committee notes evidence provided by the Environment Protection Authority about a lack of data linking the section 88 levy with illegal dumping. However, it also notes data on this point that has been supplied by Wyong Shire Council. The Committee is pleased to note that improved data collection is a major component of the Government's Illegal Dumping Strategy. Such collection will be necessary to determine if Wyong Shire Council's findings are mirrored across NSW. In the interim, the Committee has referred Wyong Shire Council's supplementary submission to the EPA for review and response.
- 5.46 Given State Government initiatives are underway to address the issue of asbestos as it relates to the waste levy following the KPMG review, the Committee does not make any specific recommendations to exempt asbestos from the waste levy at this time.
- 5.47 The Committee notes the initiatives to improve data collection around illegal dumping in NSW and initiatives to deal with illegal dumping in a more holistic way, including an overarching Illegal Dumping Strategy. In the circumstances it may be premature to recommend changes around the section 88 waste levy prior to implementation of these broader changes. In addition, the Committee accepts that the requirement for council to clean up waste dumped on its land and pay the levy is not ideal.
- 5.48 However, given significant State Government funding to local councils discussed above, which aims to prevent illegal dumping in the first place, the Committee does not recommend exempting councils from the requirement to pay the waste levy.

ORPHAN WASTE

NSW Environmental Trust

- 5.49 The Committee also heard evidence that it has become more difficult for councils to access moneys from the NSW Environmental Trust to assist to clean up orphan waste that is an environmental or public health threat. Orphan waste refers to waste dumped where, at the time of the incident, the responsible party cannot be identified.²³⁵
- 5.50 The NSW Environmental Trust is an independent statutory body established by the NSW government to fund a broad range of organisations to undertake projects that enhance the environment of NSW. The Trust is empowered under the *Environmental Trust Act 1998*, and its main responsibility is to make and

²³⁵ NSW Environment and Heritage website, <http://www.environment.nsw.gov.au/grants/cleanup.htm>, viewed 3 March 2014

supervise the expenditure of grants. The Trust is administered by the Office of Environment and Heritage, Department of Premier and Cabinet.²³⁶

- 5.51 One of the Trust's grants programs is the Illegally Dumped Asbestos Program. It contributes funds towards the removal and management of asbestos and other hazardous orphan waste that has been illegally dumped on premises where clean up measures need to be taken immediately to avoid significant harm to the environment or public health. The annual budget for the fund is \$500,000.²³⁷
- 5.52 During the roundtable of councils held at Parliament House on 21 October 2013, some participants raised concerns about the amount of money available in the NSW Environmental Trust to assist councils to clean up orphan waste, and the associated application process for funding.
- 5.53 Mr Shannon McKiernan in his capacity as Coordinator, Environmental Health and Protection, Gosford City Council stated:

The other type of waste is orphan waste. We have had a couple of weird things wash up on the beach and council is then in charge to dispose of that. So we have incurred the cost of testing it to find out what it is and then disposing of it. That can be quite substantial. That is occurring more and more...The environmental trust is there, but it is hard to obtain the money. The ability to recover the costs of orphan waste is quite onerous and, at the end of the day, we give up before we have got the money back.²³⁸

- 5.54 Mr Green from Camden Council made similar remarks:

Only recently we were the recipient of two incidents when some methamphetamine was dumped into our waterways...the cost of that clean-up work was in excess of \$250,000. Fortunately at the time, the Environment Protection Authority came to the party and paid for most of that remediation work out of the environmental trust. Council did incur significant on-costs such as staff, material and so forth, so we did not come out of it scot-free but, since that time, the Environment Protection Authority has chosen to reduce the level of environmental trust funding that is made available to local government in these instances and they have made it incredibly more difficult to seek funding from that pool.²³⁹

Hazmat arrangements

- 5.55 Several stakeholders raised the treatment of hazardous 'orphan waste' in evidence to the inquiry. Hazardous waste is waste that poses a threat, or potential threat, to public health or the environment. Examples include radioactive waste, asbestos, lead acid batteries and mineral oil.²⁴⁰

²³⁶ Environment Protection Authority website, <http://www.epa.nsw.gov.au/envtrust.htm>, viewed 6 March 2014

²³⁷ Environment Protection Authority website, <http://www.epa.nsw.gov.au/IDACUP.htm>, viewed 56 March 2014

²³⁸ Mr Shannon McKiernan, Coordinator Environmental Health and Protection, Gosford City Council, transcript of evidence, 21 October 2013, p24

²³⁹ Mr Geoffrey Green, Manager, Environment and Health, Camden Council, transcript of evidence 21 October 2014, p24

²⁴⁰ NSW Environment Protection Authority, <http://www.epa.nsw.gov.au/waste/hazardandliquidwaste.htm>, viewed 3 March 2014

5.56 Fire and Rescue NSW refer to cases of dumped hazardous materials as ‘hazmat’ incidents i.e. hazardous materials incidents. Its website contains the following information:

Fire and Rescue NSW is responsible for protecting the whole of New South Wales from hazardous materials (hazmat) incidents.

We have the authority to attend, combat and render safe any land-based or inland waterway spillage of hazardous materials within the State.

All fire stations are equipped with trained personnel and resources for dealing with hazmat incidents. Each fire station receives hazardous materials awareness training and equipment to combat minor spills of hydrocarbons, gas leaks and emergency decontamination procedures.

Fire and Rescue NSW has four specialist Hazardous Materials Response Units operating from Sydney (Greenacre and Alexandria), Newcastle and Shellharbour. They have advanced capabilities in detection of toxic industrial chemicals, volatile substances and chemical warfare agents.

Intermediate hazardous materials response is delivered by 20 strategically located units, including 14 with a waterways response capability. Each unit is equipped with detection equipment and has the capability to access chemical databases with information on chemical, biological, radiological and toxic industrial chemical substances.²⁴¹

5.57 However, during the course of the roundtable of councils held at Parliament on 21 October 2013, some participants expressed dissatisfaction with the level of responsibility that they perceive Fire and Rescue NSW are actually taking for hazmat incidents. Mr Geoffrey Green, Manager Environment and Health Camden Council stated:

The orphan waste issue is an interesting one. When Fire and Rescue NSW says [after being called to a hazmat incident] “Council, this is now made safe”, it does not mean that it is safe. It means that they have rendered it safe in that situation. The council is then obligated as the land manager to remove it and deal with the disposal of that waste: analyse it, determine the best course of action how to deal with it, and come out with a solution. Fire and Rescue NSW also have a form that I have advised my officers to refuse to sign that says that the council officer is taking personal responsibility for the safe management of that waste when it is collected. I tell my officers to refuse to sign it. The firey will write on it, “Refused to sign”.²⁴²

5.58 Mr Adam Gilligan, Manager Compliance Services, City of Newcastle also indicated that after a council has dealt with the incident, it must return equipment to Fire and Rescue NSW at its own expense:

...the expectation from the fire brigade that is largely a cost-shifting exercise from my perspective is that not only are we expected to sign that form, we are expected to clean the hazmat drum, and we are expected to get it back, not to the local [fire] station where it came from but to get it back to headquarters in Sydney. Those sort

²⁴¹ Fire and Rescue NSW website, <http://www.fire.nsw.gov.au/page.php?id+143>, viewed 3 March 2014

²⁴² Mr Geoffrey Green, Manager Environment and Health, Camden Council, transcript of evidence, 21 October 2013, p25

of expectations on local government are just a further burden that we do not need.²⁴³

- 5.59 Gosford City Council indicated in its submission to the Committee that hazmat incidents can be very expensive for Council:

Orphan waste such as chemicals or other liquids require Hazmat intervention and laboratory testing prior to disposal at appropriate facilities. The testing and disposal for a single 20 litre drum can equate to excess of \$550.00.²⁴⁴

Committee Comment

- 5.60 The Committee notes local government evidence regarding the amount of money available in the NSW Environmental Trust to assist councils to clean up illegally dumped, hazardous orphan waste, and the increased difficulty in obtaining this funding.
- 5.61 The Committee further notes this issue relates mainly to public rather than private land and is therefore outside the inquiry's terms of reference. Nonetheless, the Committee is concerned about the issue given evidence that the dumping of asbestos may increase in coming years as buildings that contain asbestos reach a certain age giving rise to renovations and upgrades.²⁴⁵
- 5.62 Hazmat incidents also generally occur on public rather than private land. For this reason, the matters raised fall outside the inquiry's terms of reference. The Committee is of the view, however, that a review of hazmat arrangements is warranted.

RECOMMENDATION 7

The Committee recommends that the Office of Environment and Heritage in the Department of Premier and Cabinet review the funding levels and application arrangements for councils accessing NSW Environmental Trust funds to assist with the management and removal of asbestos and other hazardous orphan waste that have been illegally dumped.

RECOMMENDATION 8

The Committee recommends that Fire and Rescue NSW review the operational response to hazmat incidents, in consultation with Local Government NSW and the NSW Police Force.

ILLEGAL DUMPING ON ABORIGINAL LAND

- 5.63 The Committee received a submission from Darkinjung Local Aboriginal Land Council (LALC), and heard evidence from the council's representative in Sydney on Monday 21 October 2013.
- 5.64 In summary, the council advocated for the extension of local government powers of enforcement to local Aboriginal land councils, an exemption for land councils

²⁴³ Mr Adam Gilligan, Manager Compliance Services, City of Newcastle, transcript of evidence, 21 October 2013, p26

²⁴⁴ Submission 21, Gosford City Council, p3

²⁴⁵ Mr Shannon McKiernan, Director Environmental Health Australia, transcript of evidence, 21 October 2013, p33

from the waste levy, and a requirement that government agencies requiring access to Aboriginal land, such as Ausgrid and Railcorp, provide assistance to land councils to prevent illegal dumping by better securing access points. The land council estimated that illegal dumping on their land was costing \$3 million annually, including the cost of managing waste already on the land when it was transferred to land council ownership. Council advised it received \$50,000 annually from the Environment Protection Authority to manage waste.²⁴⁶

- 5.65 At the public hearing Ms Suzanne Naden representing Darkinjung LALC detailed for the Committee the council's activities including the deployment of CCTV at entry points, installation of gates, and other measures to manage access. Ms Naden described the cooperation between the land council and various state and local government agencies, and in particular critiqued the powers of Ausgrid and Railcorp to keep access open to their easements, but without responsibility to manage that access with a view to addressing illegal dumping. The witness described Ausgrid easements as being 10 to 15 metres wide, leading directly from roads without any access deterrent measures in place.
- 5.66 In response to the land council's offer to install gates on easements and supply Ausgrid with keys, Ms Naden described Ausgrid as being uncooperative, in contrast to the response of Transgrid which collaborates with the council on the gating of access points, and Gosford and Wyong Councils which also collaborate on illegal dumping measures.²⁴⁷
- 5.67 Ms Naden acknowledged that Darkinjung LALC is well resourced whereas other members of the LALC network are not so advantaged, nor have the experience of Darkinjung in negotiating with other agencies for both funding and cooperation.²⁴⁸ She described liaison between land councils and bush fire management committees regarding access to fire trails and better land management as an important area to be addressed.
- 5.68 In the case of Darkinjung, Ms Naden pointed out that all the essential land management players are members of the local Bush Fire Management Committee, and that it is an essential network for the council as well as a body with a specific brief.
- I think the biggest push I could probably give is that there should be a bigger push for land councils to be active participants in the bush fire management committee.²⁴⁹
- 5.69 In its submission Local Government NSW, which is the peak body representing local councils in NSW, including the NSW Aboriginal Land Council, advocated the continuation and extension of the Aboriginal Lands Clean-Up Program. The Program is administered by the NSW Office of Environment and Heritage and provides funds for local Aboriginal land councils and local councils to address illegal dumping on Aboriginal owned lands.²⁵⁰

²⁴⁶ Submission 17, Darkinjung Local Aboriginal Land Council, p1

²⁴⁷ Ms Suzanne Naden, Consultant, Darkinjung LALC, transcript of evidence, 21 October 2013, p41

²⁴⁸ Ms Suzanne Naden, Consultant, Darkinjung LALC, transcript of evidence, 21 October 2013, p44

²⁴⁹ Ms Suzanne Naden, Consultant, Darkinjung LALC, transcript of evidence, 21 October 2013, p44

²⁵⁰ Submission 35, Local Government NSW, p8

Committee comment

- 5.70 The Committee notes both the efforts of Darkinjung LALC to manage illegal dumping on its land, and its frustration with government agencies whose lack of cooperation helps thwart these efforts.
- 5.71 The Committee considers that while under the *Aboriginal Land Rights Act 1983*, Local Aboriginal Land Councils have some of the aspects of public authorities, for the purposes of land management they are analogous to private landowners. As such, the Committee concludes that it cannot recommend that Local Aboriginal Land Councils be given the same enforcement powers as local government.
- 5.72 The Committee also notes the evidence that NSW government agencies, statutory authorities and corporations requiring access to Darkinjung land display varying levels of cooperation towards assisting Darkinjung Local Aboriginal Land Council to manage access to their land and deter illegal dumping.
- 5.73 The Committee accepts the evidence that membership of the local Bush Fire Management Committee is a benefit to Local Aboriginal Land Councils and notes that each Local Aboriginal Land Council is invited to become a member of a Bush Fire Management Committee.
- 5.74 Finally, the Committee notes the cost to Local Aboriginal Land Councils of managing illegal dumping on their land and the value of the Aboriginal Lands Clean-Up Program. The Committee's deliberations on the issue of illegal dumping are reported earlier in this chapter.

RECOMMENDATION 9

In order to better manage access to Aboriginal lands, the Committee recommends that:

- **NSW Government agencies and local councils cooperate with Local Aboriginal Land Councils to help manage illegal dumping on Aboriginal lands: and**
- **the NSW Government, the NSW Aboriginal Land Council and Local Government NSW jointly formulate principles which can be applied consistently to all agreements with Ausgrid, Railcorp, Transgrid, local councils and any other NSW Government agencies requiring access to easements, utilities and roads on Aboriginal land.**

RECOMMENDATION 10

The Committee recommends that the NSW Rural Fire Service include in its Annual Report details of how many Bush Fire Management Committees include a member from the Local Aboriginal Land Council.

COMMUNITY EDUCATION

- 5.75 The value of community education in combatting illegal dumping was a common theme in submissions and evidence before the Committee from across all stakeholder groups.

- 5.76 Councils recognised the importance of community education as an integral part of waste management. Holroyd City Council called for continuing state-wide public education campaigns addressing all stakeholders on their responsibilities.²⁵¹ Ballina Shire Council advocated that state-wide community campaigns be matched by ongoing education of councils and their staff on best practice and legal developments.²⁵² Sutherland Shire Council suggested specific educational tools need to be developed, and council officers, members of the public and industry stakeholders be educated on both the costs of removing waste from private lands and responsible disposal.²⁵³ Snowy River Shire Council saw a public education campaign as an essential precursor to Council commencing any expanded program of managing waste issues on private land.²⁵⁴
- 5.77 At the public hearing held in Sydney on Monday 21 October 2013, Mr Shannon Kiernan representing Environmental Health Australia commended the Hunter Central Coast Regional Environmental Management Strategy for their illegal dumping campaigns and the value of investment in regional campaigning under the leadership of the Environment Protection Authority.²⁵⁵
- 5.78 Mr McKiernan also referred to the ‘Dob in a Dumper’ campaign as one that resonated with the community. He described the reward which the campaign promised as a useful incentive, utilising neighbours as the eyes and ears of the campaign. He further endorsed targeted campaigning such as the ‘Asbestos Month’ campaigns directed at commercial operators and illegal dumping.²⁵⁶
- 5.79 In their evidence the representatives of the Environment Protection Authority described the EPA’s upcoming campaigns. Mr Beaman described the EPA’s integrated strategy for addressing illegal dumping and the role of community outreach. He said there was money for enforcement and education, but to change the culture there needed to be infrastructure as well for people to drop off unwanted material.²⁵⁷
- 5.80 Mr Beaman also told the Committee about the EPA’s community engagement strategy which aimed to motivate people to do the right thing. The EPA viewed the role of local government as crucial to motivating local communities and would be giving local government the tools, information and funding to deliver local programs.²⁵⁸

Committee comment

- 5.81 The Committee notes the importance which all witnesses placed on community education regarding waste management and illegal dumping. In the Committee’s

²⁵¹ Submission 23, Holroyd City Council, p11

²⁵² Submission 5, Ballina Shire Council, p3

²⁵³ Submission 38, Sutherland Shire Council, p5

²⁵⁴ Submission 2, Snowy River Shire Council, p1

²⁵⁵ Mr Shannon McKiernan, Director Environmental Health Australia, transcript of evidence, 21 October 2013, p32

²⁵⁶ Mr Shannon McKiernan, Director Environmental Health Australia, transcript of evidence, 21 October 2013, p33

²⁵⁷ Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p41

²⁵⁸ Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p41

view the Environment Protection Authority described plans for community education which meet the expectations of the Committee, witnesses and the wider community for sophisticated, well-funded, state-wide campaigning. The Committee endorses the Authority's approach and does not propose to make any recommendations on this matter.

Chapter Six – Other Matters

6.1 This chapter examines matters raised in submissions and evidence presented to the inquiry which are not dealt with in the previous chapters, namely:

- Interstate transportation of waste
- Derelict buildings
- Clandestine drug laboratories.

6.2 The Committee has elected to consider each of these matters individually because the issue was raised by only a limited number of stakeholders, or the issue is self-contained and benefits from individual consideration.

INTERSTATE TRANSPORTATION OF WASTE

6.3 During the course of the inquiry two participants suggested that commercial customers of licensed waste facilities may find it economical to transport waste to Queensland for disposal due to there being no waste levy in that state.

6.4 The Mayor of Port Stephens, Cr Bruce MacKenzie put it thus:

Implementation of section 88 of the waste levy is now \$107/tonne for all materials received in NSW landfill. Queensland has no landfill levy yet the recycling rate as a percentage of material recycled, according to the Queensland Department of Environment and Heritage Protection, and is comparable to that of NSW...I believe between 50 and 100 B-doubles carrying this very waste...goes to Queensland with no questions asked. Queensland has benefited in a number of ways – economically, employment, truck drivers, bulldozer operators...NSW is missing out on any form of waste levy whilst rates are at the current level...It seems ridiculous that it is more economically viable for a company to drive backwards and forwards to Queensland...and emit fuels in the name of protecting the environment.²⁵⁹

Lack of data

6.5 In response the Environment Protection Authority indicated there is a lack of data on the matter, but that data collection is being addressed. Mr Beaman stated:

Waste is always moved between the States; it is quite common...The issue around Queensland is we are working with our Queensland counterparts in the Environment Department up there because no one has a handle specifically on how much waste is moving. We are amending the *Protection of the Environment Operations (Waste) Regulation* to introduce a new tracking requirement to require waste movements...from NSW interstate to be reported to the EPA so that we can actually get some real data to have a discussion. We actually do not know how much material is moving...It has all been conjecture.²⁶⁰

²⁵⁹ Cr Bruce MacKenzie, Mayor of Port Stephens, transcript of evidence, 28 October 2013, p11

²⁶⁰ Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p38

- 6.6 Mr Beaman also challenged the idea that Queensland policies on waste are as positive from a recycling perspective as NSW policies. As well as noting the increase in household recycling over the past 10 years in NSW²⁶¹ Mr Beaman stated:

I think the issue with Queensland is the very cheap landfilling. What you hear from industry around Queensland is they are not going to have a very vibrant, prosperous recycling industry in Queensland because landfilling is so cheap.²⁶²

Data supplied by Wyong Shire Council

- 6.7 Interestingly, the supplementary submission forwarded to the Committee by Wyong Shire Council following the Committee's October hearings, and discussed in chapter 5, also contained data linking the levy not only with illegal dumping but also interstate transportation of waste.

- 6.8 The supplementary submission highlighted the optimum waste disposal price (\$162.91 per tonne) and contended that any increase in average price per tonne of waste beyond this optimum point will result in a decrease in total income at licensed waste facilities in NSW and hence increased illegal dumping.²⁶³

- 6.9 However, the supplementary submission went on to contend that illegal dumping is not the only result of this price sensitivity and it too made Cr MacKenzie's point that some of the waste no longer disposed of at licensed facilities in NSW would be disposed of in Queensland where there is no levy. Specifically, the submission stated:

The price sensitivity demonstrated above is most apparent in the behaviour of major commercial customers. The majority of volume reductions can be accounted for by the sophisticated major commercial mixed waste tippers. This suggests that a significant volume of waste is being moved interstate...As the price increases as a result of the EPA levy, we believe sophisticated tippers are finding it more cost effective to move waste north of the border where there is no EPA levy. There is no suggestion from these tippers that their collection volumes are dropping. They are simply responding to increased tipping costs by finding alternative locations.²⁶⁴

- 6.10 The supplementary submission also contained a graph showing consistently reduced annual tipping volumes from the top 10 commercial customers at an unnamed NSW licensed waste facility/ waste facilities for the last 2 to 3 financial years as the levy has increased.²⁶⁵ It concluded:

Correspondingly, in the Financial Year to Date, waste volumes continue to decline as a result of the most recent increase in the EPA levy. Our most recent projections indicate that landfill volumes for...2013/14 will reduce by 20,699 tonnes, or 28.32%

²⁶¹ Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, p39

²⁶² Mr Stephen Beaman, Director of Waste and Resource Recovery, Environment Protection Authority, transcript of evidence, 28 October 2013, pp39-40

²⁶³ Submission 4a, Wyong Shire Council, p3

²⁶⁴ Submission 4a, Wyong Shire Council, pp3-4

²⁶⁵ Submission 4a, Wyong Shire Council, p4

when compared to last year. This will result in a reduction of \$2,231,380 in s88 levy paid (at \$107.50 per tonne).²⁶⁶

Committee comment

- 6.11 The Committee notes evidence provided by the Environment Protection Authority about a lack of data linking the level of the section 88 levy with interstate transportation of waste, but that data is being collected.

FINDING 5

The Committee finds that the Environment Protection Authority is investigating the interstate transportation of waste and any impact on NSW waste management strategies.

DERELICT BUILDINGS

- 6.12 In its terms of reference the Committee advised that one of its concerns was the effectiveness of current regulatory arrangements and powers to manage derelict buildings.

Environmental Planning and Assessment Act 1979

- 6.13 The *Environmental Planning and Assessment Act 1979* (EP&A Act) establishes a system of regulating land use in New South Wales through land use planning and issuing consent for land uses. Section 121B of the Act sets out various orders that may be given by councils to regulate the use of land including to cease particular land uses; to make repairs to, demolish or refrain from demolishing buildings; and to make buildings safe by erecting barriers. The following orders are relevant to this discussion:

- Order 2: An order to the owner of a building to demolish or remove it where it is, or is likely to become, a danger to the public; or where it is so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood.
- Order 4: An order to the owner of a building to make structural alterations to a building where it is, or is likely to become, a danger to the public; or where it is so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood.
- Order 7: An order to the owner or occupier of a building to erect structures or appliances around a building which is dangerous to people or property in a public place.²⁶⁷

Local Government Evidence

- 6.14 The evidence received by the Committee regarding derelict buildings was provided by local councils.
- 6.15 Strathfield Council submitted that making orders under section 121 of the EP&A Act requires danger to the public to be established, which is usually resolved by

²⁶⁶ Submission 4a, Wyong Shire Council, p4

²⁶⁷ <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+203+1979+cd+0+N>

the installation of secure fencing. Council suggested that it has insufficient powers to enforce demolition or maintenance of derelict and fire damaged buildings and as a result, security-fenced buildings are deemed safe, but impact on the streetscape.²⁶⁸

- 6.16 On the issue of security versus demolition Gosford City Council submitted that securing a building is a cheaper option than repairing it.²⁶⁹ In evidence provided to the Committee at a public hearing Mr Shannon McKiernan described how Council is trying to revitalise the main street where there are many derelict buildings, but Council has no effective powers to remove them.

If an engineer says that a derelict building is not going to fall down then it is very hard to have it demolished. If the owner does not want to sell it, even if the council wants to buy it, then they have every right not to. Most people just board derelict buildings up, which makes them look even worse.²⁷⁰

- 6.17 Mr McKiernan advised the Committee that rendering buildings secure addressed public safety, but failed to satisfy community expectations for improvement and rehabilitation.²⁷¹

- 6.18 Maitland City Council submitted that the relevant legislation should give councils specific powers to assess the risks to the public of asbestos contained in derelict buildings.²⁷²

- 6.19 Shellharbour City Council submitted that the Local Government Act should be amended to create specific regulatory powers for councils to address the health and safety of derelict buildings.²⁷³

- 6.20 In its submission Shoalhaven City Council described the example of a derelict building which cost Council \$100,000 to demolish following a court order. Council submitted that it was unclear whether it could recover this cost through the sale of materials or other legal options, and called for clear powers to recover demolition costs as a charge against the land in question.²⁷⁴

- 6.21 Holroyd City Council described its experience of managing an unsound building which was impacting on public safety. The building was brought to Council's attention in December 2011. Council issued an emergency order, but the owner refused to cooperate. Council then commissioned a structural engineer to assess the building's condition, arranged for the NSW State Emergency Service to secure the building's roof, and found alternative accommodation for the owner. Council also received advice that legal proceedings and demolition of the building may cost \$100,000.

²⁶⁸ Submission 7, Strathfield Council, p2

²⁶⁹ Submission 21, Gosford City Council, p2

²⁷⁰ Mr Shannon McKiernan, Director Environmental Health Australia, transcript of evidence, 21 October 2013, p30

²⁷¹ Mr Shannon McKiernan, Director Environmental Health Australia, transcript of evidence, 21 October 2013, p30

²⁷² Submission 14, Maitland City Council, p1

²⁷³ Submission 30, Shellharbour City Council, p1

²⁷⁴ Submission 11, Shoalhaven City Council, p2

- 6.22 Following a fire and further damage to the building, Council erected safety fencing and instituted a regime of daily inspection of the building to prevent its re-occupation. As at August 2013 Council was planning for the demolition of the building, but the matter was unresolved.²⁷⁵
- 6.23 At the suggestion of Mr Jamie Parker MP the Committee sought the views of the City of Sydney on the question of derelict buildings.
- 6.24 The Lord Mayor of Sydney, Cr Clover Moore replied by letter dated 13 December 2013 and advised that Council believes derelict buildings should be repaired under a Development Application to allow the condition of the building and the merit of the proposed works to be assessed. Cr Moore acknowledged that the EP&A Act gives councils authority to order demolition, repair or structural alterations to buildings, but that these powers are only effective when there is an actual risk to the public. Therefore Council only issues demolition orders in extreme cases.²⁷⁶
- 6.25 Cr Moore also said that ordering an owner to screen a derelict building may result in the building becoming even less attractive. She acknowledged community pressure to force owners to repair derelict buildings, but said Council needed to balance the question of fairness to owners with the interests of neighbours. Bound up in this consideration were the issues of benefit to the community, the cost of works for the landowner and economic hardship, and the prospects of any action being effective.
- 6.26 With regard to issues where derelict buildings impact only on private land, Cr Moore advised that Council's Enforcement Policy directs residents to civil dispute resolution as Council will only act on public safety.²⁷⁷

Committee comment

- 6.27 The Committee notes the evidence of councils that, like issuing orders under the provisions of the *Local Government Act 1993*, issuing orders under the EP&A Act exposes councils and their communities to uncooperative owners, lengthy and costly legal and enforcement procedures, uncertain outcomes, and unsatisfied communities.
- 6.28 The Committee was made aware only of 'sticks' and arguably ineffectual ones, and not of any 'carrots' in the management of derelict buildings. Given that the motivation for dealing with derelict buildings is often community improvement and neighbourhood revitalisation it seems an oversight that the legislation does not give guidance on these objectives.
- 6.29 The Committee considered the need to balance community expectations and owners' rights, and whether the community had a right to impose a standard on private landowners with the objective of achieving a minimum level of maintenance and impact. The Committee notes that with certain qualifications,

²⁷⁵ Submission 23, Holroyd City Council, pp5-6

²⁷⁶ Cr Clover Moore, Lord Mayor of Sydney, letter dated 13 December 2013

²⁷⁷ Cr Clover Moore, Lord Mayor of Sydney, letter dated 13 December 2013

councils reported that orders under the EP&A Act are generally effective in securing the public safety of derelict buildings.

- 6.30 The Committee is concerned at the costs which councils may be exposed to in order to secure public safety, and the lengthy timeframes which councils reported were involved in achieving this basic outcome.

RECOMMENDATION 11

The Committee recommends that the Division of Local Government in the Department of Premier and Cabinet, and the Department of Planning consult with Local Government NSW and Environmental Health Australia to prepare guidelines which outline the operation of the Environmental Planning and Assessment Act 1979 in managing derelict buildings, with particular regard to ensuring public health and safety, and ensuring that costs incurred by councils can be recovered from building owners.

CLANDESTINE DRUG LABORATORIES

- 6.31 Many council submissions raised the issue of responsibility for policing and cleaning up clandestine drug laboratories. Most councils regarded this as an area where the current regulatory arrangements are unclear. They reported that other government agencies, and particularly the police and emergency services, regard councils as responsible for regulating the clean-up of clandestine drug laboratories after offenders have been removed from properties, without any clear legislative basis for drawing this conclusion.
- 6.32 Local Government NSW, the peak body representing councils in NSW, advised that drug residue from the operation of clandestine drug laboratories can pervade the walls, floors, ceilings, fittings, yards and drains of a property. It submitted that councils may not have the expertise to clean-up such properties and proposed that the government establish an Innocent Owners Financial Assistance Fund to be funded from proceeds of crime, to pay for clean-ups.²⁷⁸
- 6.33 In its submission Camden Council reported that it receives clandestine drug laboratory site inspection reports, both verbally and in writing, from the NSW Police Force. Council said that it is the police's expectation that Council will undertake the clean-up and remediation of these sites. On inspection of the sites, however, Council advised that evidence of drug manufacture, such as chemicals, materials and equipment, has been removed.
- 6.34 Council submitted that the current regulatory arrangements to compel clean-up of these sites are unclear. Cleaning up such properties can require expert assessment and extensive planning, and once the condition of properties is ascertained, the clean-up timeframes can be prolonged. Yet Council has limited powers to prevent re-occupation. Declaring premises unsafe and unhealthy under the Local Government Act requires Council to produce evidence which may have to be defended in court, yet the police reports are merely notification.²⁷⁹

²⁷⁸ Submission 35, Local Government NSW, p5

²⁷⁹ Submission 13, Camden Council, p3

- 6.35 Camden Council argued that the legislation needed to recognise police reports as *prima facie* evidence that such premises were unsafe and unhealthy. Council further proposed that a central agency be given responsibility for the clean-up of clandestine drug laboratories, but that if it is to remain the responsibility of councils, then there should be a specific legislative authorisation of councils and guidelines developed in consultation with stakeholders.²⁸⁰
- 6.36 Environmental Health Australia (EHA), the peak body representing environmental health officers, listed clandestine drug laboratories as a common scenario type encountered by council officers when regulating public health and safety. In its submission EHA said it is common for police to refer clean-ups to councils or for owners to seek help from councils after clandestine drug laboratories affecting their properties are exposed. EHA reiterated Camden Council's concern that police reports are not scientific and that it is difficult for councils to defend orders based on such reports in court. EHA drew attention to the costs involved in councils regulating clandestine drug laboratories, especially given the need to seek expert advice on clean-ups.
- 6.37 According to EHA the Protection of the Environment Operations (POEO) Act only addresses drug residue in the open environment and does not apply in residential buildings, leaving the Local Government Act as the only regulatory tool available to councils.²⁸¹
- 6.38 EHA argued that the police and emergency services, and the Environment Protection Authority (EPA) are better equipped than councils to regulate and clean-up clandestine drug laboratories, and proposed that the *Contaminated Land Management Act 1997* administered by EPA may be the most appropriate regulatory instrument for these matters. The EHA asked the Committee to recommend the drafting of specific legislation to clarify roles and responsibilities in this area.²⁸²
- 6.39 Holroyd City Council reported that cleaning up clandestine drug laboratories is time consuming and expensive, often involving the engagement of consultants and the preparation of remediation plans, in addition to the remediation works. Council said it was difficult to issue a clean-up notice when the person responsible may be in custody. This meant that it was often not possible to ensure the remediation work was done in a timely manner, which could compound the impacts on neighbours, especially in residential flat buildings.²⁸³
- 6.40 Marrickville Council advised the Committee that it receives written referrals from the NSW Police Force addressed to Council's Environmental Officer for follow-up. These referrals include an attached Clandestine Drug Laboratory Site Inspection Report which contains a disclaimer to the effect that the reports should not be relied on for legal or compliance purposes. Council concurred with other submissions that once evidence is removed from site, it is difficult for Council to

²⁸⁰ Submission 13, Camden Council, p9

²⁸¹ Submission 16, Environmental Health Australia, p7

²⁸² Submission 16, Environmental Health Australia, p7

²⁸³ Submission 23, Holroyd City Council, p7

conclude whether the premises are unsafe or unhealthy. Council advocated that the regulation of clandestine drug laboratories be a state responsibility.²⁸⁴

- 6.41 At the public hearing Ms Nicole Magurren representing Camden Council argued that councils are not the appropriate bodies to be cleaning up clandestine drug laboratories. She stated:

What does council do when the order is not complied with? We have recent examples where people are in gaol and they are not going to respond to an order issued by council to come back and clean the site up.²⁸⁵

- 6.42 Ms Magurren said that a multi-agency response is required and that the level of chemical contamination encountered on such sites should be addressed by a HAZMAT (hazardous materials) level response.²⁸⁶

- 6.43 Mr George Lerantges representing Marrickville Council expanded to the Committee on Council's submission regarding written police referrals to Council. He said that police leave notices on the site of clandestine drug laboratories advising that council clearance is required before re-entering the premises.

- 6.44 Mr Lerantges reported that when questioned, the NSW Police Force advises that in its view, making such properties safe is a job for council health officers. In light of the removal of evidence by the police, Mr Lerantges concurred with other witnesses that Council is not equipped to deem a house in these circumstances unhealthy or unsafe.²⁸⁷

- 6.45 Mr Adam Gilligan representing the City of Newcastle expressed concern that councils not be selective about which aspects of health and safety they could deal with expertly and which they could not. He stated:

Some of them are naturally going to be within our skill set and some are outside ... where it is outside our skill set what we are most likely to do is engage an occupational or environmental hygienist ... we should clarify that it should be a mandatory requirement on police to notify councils and owners, particularly where it is a tenant who is the person of interest ... the police should trigger that process.²⁸⁸

- 6.46 In Mr Gilligan's view, the process was akin to dealing with development non-compliance where a private certifier was involved ie the police should serve notice and specify what drugs were involved, Council should engage a specialist and monitor the clean-up, and the owner should bear the costs and recover through tenancy arrangements.²⁸⁹

²⁸⁴ Submission 36, Marrickville Council, p3

²⁸⁵ Ms Nicole Magurren, Director Development and Health, Camden Council, transcript of evidence, 21 October 2013, p21

²⁸⁶ Ms Nicole Magurren, Director Development and Health, Camden Council, transcript of evidence, 21 October 2013, p21

²⁸⁷ Mr George Lerantges, Team Leader Compliance, Marrickville Council, transcript of evidence, 21 October 2013, p21

²⁸⁸ Mr Adam Gilligan, Manager Compliance Services, City of Newcastle, transcript of evidence, 21 October 2013, p22

²⁸⁹ Mr Adam Gilligan, Manager Compliance Services, City of Newcastle, transcript of evidence, 21 October 2013, p22

- 6.47 Mr Geoffrey Green representing Camden Council told the Committee that the cost of a clean-up for a clandestine drug laboratory could be in the order of \$50,000 to \$70,000. He said there was confusion amongst councils regarding whether the POEO Act or the Local Government Act applied and in any case:

There was no consultation with local government in relation to passing of this responsibility on to local government and we are poorly equipped to deal with it.²⁹⁰

- 6.48 On the question of guidelines for managing clandestine drug laboratories, Mr Jonathon Scorgie, Senior Environmental Health Officer, Wyong Shire Council differed with previous evidence and informed the Committee that guidelines were available. He reported that he had attended workshops on the production of guidelines and submitted that:

We are dealing with chemicals that can be enforced under (the) POEO (Act). They are hazardous materials that have the potential to contaminate land.²⁹¹

Clandestine Drug Laboratory Remediation Guidelines

- 6.49 Mr Scorgie subsequently supplied the Committee with a copy of the guidelines entitled *Clandestine Drug Laboratory Remediation Guidelines 2011*, prepared by the Australian Crime Commission on behalf of the Commonwealth Attorney-General's Department as a best practice guidance document.²⁹²

- 6.50 In examining the guidelines, the Committee noted they were drafted in consultation with various government agencies across Australia including the NSW Police Force. The Committee also noted that the guidelines were intended to provide a framework within which regulatory authorities could administer, investigate and remediate contaminated sites.

- 6.51 The Committee identified that the guidelines were available or linked on a number of Commonwealth and interstate departmental websites, but was unable to identify a central NSW departmental link.

Committee comment

- 6.52 The Committee notes the evidence that councils are generally unsure of their responsibilities for managing clandestine drug laboratories and that they report that these responsibilities were transferred to local government without consultation.

- 6.53 The Committee also notes the varying practices of the NSW Police Force in referring individual cases to councils for clean-up and clearance to re-occupy premises.

²⁹⁰ Mr Geoffrey Green, Manager Environment and Health, Camden Council, transcript of evidence, 21 October 2013, p22

²⁹¹ Mr Jonathan Scorgie, Senior Environmental Health Officer, Wyong Shire Council, transcript of evidence, 21 October 2013, p22

²⁹²

<http://www.ag.gov.au/CrimeAndCorruption/Drugs/Documents/Clandestinedruglaboratoryremediationguidelines.pdf>

- 6.54 The Committee is concerned that the status of the Commonwealth's *Clandestine Drug Laboratory Remediation Guidelines 2011* is uncertain, that many councils do not appear to be aware of their existence, and that they are not easy to access via NSW departmental agencies.

FINDING 6

The Committee finds that local councils do not have the expertise or resources to take lead responsibility for managing clandestine drug laboratories.

RECOMMENDATION 12

The Committee recommends that the NSW Government clarify the status of the *Clandestine Drug Laboratory Remediation Guidelines 2011*, and that statutory and operational responsibility for leading the management of clandestine drug laboratories be vested in the Environment Protection Authority.

Appendix One – Legislation Comparison Table

Table 1 – Comparison Table – Local Government Act and Protection of the Environment Operations Act

	<i>Local Government Act 1993</i>	<i>Protection of the Environment Operations Act 1997</i>
Relevant Orders	<ol style="list-style-type: none"> 1. Order 21, section 124, part 2, chapter 7 (to owner or occupier of land or premises): To do or refrain from doing such things as are specified in the order to ensure that land is, or premises are, placed or kept in a safe or healthy condition, where the land or premises are not in a safe or healthy condition. 2. Order 22, section 124, part 2, chapter 7 (to owner or occupier of land or premises, owner of or person responsible for the waste or for any receptacle or container in which the waste is contained): To store, treat, process, collect, remove, dispose of or destroy waste which is on land or premises in the manner specified in the order (provided that it is not inconsistent with regulations made under the <i>Protection of the Environment Operations Act 1997</i>) where waste is present or generated on the land or premises and is not being dealt with satisfactorily, and is not regulated or controlled by, or subject to, a licence or notice granted or issued under the <i>Protection of the Environment Operations Act 1997</i>). 3. Order 22A, section 124, part 2, chapter 7 (to owner or occupier of the premises): To remove or dispose of waste that is on any residential premises or to refrain from keeping waste on those premises, where the waste is causing or is likely to cause a threat to public health or the health of any individual. 	<ol style="list-style-type: none"> 1. Chapter 4, Section 91 Clean-up Notice: An appropriate regulatory authority (usually EPA or council) may, by notice in writing (a) direct an occupier of premises at or from which the authority reasonably suspects that a pollution incident has occurred or is occurring, or (b) direct a person who is reasonably suspected by the authority of causing or having caused a pollution incident, to take such clean-up action as specified in the notice and within such period as is specified in the notice. 2. Chapter 4, Section 96 Prevention Notice: An appropriate regulatory authority may, by notice in writing, (a) direct the occupier of the premises, or (b) direct the person carrying on the activity to take such action as is specified in the notice and within such period (if any) as is specified in the notice, to ensure that the activity is carried on in future in an environmentally satisfactory manner. The action may include such things as preparing and carrying out a plan to control, prevent or minimise pollution or waste.

	Local Government Act 1993	Protection of the Environment Operations Act 1997
Procedures to be observed before giving orders	<p>Under chapter 7, part 2, division 2 of the <i>Local Government Act 1993</i>, before giving an order (except order 15 or order 22A which are emergency orders) councils must observe certain procedures including:</p> <p>Section 132:</p> <ol style="list-style-type: none"> 1. Before giving an order, a council must give notice to the person to whom the order is proposed to be given of its intention to give the order, the terms of the proposed order and the period proposed to be specified as the period within which the order is to be complied with. 2. The notice must also indicate that the person to whom the order is proposed to be given may make representations to the council as to why the order should not be given or as to the terms of or period for compliance with the order. <p>The notice may provide that the representations <i>are</i> to be made to the council or a specified committee of the council on a specified meeting date or to a specified councillor or employee of the council on or before a specified date being, in either case, a date that is reasonable in the circumstances of the case.</p>	<p>Chapter 4 of the <i>Protection of the Environment Operations Act 1997</i> does not contain <i>any</i> procedures that must be observed before giving orders.</p>
Duration of Orders	<p>Section 128A of the <i>Local Government Act 1993</i> provides that an order 22A under section 124 ceases to have effect, unless earlier revoked, at the end of the period of 5 years after it is given.</p> <p>The Act is silent on the duration of any of the other orders available under section 124.</p>	<p>Chapter 4 of the <i>Protection of the Environment Operations Act 1997</i> is silent on the duration of clean-up notices and prevention notices. Sections 91 and 96 state the clean-up / preventive action must be taken within the period (if any) specified in the notice and sections 91 and 97 provide for further penalties for ‘continuing’ offences i.e. for each day the offence continues.</p>
Penalties	<p>Section 628(2) of the <i>Local Government Act 1993</i> provides that a person who fails to comply with one of the above orders is</p>	<p>Section 91 and section 97 of the <i>Protection of the Environment Operations Act 1997</i> provide that a person who does</p>

	Local Government Act 1993	Protection of the Environment Operations Act 1997
	guilty of an offence, and the maximum penalty is 20 penalty units (i.e. a \$2,200 fine).	not comply with a clean-up notice or prevention notice, respectively, is guilty of an offence and the maximum penalty: <ol style="list-style-type: none"> 1. In respect of a corporation is \$1M with a further penalty of \$120,000 for each day the offence continues; and 2. In respect of an individual the maximum penalty is \$250,000 and a further penalty of \$60,000 for each day the offence continues.
Escalation of offences/ penalties	The maximum penalties for not complying with a particular order under the <i>Local Government Act 1993</i> are the same – no provision is made for aggravated forms of the offence or repeat offences (see section 628).	There are 3 tiers of offence under the <i>Protection of the Environment Operations Act 1997</i> . <p>Tier 1 offences are the most serious offences under the Act. These are:</p> <ol style="list-style-type: none"> 1. Wilful or negligent disposal of waste causing or likely to cause harm to the environment (section 115). 2. Wilfully or negligently causing a substance to leak, spill or otherwise escape in a manner that harms or is likely to harm the environment (section 116). 3. Wilful or negligent emission of an ozone-depleting substance in breach of the Ozone Protection Regulation in a manner that harms or is likely to harm the environment (section 117). <p>Tier 1 offences can attract penalties of up to \$5 million and 7 years gaol.</p> <p>Not complying with a clean-up notice (section 91) or a prevention notice (section 97) are tier 2 offences. While no provision is made for aggravated forms of the offence or repeat offences a further penalty exists for each day the offence</p>

	<i>Local Government Act 1993</i>	<i>Protection of the Environment Operations Act 1997</i>
		<p>continues (see above).</p> <p>Tier 3 offences are dealt with by penalty notices (i.e. on-the-spot fines). The fines can be paid or defended in court. The maximum possible penalty that a penalty notice can impose may not exceed the maximum penalty that can be imposed by a court for the offence. The <i>Protection of the Environment Operations (General) Regulation 2009</i> lists the tier 2 offences, including offences under sections 91 and 97, that can be dealt with by penalty notice in which case the maximum penalty is \$750 for an individual and \$1,500 for a corporation.</p>
Power to enter land	<p>Chapter 8, part 2, section 191 of the <i>Local Government Act 1993</i> provides that a council employee authorised by a council may enter any premises at a reasonable hour of the day or at any hour during which business is in progress, to exercise council functions.</p> <p>However, this power is limited, for example:</p> <p>a) Section 193 provides that in most instances, a person authorised to enter premises must give the owner or occupier of the premises written notice of his/her intention to enter the premises, specifying the day on which the person intends to enter the premises, and the notice must be issued before that day.</p> <p>b) Section 194 provides reasonable force may be used to gain entry but only if authorised by the council in writing, specifying the circumstances which must exist before force is used.</p> <p>c) Section 200 provides the powers of entry and inspection conferred by the Part are not exercisable in relation to that part of any premises</p>	<p>Chapter 4, section 111 of the <i>Protection of the Environment Operations Act 1997</i> provides that:</p> <ol style="list-style-type: none"> 1. A regulatory authority or public authority may, by its employees, agents or contractors, enter any premises at any reasonable time for the purposes of exercising its functions under this Chapter. 2. For the purpose of entering or leaving any such premises, the power conferred by this section extends to entering other premises. 3. The power to enter premises conferred by this section authorises entry by foot or by means of a motor vehicle or other vehicle, or in any other manner. 4. Entry may be effected under this section by an authority with the aid of such authorised officers or police officers as the authority considers necessary and with reasonable force.

	Local Government Act 1993	Protection of the Environment Operations Act 1997
	<p>being used for residential purposes except (a) with the permission of the occupier of that part of the premises, or (b) if entry is necessary for the purpose of inspecting work carried out under an approval, or (c) under the authority conferred by a search warrant.</p>	<p>Unlike the <i>Local Government Act 1993</i>, limits on the power of entry (e.g. notice requirements, residential premises requirements) do not apply under the <i>Protection of the Environment Operations Act 1997</i>.</p>
Enforcement of Orders	<p>Section 678(1) of the <i>Local Government Act 1993</i> provides that if a person fails to comply with the terms of an order given to the person under part 2 of chapter 7 of the Act, the council may do all such things as are necessary or convenient to give effect to the terms of the order, including the carrying out of any work required by the order.</p> <p>Section 678(6) states that any expenses incurred by the council in carrying out the order may be recovered by the council in any court of competent jurisdiction as a debt due to the council by the person concerned.</p> <p>There is no explicit reference to the option of registering the debt as a charge against land. In their submissions, Shoalhaven, Camden and Eurobodalla Councils all call for a clear power to be included in the Act to do this (as is the case under the <i>Protection of the Environment Operations Act 1997</i>).</p> <p>Advice from Division of Local Government, DPC, indicates councils do currently have the power to place a caveat against the real property of a landowner where he or she has failed to comply with an order under the <i>Local Government Act 1993</i> and council has incurred costs in undertaking works to effect it. The advice does not pinpoint where this power comes from and it may be helpful to explicitly reference it in the Act as is the case with the <i>Protection of the Environment Operations Act 1997</i> so councils are fully aware of it.</p>	<p>Section 104 of the <i>Protection of the Environment Operations Act 1997</i> provides that the appropriate regulatory authority may serve a cost compliance notice on a person previously served with a clean-up notice or a prevention notice requiring the person to pay the costs of:</p> <ul style="list-style-type: none"> a) monitoring action under the notice; b) ensuring that the notice is complied with; and c) any other associated matters. <p>Section 104 also provides a public authority that has taken clean-up action itself (under section 92 of the Act) may require the occupier of the premises where the pollution incident has occurred or the person suspected of causing the pollution incident, or both, the pay the costs of the clean-up action.</p> <p>Sections 106 and 107 also provide that such cost compliance notice, where it relates to land, can be registered as a charge against that land to be re-couped when the property is sold (if not paid before).</p>
Definitions	<p>“Unsafe” and “unhealthy” (the basis of orders 21 and 22A) are not defined by the <i>Local Government Act 1993</i>.</p>	<p>“Pollution”, “pollution incident” and “waste”, all relevant to the issue of a clean-up notice and a prevention notice under the <i>Protection of the Environment</i></p>

	Local Government Act 1993	Protection of the Environment Operations Act 1997
	<p>“Waste” is defined in the dictionary to the Act as follows:</p> <ul style="list-style-type: none"> a) effluent, being any matter or thing, whether solid or liquid or a combination of solids and liquids, which is of a kind that may be removed from a human waste storage facility, sullage pit or grease trap, or from any holding tank or other container forming part of or used in connection with a human waste storage facility, sullage pit or grease trap, or b) trade waste, being any matter or thing, whether solid, gaseous or liquid or a combination of solids, gases and liquids (or any of them), which is of a kind that comprises refuse from any industrial, chemical, trade or business process or operation, including any building or demolition work, or c) garbage, being all refuse other than trade waste and effluent, <p>and includes any other substance defined as waste for the purposes of the <i>Protection of the Environment Operations Act 1997</i>, and a substance is not precluded from being waste merely because it is capable of being refined or recycled.</p> <p>N.B. Councils have complained this definition does not cover items and materials where what makes them waste is the sheer volume they are kept in.</p>	<p><i>Operations Act 1997</i>, are defined in the dictionary to the Act.</p> <p>“Pollution” means water pollution, air pollution, noise pollution or land pollution.</p> <p>“Pollution incident” means an incident or set of circumstances during or as a consequence of which there is or is likely to be a leak, spill or other escape or deposit of a substance, as a result of which pollution has occurred, is occurring or is likely to occur. It includes an incident or set of circumstances in which a substance has been placed or disposed of on premises, but it does not include an incident or set of circumstances involving only the emission of noise.</p> <p>“Waste” includes:</p> <ul style="list-style-type: none"> a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment, or b) any discarded, rejected, unwanted, surplus or abandoned substance, or c) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, processing, recovery or purification by a separate operation from that which produced the substance, or d) any processed, recycled, re-used or recovered substance produced wholly or partly from waste that is applied to land, or used as fuel, but only in the circumstances prescribed by the regulations, or e) any substance prescribed by the regulations to be waste. <p>A substance is not precluded from being waste for the purposes of the Act merely because it is or may be processed, recycled, re-used or recovered.</p>

Appendix Two – List of Submissions

1	Ms Ann Brennan
2	Snowy River Shire
3	Hornsby Shire Council
4	Wyong Shire Council
4a	Wyong Shire Council
5	Ballina Shire Council
6	Port Stephens Council
7	Strathfield Council
8	The Hills Shire Council
9	Waverley Municipal Council
10	Junee Shire Council
11	Shoalhaven City Council
12	NSW Business Chamber
13	Camden Council
14	Maitland City Council
15	Bathurst Regional Council
16	Environmental Health Australia
17	Darkinjung Local Aboriginal Land Council
18	Kogarah City Council
19	Armidale Dumaresq Council
20	Albury City Council
21	Gosford City Council
22	Mr Jody Bailey
23	Holroyd City Council
24	Australian Sustainable Business Group (ASBG)
25	The City of Newcastle
26	Dubbo City Council
27	Confidential

LEGISLATIVE ASSEMBLY COMMITTEE ON ENVIRONMENT AND REGULATION
LIST OF SUBMISSIONS

28	Confidential
29	Confidential
30	Shellharbour City Council
31	Liverpool City Council
32	Eurobodalla Shire Council
32a	Southern Councils Group
33	Warringah Council
34	REMONDIS Australia Pty Ltd
35	Local Government NSW
35	Marrickville Council
36	Campbelltown City Council
38	Sutherland Shire Council
39	Confidential
40	NSW Council for Civil Liberties Inc

Appendix Three – List of Witnesses

21 October 2013, Macquarie Room

Witness	Organisation
Ms Nicola Clarke <i>Compliance Team Leader</i>	Hornsby Shire Council
Mr Simon Evans <i>Manager, Compliance and Certification</i>	Hornsby Shire Council
Mr Brett Richardson <i>Manager, Environment Protection and Regulation Services</i>	Sutherland Shire Council
Mr David Ackroyd <i>Manager, Communities Unit</i>	Sutherland Shire Council
Mr Shannon McKiernan <i>Coordinator, Environmental Health and Protection</i>	Gosford City Council
Mr Adam Gilligan <i>Manager, Compliance Services</i>	The City of Newcastle
Ms Nicole Magurren <i>Director of Development and Health</i>	Camden Council
Mr Geoff Green <i>Manager, Environment and Health</i>	Camden Council
Ms Deb Lenson <i>Divisional Manager Environmental Services</i>	Eurobodalla Shire Council
Ms Susy Cenedese <i>Strategy Manager</i>	Local Government NSW
Mr George Lerantges <i>Team Leader Compliance</i>	Marrickville Council
Mr Jon Scorgie <i>Senior Environmental Health Officer</i>	Wyong Shire Council
Ms Suzanne Naden <i>Representative</i>	Darkinjung Local Aboriginal Land Council
Mr Adam Doig <i>Chief Executive Officer</i>	Australian Sustainable Business Group

28 October 2013, Macquarie Room

Witness	Organisation
Dr Martin Bibby <i>Board Member</i>	NSW Civil Liberties Council
Cr Bruce Mackenzie <i>Mayor</i>	Port Stephens Council
Professor John Snowdon <i>Psychiatric Geriatrician</i>	Concord Hospital
Ms Janis Redford <i>General Manager</i>	Catholic Community Services
Ms Margaret Pistevos <i>Director Community Services Rural and Regional</i>	Catholic Community Services
Ms Mercy Splitt <i>Operational Manager for Hoarding and Squalor, Sydney, Hunter, Illawarra and Southern Highlands</i>	Catholic Community Services
Mr Steve Coleman <i>Chief Executive Officer</i>	RSPCA
Mr Stephen Beaman <i>Director Waste and Resource Recovery</i>	Environment Protection Authority
Mr Christopher McElwain <i>Senior Manager of Waste Compliance</i>	Environment Protection Authority
Mr Robert Hogan <i>Manager of Regional Waste Compliance</i>	Environment Protection Authority

Appendix Four – Extracts from Minutes

Minutes of Proceedings of the Committee on Environment and Regulation Meeting no. 11

Wednesday 9 May 2013
1.00pm
Room 1043, Parliament House

Members Present

Mr Patterson (Chair), Mrs Davies (Deputy Chair), Mr George, Mr Parker and Ms Tebbutt.
Staff in attendance: Jason Arditì and Abigail Groves.

The Chair commenced the meeting at 1.03pm.

1. Confirmation of Minutes

Resolved, on the motion of Mr Parker, seconded Mrs Davies: That the minutes of the meeting held on 14 November 2012 be confirmed.

2. Inquiry into the Management and Disposal of Waste on Private Lands

The Committee discussed the draft terms of reference (previously circulated), including adding terms of reference to consider derelict properties, problem hoarders, and clean-up processes. The Committee agreed to discuss possible new terms of reference after the meeting.

The committee adjourned at 1.18pm, until a date and time to be determined.

Minutes of Proceedings of the Committee on Environment and Regulation Meeting no. 12

Thursday, 30 May 2013
1:00pm
Room 1043, Parliament House

Members Present

Mr Patterson (Chair), Mrs Davies (Deputy Chair and, Ms Tebbutt
Staff in Attendance: Abigail Groves, Jason Arditì and David Hale

The Chair commenced the meeting at 1.00 pm.

Apologies

Apologies were received from Mr George and Mr Parker.

1. Confirmation of Minutes

Resolved on the motion of Ms Tebbutt: That draft minutes of meeting No.11 held on 9 May 2013 be confirmed.

2. Inquiry into the Management and Disposal of Waste on Private Lands

Resolved on the motion of Mrs Davies: That the Committee adopt the terms of reference, the Chair announce the Inquiry in the House, and the Committee advertise the Inquiry and calls for submissions with a closing date of Monday 29 July 2013.

The Committee adjourned at 1.10 pm *sine die*.

Minutes of Proceedings of the Committee on Environment and Regulation Meeting no. 13

Thursday 22 August 2013

1.02 pm

Room 1043, Parliament House

Members present

Mr Patterson (Chair), Mrs Davies (Deputy Chair), Mr George, Mr Parker and Ms Tebbutt.

Staff in Attendance: Abigail Groves, David Hale, Elspeth Dyer and James Newton.

1. Confirmation of minutes

Resolved, on the motion of Ms Tebbutt: That the minutes of the deliberative meeting No. 12, 30 May 2013 be confirmed.

Inquiry into the Management and Disposal of Waste on Private Land

2. Submissions received

Mrs Davies requested that copies of submissions containing detailed images be made available to Members in a clearer form.

Resolved, on the motion of Mr Parker: That the Committee receives and authorises the publication of submissions made to the Inquiry, as per the publication scheme outlined in the agenda, and orders that they be placed on the Committee's website.

3. Correspondence

3.1 Correspondence sent

The Chair informed the Committee that he had written to the Hon. John Ajaka MLC, congratulating him on his appointment to the Ministry and inviting his Department's input to the Inquiry.

3.2 Correspondence received

The Committee noted correspondence received from Mr Tony Khoury and [REDACTED], in relation to an offer to assist the Inquiry and a request for a minor amendment to Submission No. 29, respectively.

4. Proposed Inquiry schedule

The Committee agreed to invite the following witnesses:

- Environmental Health Australia.
- Darkinjung Local Aboriginal Land Council.
- Australian Sustainable Business Group.
- Local Government NSW.
- Office of Local Government.
- Environment Protection Authority.
- NSW Police Force.
- NSW Health.
- Menzies Centre for Health Policy.
- NSW Council for Civil Liberties.
- Property Council of NSW.
- Community Legal Centres NSW.
- Public Guardian.

The Committee agreed to invite local government councils and representative bodies to express interest in making further contributions to and appearing before the Inquiry. From these responses, the form and schedule for the Inquiry will be ascertained.

The Committee agreed to hold a public hearing on Monday 21 October 2013.

5. General business

The Chair noted that Mrs Davies would contact Penrith City Council concerning a possible contribution the Inquiry and invited Mr George to do the same with his local government area.

6. Next meeting

The Committee adjourned at 1.24 pm *sine die*.

Minutes of Proceedings of the Committee on Environment and Regulation Meeting no. 14

Thursday 17 October 2013

1:10 pm

Room 1043, Parliament House

Members Present

Mr Patterson (Chair), Mr George, Ms Tebbutt and Mr Parker

Staff in Attendance: Abigail Groves, David Hale and Elspeth Dyer

1. Apologies

Mrs Davies.

2. Confirmation of minutes

Resolved on the motion of Mr George: That the minutes of the deliberative meeting No 13, 22 August 2013 be confirmed.

Inquiry into the Management and Disposal of Waste on Private Land

3. Submissions received

Resolved on the motion of Mr Parker: That Submission No 39 be kept confidential to the Committee.

4. Correspondence

4.1 Correspondence Received

The Committee noted correspondence received from [REDACTED], Carmel Tebbutt MP regarding constituents of Marrickville, and The Hon Brad Hazzard MP, Minister for Planning and Infrastructure expressing support for the inquiry.

4.2 Correspondence Sent

The Committee noted correspondence sent to [REDACTED] regarding their respective submissions, and to NSW Public Guardian, NSW Community Legal Centres, Property Council of NSW, Menzies Centre for Public Health, and NSW Council for Civil Liberties inviting them to make submissions.

5. Inquiry schedule

5.1 Public Hearing 21 October 2013

Resolved, on the motion of Mr Parker: That the Committee distribute overheads and indicative questions prepared for the hearing, to witnesses in advance.

Resolved, on the motion of Ms Tebbutt: That the Committee invite [REDACTED] to give evidence at 3.30pm on Monday 21 October 2013.

5.2 Public Hearing 28 October 2013

Resolved, on the motion of Mr George: That the draft hearing schedule proposed for Monday 28 October 2013 be finalised based on the calling of the following witnesses:

- Dr Martin Bibby.
[REDACTED]
[REDACTED]
[REDACTED]
- Cr Bruce Mackenzie.
- Professor John Snowdon.
- Representatives of Catholic Community Services.
- Representatives of the RSPCA.

- Representatives of the Environment Protection Authority
- Representatives of the Disability and Ageing portfolio.

Resolved, on the motion of Mr George: That the Committee hear all evidence to the inquiry from private citizens *in camera*.

6. Next Meeting

The Committee adjourned at 1.40 pm until 9:30 am on Monday 21 October 2013.

Minutes of Proceedings of the Committee on Environment and Regulation Meeting no. 15

Monday 21 October 2013

9:30 am

Macquarie Room, Parliament House

Members Present

Mr Patterson (Chair), Mrs Davies (Deputy Chair), Mr George, Ms Tebbutt and Mr Parker.

Staff in Attendance: Abigail Groves, David Hale, Elspeth Dyer and James Newton.

1. Confirmation of minutes

Resolved, on the motion of Mr George: That the minutes of deliberative meeting No 14, 17 October 2013 be confirmed.

Inquiry into the Management and Disposal of Waste on Private Land

2. Public Hearing 28 October 2013

The Committee noted the progress report regarding organisation of the public hearing for Monday 28 October 2013.

3. Public Hearing 21 October 2013

3.1 Media orders

Resolved, on the motion of Mrs Davies: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 21 October 2013 in accordance with the NSW Legislative Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

3.2 Publication orders

3.2.1 Transcript of evidence

Resolved, on the motion of Mrs Davies: That the corrected transcript of evidence given on 21 October 2013 be authorised for publication and uploaded on the Committee's website.

3.2.2 Answers to questions on notice

Resolved, on the motion of Mrs Davies: That witnesses be requested to return answers to questions taken on notice and supplementary questions within 2 weeks of the date on which

the questions are forwarded to the witness, and that once received, answers to questions on notice be published on the Committee's website.

The public hearing commenced at 9:45 am. Witnesses and the public were admitted. The Chair made a brief opening statement.

The following witnesses representing local government were sworn and examined:

- Ms Nicola Clarke, Compliance Team Leader, Hornsby Shire Council.
- Mr Simon Evans, Manager Compliance and Certification, Hornsby Shire Council.
- Mr Brett Richardson, Manager Environment Protection and Regulation Services, Sutherland Shire Council.
- Mr David Ackroyd, Manager Communities Unit, Sutherland Shire Council.
- Mr Geoff Green, Manager Environment and Health, Camden Council.
- Ms Nicole Magurren, Director Development and Health, Camden Council.
- Ms Deb Lenson, Divisional Manager Environmental Services, Eurobodalla Shire Council.
- Ms Susy Cenedese, Strategy Manager, Local Government NSW.
- Mr George Lerantges, Team Leader Compliance, Marrickville Council.
- Mr Jon Scorgie, Senior Environmental Health Officer, Wyong Shire Council.

The following witnesses representing local government were affirmed and examined:

- Mr Shannon McKiernan, Coordinator Environmental Health and Protection, Gosford City Council.
- Mr Adam Gilligan, Manager Compliance Services, Newcastle City Council.

Evidence concluded, the witnesses withdrew.

The following witness representing Environment Health Australia (NSW) was examined while still under affirmation:

- Mr Shannon McKiernan, President.

Evidence concluded, the witness withdrew.

The following witness representing Darkinjung Local Aboriginal Land Council was affirmed and examined:

- Ms Suzanne Naden, Consultant.

Evidence concluded, the witness withdrew.

The following witness representing Australian Sustainable Business Group was sworn and examined:

- Mr Andrew Doig, Chief Executive Officer.

Evidence concluded, the witness withdrew.

The Chair noted that the Committee had resolved previously to hear evidence from all private citizens *in camera*. The public and the media withdrew.

The Committee proceeded to take evidence in camera at 3:25 pm.

Persons present other than the Committee: Abigail Groves, David Hale, Elspeth Dyer, James Newton, and Hansard.

Evidence concluded, the witness withdrew.

The hearing concluded at 4:10 pm.

7. Publication of documents tendered

Resolved, on the motion of Mrs Davies: That the following documents tendered during the public hearing be accepted by the Committee and published on the Committee's website:

- Mr David Ackroyd, Sutherland Shire Council Domestic Squalor and Hoarding Policy.
- Ms Suzanne Naden, Darkinjung Local Aboriginal Land Council response to questions and other documents except for those listed below.

Resolved, on the motion of Mrs Davies: That the following documents tendered during the public hearing be kept confidential to the Committee:

- Mr Simon Evans, Hornsby Shire Council letter from Storey and Gough, Solicitors.
- Mr George Lerantges, Marrickville Council photographs of hoarding site.
- Ms Suzanne Naden, Darkinjung Local Aboriginal Land Council Sustainable Lands Strategy.

8. Next Meeting

9:30 am Monday 28 October 2013, Macquarie Room, Parliament House.

Minutes of Proceedings of the Committee on Environment and Regulation Meeting no. 16

Monday 28 October 2013

9:40 am

Macquarie Room, Parliament House

Members Present

Mr Patterson (Chair), Mrs Davies (Deputy Chair), Mr George and Mr Parker.

Staff in Attendance: Abigail Groves, David Hale, Elspeth Dyer and James Newton.

1. Apologies

Ms Tebbutt.

2. Confirmation of minutes

Resolved, on the motion of Mrs Davies: That the minutes of deliberative meeting No 15, 21 October 2013 be confirmed.

Inquiry into the Management and Disposal of Waste on Private Land

3. Submissions

Resolved, on the motion of Mr George: That Submission No 40 be published on the Committee's website with direct contact details suppressed.

4. Correspondence

4.1 Correspondence Received

The Committee noted correspondence received from [REDACTED].

4.2 Correspondence Sent

The Committee noted correspondence sent to Mr Barry Buffier, Chief Executive Officer of the Environment Protection Authority requesting that the Authority nominate a witness to attend the public hearing scheduled for 28 October 2013; and to Cr Clover Moore, Mayor of Sydney and Cr Lawrie McKinna, Mayor of Gosford regarding management of derelict buildings.

5. Public Hearing 28 October 2013

5.1 Media orders

Resolved, on the motion of Mrs Davies: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 28 October 2013 in accordance with the NSW Legislative Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

5.2 Publication orders

5.2.1 Transcript of evidence

Resolved, on the motion of Mrs Davies: That the corrected transcript of evidence given on 28 October 2013 be authorised for publication and uploaded on the Committee's website.

5.2.2 Answers to questions on notice

Resolved, on the motion of Mrs Davies: That witnesses be requested to return answers to questions taken on notice and supplementary questions within 2 weeks of the date on which the questions are forwarded to the witness, and that once received, answers to questions on notice be published on the Committee's website.

The public hearing commenced at 9:45 am. Witnesses and the public were admitted. The Chair made a brief opening statement.

The following witness representing the NSW Council for Civil Liberties was affirmed and examined:

- Dr Martin Bibby, Board Member.

Evidence concluded, the witness withdrew.

The Chair noted that the Committee had resolved previously to hear evidence from all private citizens in camera. The public and the media withdrew.

The Committee proceeded to take evidence in camera at 10:35 am.

Persons present other than the Committee: Abigail Groves, David Hale, Elspeth Dyer, James Newton and Hansard.

Evidence concluded, the witnesses withdrew.

The public hearing resumed at 12:15 pm. The public were admitted.

The following witness representing Port Stephens Council was sworn and examined:

- Councillor Bruce MacKenzie, Mayor.

Evidence concluded, the witness withdrew.

The following witnesses representing the Hoarding and Squalor Taskforce were sworn and examined:

- Professor John Snowdon, Psychiatric Geriatrician, Concord Hospital.
- Ms Janis Redford, General Manager, Catholic Community Services.
- Ms Margaret Pistevo, Director Community Services Rural and Regional, Catholic Community Services.
- Ms Mercy Splitt, Operational Manager for Hoarding and Squalor, Catholic Community Services.
- Mr Steven Coleman, Chief Executive Officer, RSPCA.

Evidence concluded, the witnesses withdrew.

The following witness representing the Environment Protection Authority was sworn and examined:

- Mr Stephen Beaman, Director Waste and Resource Recovery.

The following witnesses representing the Environment Protection Authority were affirmed and examined:

- Mr Christopher McElwain, Senior Manager of Waste Compliance.
- Mr Robert Hogan, Manager of Regional Waste Compliance.

Evidence concluded, the witnesses withdrew.

The hearing concluded at 3:28 pm.

6. Next Meeting

The meeting adjourned at 3:30 pm, *sine die*.

Minutes of Proceedings of the Committee on Environment and Regulation Meeting no. 17

Wednesday 20 November 2013

1:00 pm

Room 1043, Parliament House

Members Present

Mr Patterson (Chair), Mrs Davies (Deputy Chair), Ms Tebbutt and Mr Parker.

Staff in Attendance: Abigail Groves, David Hale and Sasha Shevtsova.

1. Apologies

Mr George.

2. Confirmation of minutes

Resolved, on the motion of Mrs Davies: That the minutes of deliberative meeting No 16, 28 October 2013 be confirmed.

Inquiry into the Management and Disposal of Waste on Private Lands

3. Documents tendered during the public hearing on Monday 28 October 2013

Resolved on the motion of Mr Parker: That documents tendered by [REDACTED] and [REDACTED] be kept confidential to the Committee, and that documents tendered by Cr MacKenzie and Mr Beaman be published on the Committee's website.

4. Legal matters raised in camera on Monday 28 October 2013

The Committee noted the briefing paper on legal matters raised in camera on Monday 28 October 2013.

5. Submissions

Resolved, on the motion of Mrs Davies: That the supplementary submission from Wyong Shire Council be published on the Committee's website.

6. Answers to questions taken on notice

The Committee noted the interim response received from Ms Janis Redford, Catholic Community Services.

Resolved, on the motion of Mr Parker: That the following answers be published on the Committee's website with direct contact details suppressed.

- Dr Martin Bibby, NSW Council for Civil Liberties – various issues.

7. Correspondence

7.1 Correspondence Received

The Committee noted correspondence received from [REDACTED] concerning various matters, and Professor John Snowdon concerning tenants' rights.

8. Inquiry Update

The Committee received an update on progress. Discussion ensued.

9. Next Meeting

The meeting adjourned at 1.28pm, *sine die*.

Minutes of Proceedings of the Committee on Environment and Regulation Meeting no. 18

Thursday 15 May 2014

Room 1254 Parliament House

Members Present

Mr Patterson (Chair), Mrs Davies (Deputy Chair), Mr George, Ms Tebbutt, Mr Parker
Staff in Attendance: Carly Maxwell, Elspeth Dyer, Meike Bowyer, David Hale
The meeting commenced at 1.00pm.

1. Confirmation of minutes

Resolved on the motion of Mrs Davies: That the minutes of deliberative meeting No 17, Wednesday 20 November 2013 be confirmed.

2. Correspondence

The Committee noted correspondence from the Hon Adele Farina MLC, Chair of Committees, Legislative Council of Western Australia regarding the Scrutiny of Legislation Conference.

Inquiry into the Management and Disposal of Waste on Private Lands

3. Correspondence

The Committee noted correspondence from:

- Mr Paul Terrett, Office of the Minister for Local Government regarding cost recovery by councils when enforcing compliance orders;
- Cr Clover Moore, Lord Mayor of Sydney regarding managing derelict buildings;
- Ms Janis Redford, General Manager, Catholic Community Services regarding hoarding and squalor protocols;
- [REDACTED] regarding suppression of sensitive information; and
- Cr Lindsay Brown, Mayor of Eurobodalla regarding powers of entry.

Discussion ensued.

The staff updated the Committee on further advice from Ms Redford that the protocols should be available on 20 May 2014.

The Committee considered [REDACTED] correspondence and endorsed the previous responses of the staff. The Chair requested that a reply to this effect be prepared for his approval.

Resolved on the motion of Mr Parker: That the correspondence received from Cr Moore and Cr Brown be published on the Committee's website with signatures and personal contact information redacted.

4. Consideration of Chair's draft report of the Inquiry into the Management and Disposal of Waste on Private Lands

The Chair proposed to workshop his draft report, distributed previously.

Discussion ensued.

The Committee agreed to circulate suggested amendments for further consideration and reconvene to review and adopt the report.

5. Next Meeting

Thursday 29 May 2014 at 1.00pm in Room 1254 Parliament House.

Minutes of Proceedings of the Committee on Environment and Regulation Meeting no. 19

Thursday 19 June 2014

Parkes Room Parliament House

Members Present

Mr Patterson (Chair), Mrs Davies (Deputy Chair), Mr Parker

Staff in Attendance: Leslie Gonye, Elspeth Dyer, Meike Bowyer, David Hale

The meeting commenced at 1.45pm.

1. Apologies

Mr George, Ms Tebbutt

2. Confirmation of minutes

Resolved on the motion of Mrs Davies, seconded Mr Parker: That the minutes of deliberative meeting No 18, Thursday 15 May 2014 be confirmed.

3. Correspondence

The Committee noted correspondence from Mrs Janis Redford, General Manager, Catholic Community Services, dated 20 May 2014 regarding hoarding and squalor protocols.

Inquiry into the Management and Disposal of Waste on Private Lands

4. Consideration of Chair's draft report

The Chair spoke to his draft report, previously circulated. Discussion ensued.

The Committee agreed to consider the recommendations and then consider the report chapter by chapter.

There being no amendments to the recommendations, it was resolved on the motion of Mrs Davies, seconded Mr Parker: That the recommendations stand as part of the report.

Resolved on the motion of Mrs Davies, seconded Mr Parker: That Chapter One stand as part of the report.

Resolved on the motion of Mrs Davies, seconded Mr Parker: That Chapter Two stand as part of the report.

Resolved on the motion of Mrs Davies, seconded Mr Parker: That Chapter Three stand as part of the report.

Resolved on the motion of Mrs Davies, seconded Mr Parker: That Chapter Four stand as part of the report.

Resolved on the motion of Mrs Davies, seconded Mr Parker: That Chapter Five stand as part of the report.

Resolved on the motion of Mrs Davies, seconded Mr Parker: That Chapter Six stand as part of the report.

Resolved on the motion of Mrs Davies, seconded Mr Parker: That the draft report be the report of the Committee and that it be signed by the Chair and tabled.

Resolved on the motion of Mrs Davies, seconded Mr Parker: That the Chair, the Committee Manager and the Senior Inquiry Manager be permitted to correct stylistic, typographical and grammatical errors.

Resolved on the motion of Mrs Davies, seconded Mr Parker: That, once tabled, the report be published on the Committee's website.

The Committee discussed the tabling arrangements and agreed that the Chair would issue a media release once the report had been tabled.

The Committee noted the contribution of the staff to the conduct of the inquiry and preparation of the report, with appreciation.

5. Next Meeting

The Committee adjourned at 2.00pm, *sine die*.