

**Submission
No 40**

MANAGEMENT AND DISPOSAL OF WASTE ON PRIVATE LANDS

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Date Received: 24/03/2014



Submission to the NSW Parliamentary Inquiry into Management and Disposal of Waste on Public Lands.

The New South Wales Council for Civil Liberties (CCL) is one of Australia's leading human rights and civil liberties organisations. Founded in 1963, NSWCCL is a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. To this end the NSWCCL attempts to influence public debate and government policy on a range of human rights issues by preparing submissions to parliament and other relevant bodies. CCL is a Non-Government Organisation (NGO) in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

The CCL thanks the Environment and Regulation Committee (The Committee) for its invitation to write a submission, and for the invitation to address the Committee on Monday October 28.

A. Principles.

i. In dealing with these 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.

ii. People with a mental illness should be treated sensitively and with respect, in view of what they have been and of what they may become—and, indeed of what they are.

iii. Councils should take account also of the feelings others have towards people with incurable and progressing dementia. Love, affection and the deep hurt at what is happening to a relative or friend are not to be treated lightly. Society depends on such emotions.

iv. There must be an appropriate balance between individuals' civil liberties and the powers Council have in order to ensure that waste is managed appropriately. 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 the problem, and that individuals' civil liberties must not be impinged on except to the extent necessary to prevent the impinging on others' liberties.

B. Hoarders.

We understand that the principal concern that we are asked to address concerns the rights of hoarders. We have had the benefit of reading and hearing the submissions made by various Councils about the problems posed them by hoarders, including concerns about vermin, pollution and dangerous substances. Hoarders, for this purpose, may be usefully, if somewhat arbitrarily, divided into two groups--those for whom hoarding is a rational choice, and those who are mentally ill.

i. For the first group, the situation is clear. Councils have no business ordering people to dispose of or tidy their property unless it poses a health or safety risk. That a collection of rusting cars or a pile of tyres is unsightly is not sufficient reason for heavy-handed intervention. Where there is a genuine concern about health or safety, councils have power to order a clear up; but the owners must have in their turn the opportunity to appeal against unreasonable decisions. Where there is no such concern, rangers and neighbours should limit themselves to what Mill recommends: the gentle persuasion of rational discussion. There can, after all, be a good reason for a person to collect odd objects.

ii. Under the Diagnostic and Statistical Manual of Mental Disorders version IV, hoarding was treated as a symptom of obsessive compulsive disorder. Under the new version V, it is treated as a disease in its own right. Heavy-handed tactics are obviously inappropriate with compulsive hoarders, and in any case are not likely to provide a long-term solution, since (as at least one council has noted) the hoarder is likely to start again as soon as a clear up is complete.

As with other mental disorders, compulsive hoarders should be treated sensitively, and by professionals. Where cleanups are necessary for health and safety reasons, interaction with the hoarder needs to be in consultation with those professionals, and to be done sensitively. The emphasis needs to be on management and cure rather than compliance.

The Parliamentary Committee might consider what assistance councils need to obtain access to such professionals, and in particular whether specific funding is needed for this kind of purpose. Hoarders are not the only mentally ill people councils are called upon to help.

C. Vegetation and rubbish.

Some councils have proposed that their staff be entitled to enter on properties for the purpose of checking whether overgrown vegetation or piles of rubbish are a health hazard, without the permission of the owners nor the possession of a warrant issued by a judicial officer. This is an extraordinary request. Neither the police nor even ASIO have such unrestricted powers. And there is good reason why they don't. The invasion of privacy involved in walking into someone's house or past his or her windows is so severe it is odd that this is even suggested.

D. Covert surveillance.

We note with surprise that a regional illegal dumping (RID) squad has been engaging in covert surveillance. While this is an understandable reaction to illegal dumping, especially of hazardous materials, it is a basic requirement of privacy that a person knows who his or her audience is.

The collection (open or covert) and use of any personal information by public agencies in NSW is governed by part 2 of the Privacy and Personal Information Protection Act 1988 (NSW). The use of visual surveillance is also limited by subsection 8(i) of the Surveillance Devices Act 2007 (NSW). Councils should ensure that members of RID squads are thoroughly cognisant of these matters.

E. A proposed list.

There is a proposal for a statewide data base listing persons of interest, meaning, we presume, persons who are believed to have illegally dumped materials, but against whom there is not enough evidence to institute proceedings. Any such list would also be subject to part 2 of the Privacy and Personal Information Protection Act. In particular, and in view of the

presupposition that proof of wrongdoing is lacking, the fact that a person appears on such a list should not be used in relation to any other decision involving that person's interests. Councils should be careful that a person cannot be demonised on the basis of mere suspicion.

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19.10.2013.