

**Submission  
No 16**

## **MANAGEMENT AND DISPOSAL OF WASTE ON PRIVATE LANDS**

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Committee on Environment and Regulation  
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Dear Committee Manager,

**Submission – Inquiry into the Management and Disposal of Waste on  
Private Land**

We thank you for the opportunity to make this submission.

I am writing to you on behalf of the members of Environmental Health Australia (New South Wales) Incorporated.

Environmental Health Australia (formerly the Australian Institute of Environmental Health, established in 1936) is the premier professional body concerned with environmental health standards. Its mission and objectives are to contribute to the improvement in environmental health standards in Australia by:-

- Developing and advancing the practices and policies of the environmental health profession;
- Co-ordinating and representing the views, concerns and interests of members;
- Disseminating knowledge on environmental health to individuals, the community, governments and other organisations;
- Promoting excellence in environmental health practice; and
- Advocating the objects and policies of the organisation.

EHA (NSW) Inc has members from Federal, State and Local Government as well as private practice. However, the majority of our members are employed in Local Government and as such work on the frontline when it comes to dealing with the management and disposal of waste on private land.

EHA (NSW) Inc has addressed the Terms of Reference as outlined below:

**a) The health and safety risks posed by inadequate management and disposal of waste, overgrowth and excess vegetation, pests, and odour;**

Managing environmental health and safety issues can be challenging, time consuming and expensive in the local government context. Council's often receives complaints from members of our community about alleged health and safety risks posed by inadequate management and disposal of waste, overgrowth and excess vegetation, pests, and odour on private properties.

The actual affects of health and safety to people or the environment can be difficult to prove beyond reasonable doubt, particularly within the scope that is defined within the current legislation. Whilst Council's have experienced genuine cases where the health and safety risks caused by the issues identified above are clear and obvious, the trigger for the community to complain is generally the unsightly conditions or perceived/potential environmental health and safety risk rather than actual health and safety risk. The issue of beyond reasonable doubt is sometimes challenged by property owners and complainants alike and this can be a barrier to the effectiveness of the regulatory tools afforded to local government. Nonetheless, the community have an expectation that Council will action their complaints regardless of whether or not the risks above are actual or perceived.

An example is if someone has failed to mow their lawn, which may be more than 100mm above natural ground level for example, there is an expectation that Council should direct the owner of the property to remove the "excess vegetation" even when there is no evidence to suggest that vermin or pests exist on the property. These types of complaints are generally addressed within the specified timeframe and are more prevalent during the summer and spring warmer months.

Some of the common types of scenarios encountered by Council Officers are outlined in the table below.

<b>Common Scenario Type</b>	<b>Potential Health &amp; Safety Risk</b>
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 Labs	Odour, Fire Safety, Health & Safety - Council staff/property occupier/ neighbour
Derelict dwellings	Vermin, Fire Safety, Health & Safety - Council staff/property occupier/ neighbour

**Table 1 Common Scenario Types and Potential Health & Safety Risks.**

Within the Council's, there are a number of private waste service contractors operating from private land that are not licensed by the NSW Environmental Protection Authority (EPA). The nature of mixed waste being stored on these industrial/commercial sites has resulted in Council receiving complaints regarding odour, dust and pests affecting neighbouring premises.

As an example one private waste facility not only has exceeded the scheduled waste thresholds as outlined in "Schedule 1 – Scheduled Activities – Protection of the Environment Operations Act, 1997" but several of the neighbouring premises have complained regarding dust, odour and rats entering their land, harbouring in their equipment and causing damage to their goods. The amount of waste being stored on the premises is significant, open to the elements and in some cases is stored in a manner where the stockpiles are as high as the neighbouring buildings. One area of the site also has waste being stored up against a neighbouring concrete panel common wall which forms part of the neighbouring building.

Council's for their part have issued a number of Environmental Protection Notices to address the issue. Now that it has been established that the facility has exceeded the scheduled waste thresholds, the matter has been taken on by the EPA as the appropriate regulatory authority. This still presents concerns to Council's as there is a significant quantity of waste stored on the property. Should the occupier cease trading and leave, the issue of who will clean up the site, how it will be cleaned up and who pays is of particular concern. Notwithstanding, Council's continue to receive ongoing complaints regarding dust and vermin.

There may be situations where the health and safety risks of hazardous materials or products, hazardous chemicals, in particular unmarked containers, heat and fire affected containers, residues of chemicals and asbestos that may not be visible to the eye that are not so obvious. In an example of a clandestine drug lab, testing may be required to establish if chemicals/toxins remain and in what quantities to establish clean up or Remedial Action Plans.

Generally, to address complaints regarding the inadequate management and disposal of waste, overgrowth and excess vegetation, pests, and odour on private properties, Council has available to it the authority to issue a Notice followed by an Order under the Local Government Act, an Emergency Order under the Local Government Act or an Environmental Protection Notice such as a Clean Up or Prevention Notice under the Protection of the Environment Operation Act.

The issue of the effectiveness of the legislation to address the examples provided above is further discussed in Section (b) of the submission.

***b) The effectiveness of current regulatory arrangements and powers to compel clean-ups on private land and manage derelict buildings;***

Council's have available to it the authority to issue a Notice followed by an Order under the Local Government Act, an Emergency Order under the Local Government Act or an Environmental Protection Notice such as a Clean Up or

Prevention Notice under the Protection of the Environment Operation Act to compel clean up of private land. However, ultimately council's need to consider the potential impact the issuing of legal directions have, if the recipient of the Notice fails to comply.

In scenarios that have the potential to be life threatening or have a significant risk to environmental and public health, Council's may be left in a position where it is required to effect the terms and condition of the Notice/Order it serves. Often this will require the engagement of third parties, solicitors, courts and can quickly amount to significant costs. Whilst there may be pressure or an expectation from the community or elected members of Council to take action, the appropriateness of spending public money weighed up against the risks can be difficult to balance/justify. In one way Council could be scrutinised for not acting where there is a risk to the environment or the public, however it may also be scrutinised for spending significant ratepayer money that benefits a disproportionate small section of the community as a whole. The spending of money, which has not been specifically allocated through the formal budget process, may also result in a reduction of services provided to the community in unrelated areas as money specifically sort for these types of Programs may have to be reallocated to unexpected expenses.

The Local Government Act was amended in 2006 to include a new order 22A in Section 124. That Order allows a council to issue an order to remove or dispose of waste that is on any residential premises or to refrain from keeping waste on those premises. This Order is not applicable to industrial/commercial properties where similar problems exist. The waste must be, in the opinion of an Environmental Health Officer, causing or likely to cause a threat to public health or the health of an individual. The Order is issued to an owner or occupier of the premises.

Further, the Order is not to be used where premises are considered merely unsightly. There must be waste kept that is causing or is likely to cause a threat to public health or the health of an individual. An Order cannot be issued before a qualified Environmental Health Officer has attended the premises and carried out an assessment.

Under the Local Government Act, waste means:

*(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, 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.*

I can advise that most Council's have not issued an Order in relation to Order 22A under the Local Government Act. This is mainly due to the fact that although waste is defined in the Act, what constitutes waste, particularly in

relation to (c) in the definition, can easily be argued by the owner of such material as not being waste. Before an Order of this type can be issued, realistically Council's must attempt to pre-empt what a Magistrate would decide and assess whether it is worth the risk of spending significant money to defend such a matter should it end up in Court.

A recent example of where a particular Council has experienced issues with the effectiveness of the legislation is where a residential owner accumulated a significant amount of material such as carpet underlay, plastic pot plants (some broken), pieces of timber, pallets of tiles, plastic crates, foam boxes, light fittings, plastic containers, doors, building materials and other miscellaneous items which they stored in the front and rear yards exposed to the elements. At one stage, the amount of material stored in the front yard was consistently half the height of the dwelling on the property and grass and weeds were allowed to grow in and over the material. Over time, these materials became weathered and deemed by Council to be waste.

However, the owner maintained that the material could be reused. For instance, the carpet underlay, deemed by Council to be waste because it could not be used for its original purpose was claimed by the owner to be proposed for weed matting outside. The timber doors were rotted and warped were also deemed to be waste by Council. The owner claimed they were proposing to build outdoor screens for her garden and it didn't matter that the wood was warped. Therefore, trying to define something as waste, despite the definition in the Act, can be interpreted in different ways by different people.

As a result, Council formed the opinion it would be easier to issue a Notice under Order 21 of Section 124 of the Act and deal with the matter as a perceived health and safety issue as it was thought that Council could argue the case more effectively of the proposed harbourage for vermin rather than accumulation of waste. There are still problems with this line of action and Council has had to respond to the owner addressing her concerns. It is important to note that this was not the first time this issue has been raised with Council regarding this property, nor was it the first time Council had issue a Notice and Order for the owner to action. Council has recorded several properties within the area where the owners seem to know the system and do not action anything on their property until Council is involved.

Council Officers are of the opinion that when using the Local Government Act for these types of situations, the period of time from when a complaint is first lodged with Council until completion of works may be extensive, particularly when the complainant expects to see results within a couple of weeks, if not days, after reporting the matter to Council. The initial investigation can take time, Notices of Intention to issue an Order, Orders, follow up inspections, Show Cause Letters, owner's inaction or inability to undertake works due to varying circumstances, issue of Penalty Infringement Notices, gaining of search warrants, engagement of private contractors to effect the terms and conditions of the Order and reissue of Orders all extend the time of compliance and the final outcome of when works get completed.

It is difficult where a recipient of an Order does not act or does not fully comply with an Order. Reasons for inaction are varied and may range from lack of means, whether this be financial or the physical ability or motivation, possible mental health issues, on occasion locating the owner or the death of the owner

and yet the surrounding community may be dissatisfied when delays occur in addressing their concerns.

Another example where a particular Council has experienced issues with the effectiveness of the legislation is where the Council became aware of a vacant site within an industrial area that was subject to the disposal of unlawful waste including Asbestos. This required Council to use its authority under the Protection of the Environment Operations Act, 1997. Council issued several Clean Up Notices in accordance with Section 91 of the Protection of the Environment Operations Act, 1997. The corporation that was in charge and in control of the site didn't comply with the directions of the Notice.

Subsequently Council commenced Class 5 proceedings in the NSW Land & Environment Court to obtain orders from the Court to order the corporation to clean the site. However the corporation filed for bankruptcy, therefore Council's actions ceased against that corporation. The director of the bankrupt corporation then created a new company that was in control of the subject land.

The challenge for Council is that Council accrued excessive legal costs, in excess of \$80,000 where a director of a corporation can file for bankruptcy and the within a short period of time create another company and the issue of the illegally dumped waste has not been resolved. It's not necessarily an issue with the Protection of the Environment Operations Act, 1997 but it is more an issue with the ability of directors of company to wrap up one company and start a new one almost immediately with no protection for the community.

The other circumstance to be considered is that if a waste facility on private land exceeds the threshold limits as outlined in "Schedule 1 – Scheduled Activities – Protection of the Environment Operations Act, 1997", the EPA is technically the Appropriate Regulatory Authority (ARA) for the premises. However from what a particular Council has experienced, with the example referred to in the previous Section (a), the EPA rather than compelling the owner/occupier of the site to have an Environmental Protection Licence (EPL) they will compel the premises to reduce the waste to a level below "Schedule 1 – Scheduled Activities – Protection of the Environment Operations Act, 1997" so they don't have to deal with the ongoing problem of the premises.

Section 91 of the Protection of the Environment Operations Act, 1997 permits the ARA to issue a Clean Up Notice on the owner or occupier of the land; however if the waste has been illegally dumped be it on Council land or on private land the 'orphan waste' will need to be cleaned up, which is then the responsibility to the land owner and then the owner has to bear the unnecessary costs of the clean up.

Regarding derelict buildings, Council has provision to manage these buildings under the Section 121B of the Environmental Planning & Assessment Act, 1979 requiring that the building be demolished or removed because the building is or becoming dilapidated.

Another area Council has identified where there are issues with the effectiveness of the legislation is the fact that Council Officers are irregularly faced with the NSW Police referring clandestine drug labs to Council to pursue clean up after a drug raid. This is something relatively new to local government, however appears to becoming more and more frequent. Some Council's have received several notifications from the NSW Police over recent years regarding clandestine drug labs being set up in private properties consisting of single dwellings, common areas of unit blocks and industrial/commercial properties. There have been circumstances where the owner of the property was not aware that the premises was being used as a clandestine drug lab and they have sought assistance from Council with the clean up of the site.

Timeframes for clean up can be prolonged, which can be a concern given the potentially hazardous substances that may be present at a premises previously used as a clandestine drug lab. However, it is appreciated that adequate time is needed to source suitable consultants to undertake assessments, prepare Remedial Action Plans and undertake remediation works.

Whilst not pushed by the owner of a dwelling at the time, a particular Council has experienced where the owner of a property sought further explanation from Council as to the adequacy of the Police Report, in so far as being sufficient evidence to prove that the premises are not in a safe and healthy condition prior to the issue of a Notice. The Police Report is not an entirely scientific report, but rather a notification to the council of the prior existence of a clandestine drug lab at a premise and the type of chemicals/substances found during their raid. It may be difficult to defend a matter based on the Police Report if someone was to challenge this in Court. As a result, Council recommends that any amendment to legislation affecting or empowering local government be changed so that legislative provisions are sought to enable the Police Report to be utilised in evidence or other mechanisms to support that the land is not in a safe and healthy condition.

There could be substantial costs to councils when undertaking this regulatory function if specific legislation is not made.

Regardless of which regulatory authority becomes involved, it is considered important that the premises be made safe and healthy without unnecessary delays to protect human health and the environment. The legislation is not sufficient in this regard.

The *Protection of the Environment Operations Act 1997* is not specific in addressing the issues presented by many clandestine drug labs, particularly those involving residential dwellings. The legislation only applies when the drug residues are in the open environment and is not when the waste is within the building.

Given the expertise and training held by NSW Police and Fire and Rescue NSW, these agencies may be more suitably skilled to address such matters. The EPA may also have suitable expertise to assist in the remedy of these



properties. The Contaminated Land Management Act 1997 allows for the EPA to declare a site to be significantly contaminated land in some circumstances.

The inquiry should consider whether this legislation could be amended to cover premises where clandestine drug labs have been in use. Alternatively, there should be specific legislation within either the Local Government Act or Protection of the Environment Operations Act to address issues associated with properties being used as clandestine drug labs and specific training and authority given to Officers within local government.

Another example to support where a particular Council has had issues with the effectiveness of the legislation is in relation to an Asbestos complaint received by Council. Council received a complaint from a resident advising that another resident was bringing Asbestos and Asbestos containing material back to the residential property, breaking the material up and disposing of it in the Council's general waste garbage bin. In the initial instance, a verbal direction was given to the occupant to ensure Asbestos or Asbestos containing material was not placed in the Council's general waste garbage bin for collection. Additional to this, Council developed a proposal to monitor and regulate the complaint with the assistance of the Regional Illegal Dumping Squad (RID Squad). During the following period, the occupier continued to dispose of the Asbestos and Asbestos containing material in the Council's general waste garbage bin and store the material on their property.

In order to confirm the presence of Asbestos and Asbestos containing material beyond a reasonable doubt, Council had to collect the general waste garbage bins after they had been presented for collection, engage a licensed Asbestos Contractor to unload the bins and sort and identify the Asbestos and Asbestos containing material and take the appropriate samples. As the investigation was covert at this stage, the resident's bins had to be taken and washed and put back without the knowledge of the resident. The samples were then sent to the lab for testing and verification.

The Council ended up issuing Environmental protection Notices under the Protection of the Environment Operations Act, 1997 and instigating legal action in the local Court. The occupier was an insidious offender and ultimately, the Council had to outlay the cost of the legal action without assistance of any other government agency. The legal costs associated with the proceedings were close to \$30,000 where the offender was only handed a sentence of \$20,000.

Not only did the Council have to address the actions of the occupier, the property was owned by NSW Housing. Council had issues dealing with this government agency and involving them with the clean up of the site as the occupier had also stored Asbestos in the rear yard.

The Council had to direct NSW Housing to employ the services of contractors to clean the site so that the environmental harm and risk to public health would be reduced. Council had difficulty gaining their cooperation initially and getting them to complete the required tasks within the timeframe deemed appropriate

by Council. It was also unclear as to the authority Council had under the legislation to order another government agency to carry out work.

In this instance, the Council formed the opinion that it had no other alternative but to take legal action to have the occupier cease the activity, despite the possibility that the penalty amount would be far less than the cost to run the matter given the nature and seriousness of the issue and the importance to our community.

**c) *The adequacy of inspection and enforcement procedures, including relevant sanctions and powers to recover costs;***

As already indicated above in “b” inspections and enforcement procedures identify issues whereby waste is disposed on private land. The Protection of the Environment Operations Act, 1997 through Section 104 permit Council to issue a Compliance Cost Notice; the Notice permits Council to ensure that the Notice has been complied with.

Compliance Cost Notices are only effective when the Council is aware of whom the polluter is and they have failed to comply with the Clean up Notice that the Council has issued. The Compliance Cost Notice is not effective if the Council is dealing with orphan waste that has been disposed of on private or public land.

There have been specific examples whereby Council has observed the illegal disposal of waste on private land and has issued Clean up Notices in accordance with the Protection of the Environment Operations Act, 1997; however the owners of the land failed to comply with the terms of the Notice. Because of the volume of waste on site, Council commenced legal action in the NSW Land & Environment Court.

However during the Court proceedings the defendant filed for bankruptcy, which resulted in Council having to withdraw its legal action. Subsequently the defendant then changed their company details and the created a new company to manage the subject site. The Council as a result of the legal proceedings has accrued substantial legal costs prosecuting the subject company.

This is an ever growing challenge for Council's when enforcement proceedings are initiated and the defendant then files for bankruptcy. The Council and the community are not protected by this action and then the Council and the community potentially are left to deal with the ongoing waste issues.

When the owner of the premises which has accumulated waste on their premises goes into liquidation the Council is then left to liaise directly with the liquidator. When dealing with the liquidator, the Council is unlikely to recover any costs associated with its clean up action and there is no guarantee that the liquidator will clean up or remove the waste that has been accumulated on the land.

When Council is dealing with clandestine drug labs we have the circumstance on occasion that the person that Council needs to issue the Clean Up Notice on may be in custody. This poses a difficult challenge that the Notice needs to be executed. In that circumstance the Council may need to engage a contractor to undertake the works and then either issue a Compliance Cost

Notice or alternately place the charge back on the value of the land, in the event that the property is sold the Council may have the provision to recover its costs through the sale of the premises.

**d) Possible measures to improve the management of waste on private land;**

As Council areas are highly urbanised we do not experience the instances of 'illegal land filling' that can occur in other local government areas which are semi-rural or rural. However, it is apparent that waste originating in some Council areas is sometimes illegally dumped outside the area. This is often construction and demolition waste. This noted however, there are many instances of waste being dumped on private. For example, as new estates are being developed it is a common occurrence for builders to dump their waste on other vacant lots within the estate to avoid disposal costs. If the person dumping cannot be identified then it is left to the property owner to remove the waste often at a cost of thousands of dollars.

To combat illegal dumping of construction and demolition waste Council's requires development applicants to submit waste management plans and to provide waste disposal receipts to confirm how their waste was disposed. However, as Council's are not always the certifying authority and does not have resources to monitor every building site, full compliance is not achieved. Measures could be considered to tighten up these requirements with state-wide standard implementation and allocation of resources. For example, developers could pay a refundable bond that is returned once receipts have been submitted.

Council's also deal with a significant amount of illegally dumped asbestos. Dumped asbestos presents a risk to the health and safety of the Community. Council's must engage an appropriately licensed hazardous waste contractor to undertake such cleanup work. Depending of the volume of waste to be collected, clean up of asbestos can range from hundreds to thousands of dollars.

Disposal of asbestos attracts the Protection of the Environment Operations Act, 1997 Section 88 levy despite the fact that it cannot be reused or recycled. Council proposes that asbestos tipping costs should be reduced to provide an incentive for people to dispose of it correctly. As a starting point, this means the levy should be removed for the disposal of asbestos.

It is Council's experience that the types of waste dumped illegally, is often that which has a low value. If there are strong recycling markets then the materials are less likely to be dumped, or if they are dumped, they are subsequently claimed by other people. Initiatives to develop and improve reuse and recycling markets and to place value on otherwise un-valuable resources need to be explored.

**e) The extent of illegal dumping and the impact on local government authorities of requirements to remove dumped waste;**

It is difficult to determine the amount of waste that is illegally dumped on public and private land in Council areas. Waste dumped on private land, while Council may assist with investigating from where the waste originated and by whom it was dumped, in situations where the offender cannot be identified, the land owner is responsible for its removal and the associated costs. Some incidents are reported to Council but the percentage this forms

of the total amount of waste illegally dumped is unknown. It can be said though that Council commits significant resources to investigating waste dumped on private land.

In regard to waste dumped on public land Council is involved in education, investigation and enforcement, and is responsible for removing and disposing of waste where the offender cannot be identified.

In terms of education and enforcement, Council's use a multi pronged approach. Council's Waste Education Officers are involved in promoting anti-illegal dumping messages to the Community and working to ensure there is a good awareness of Council's and other services available to dispose of waste properly. The Regional Illegal Dumping Squad has an Officer dedicated to each Council area that is a member of the RID Squad. The RID Squad is involved in investigating and prosecuting illegal dumping offenders whenever possible.

To maintain the health and safety of the Community, Council's are obliged to collect and dispose of illegally dumped waste from public land where the person responsible for dumping the waste can not be identified. Council's incurs the cost to collect this waste and the cost to dispose of it. Disposal costs vary depending on the disposal facility utilised but generally speaking it is up to and in excess of \$200 per tonne, including the Protection of the Environment Operations Act, 1997 Section 88 Levy. There are currently very few options to recover or recycle waste collected from illegal dumping as the nature of waste means it is not viable.

The cost to Council's to manage illegally dumped rubbish each year is in the magnitude of several hundred thousand dollars per Council. Illegally dumping is one of the higher ranking concerns residents often express to Council.

f) ***Any other related matter.***

N/A

Please do not hesitate to contact me on (02) 9181 3320 or [nsw@eh.org.au](mailto:nsw@eh.org.au) if you have any questions.

Yours sincerely,

Stuart Nunn.

Director

EHA (NSW) Inc