

REPORT OF PROCEEDINGS BEFORE

COMMITTEE ON ENVIRONMENT AND REGULATION

**INQUIRY INTO MANAGEMENT AND DISPOSAL OF
WASTE ON PRIVATE LANDS**

At Sydney on Monday 21 October 2013

The Committee met at 9.45 a.m.

PRESENT

Mr C. S. Patterson (Chair)
Mrs T. Davies (Deputy Chair)
The Hon. T. George
Mr J. T. Parker
The Hon. C. M. Tebbutt

CHAIR: Good morning and thank you for attending today's Committee hearing on the management and disposal of waste on private lands. I am Chris Patterson, chair of the Committee and the member for Camden. With me is Tanya Davies, the member for Mulgoa and the deputy chair; the Hon. Thomas George, the member for Lismore; the Hon. Carmel Tebbutt, the member for Marrickville; and Jamie Parker, the member for Balmain. As you are aware, the management and disposal of waste on private lands is a complex and costly issue. The community expects private lands to be well managed and, through its elected representatives, has constructed a set of laws, regulations and policies that outline these expectations and how they should be achieved. That is the community expectation. Being local government representatives, you would know better than anybody that it is not always easy to meet community expectation.

We received 27 submissions from local government. We then asked who would like to come and address the Committee and those people are sitting here today. As I said, people working in local government are the experts in a lot of the management issues. There was a clear theme in the submissions from a number of local government areas as to concerns and problems with the management of waste on private lands. That is what today is all about. I thank the Committee staff Abigail Groves, David Hale, Elspeth Dyer and James Newton for their excellent efforts to bring everything about today. To everybody here, thank you for appearing before the Committee.

NICHOLA LOUISE CLARKE, Compliance Team Leader, Hornsby Shire Council,

SIMON EVANS, Manager, Compliance and Certification, Hornsby Shire Council,

BRETT RICHARDSON, Manager, Environment Protection and Regulation Services, Sutherland Shire Council,

DAVID ACKROYD, Manager, Communities Unit Sutherland Shire Council,

GEOFFREY GREEN, Manager, Environment and Health, Camden Council,

NICOLE MAGURREN, Director of Development and Health, Camden Council,

DEBORAH LENSON, Divisional Manager, Environmental Services, Eurobodalla Shire Council,

SUSY CENEDESE, Strategy Manager, Local Government NSW,

GEORGE LERANTGES, Team Leader Compliance, Marrickville Council, and

JONATHAN SCORGIE, Senior Environmental Health Officer, Wyong Shire Council, sworn and examined:

SHANNON McKIERNAN, Coordinator, Environmental Health and Protection Gosford City Council, and

ADAM GILLIGAN, Manager, Compliance Services, the City of Newcastle, affirmed and examined:

CHAIR: I welcome our witnesses from local government. Thank you for appearing before the Committee on Environment and Regulation to give evidence. Over the next two hours the Committee and I will engage in discussion with you using a series of overheads to assist us to focus on the topics of interest to the Committee. As this is a formal parliamentary hearing, however, your evidence must be sworn and recorded in *Hansard*. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process? You might not be aware we are currently being broadcast live, and everything you say will be recorded in *Hansard*.

Normally, when we are hearing from an individual witness we commence our discussion by paying them the courtesy of asking whether they would like to give an opening statement or if they have anything they would like to put on the record. Because we are holding a roundtable discussion because we have so many witnesses from local government there is no obligation to do that; however, if anybody would like to make an opening statement they are most welcome to. As nobody wishes to make an opening statement we will proceed with the questions.

This is an official hearing and we will be running it as such but we have a number of questions to put to you as an informal roundtable. As I have said, you guys are the experts and so it is fine if we deviate from the questions if you do not think that we are covering what you need covered. That is another way in which we will be productive. This is not about us wasting your time; it is about you providing information, and it will be much appreciated. Please, do not be shy. We will start with the questions but if you feel that the Committee would benefit by taking an issue further please feel free to let us know.

The first question relates to regulatory inspection and enforcement arrangements for waste on private land and cooperation from occupants in the clean-up of waste on private lands. One of the key things to come out of it was the rate of compliance notices issued under the Local Government Act 1993 and the Protection of the Environment Operations Act 1997. Would anybody like to start the discussion on that issue?

Mr RICHARDSON: We have got two percentage rates in relation to the different notices that are issued under those various legislations. With the Local Government Act we tend to find that we have about an 80 to 85 per cent success rate but with clean-up notices issued under the Protection of the Environment Operations Act [POEO] it is a lot higher, it is about 90 per cent. I think that is due to the fact that the clean-up directions are normally when it comes to hazardous types of waste, so we have a lot better compliance rate with the POEO.

CHAIR: That seems like a high compliance rate. Is that the feeling around the room?

Mr McKIERNAN: I would agree that the Protection of the Environment Operations Act [POEO] notices have a lot more success and I think they are a lot more timely and that is the other issue. I guess in relation to the Local Government Act, the whole notice of intention and going through long processes can drag it out quite a lot whereas the clean-up notice through POEO is pretty much a direct request. I think there are probably two aspects. I think POEO seems to be a lot clearer and more successful in cleaning it up and also more timely.

Ms CARMEL TEBBUTT: It might be good to have explained what the difference is with the clean-up under the POEO Act and the other Act.

CHAIR: Absolutely. Would somebody like to offer us the difference between the two clean-ups that Brett first mentioned and Shannon has spoken about?

Mr GREEN: I suppose the essence of the difference between the two pieces of legislation is that the Protection of the Environment Operations 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 that waste is in a safe and healthy condition. The burden of proof between the two is quite distinct and there is quite often a lot of confusion between the two and which one should be used.

CHAIR: I would like this to be informal as possible. Does anybody mind that we are using first names? Are you happy with that, or does it offend anybody mortally?

Mr THOMAS GEORGE: No problems.

Ms LENSON: In relation to the question of cooperation from occupants in the clean-up of waste, even prior to the issue of orders or notices the council would often negotiate. I would suggest that the rate of compliance is high and, as a last resort, the council would then go towards notices and orders and generally again the compliance rate would be high.

Mr GILLIGAN: I would add that not only is that compliance before regulatory powers are used, but there is compliance afterwards where councils go in and give effect to their own orders. Ultimate compliance is achieved once that work is done by the council. I would also concur that there is a higher rate of compliance with Protection of the Environment Operations Act orders rather than the Local Government Act. I think there are a couple of other factors there. One is that the penalties are significantly higher for breaches of the POEO than for the Local Government Act, but I also think to some degree it reflects the nature of those matters. As Geoff has mentioned, the health and safety orders in our experience are often used for domestic situations—things like land that is simply overgrown—whereas the pollution notices are used where there is clearly an impact on the environment. It is often easier to get buy-in from the community on those matters.

The other issue is that overgrown land keeps coming back. Even when you achieve compliance with particular premises, whether it is voluntary as a result of a notice and order or because you have had to go in and do the work, that grass is going to grow back. People who fail to comply often will fail to comply in the future with those notices.

Mr LERANTGES: Just in relation to what Adam was saying, when we look at applying the Local Government Act with reference to overgrown, we find it difficult to see how overgrown actually places land in an unhealthy and unsafe condition. Just by the nature of its being overgrown, people ring council. As with everyone, we get a lot of complaints from community members about overgrown land. When our officers go to investigate outside of the unsightly aspect of it, it is very difficult to ascertain what actually the health or safety impacts are just by the fact it is overgrown. By a process of negotiation and in terms of cooperation, by people having overgrown or having waste or materials on their land, it is not something that you can have a normal conversation about. There are mental issues. There are issues involved that we have to manage.

We find it difficult to take action under the Local Government Act by the fact that it is an absolute requirement that 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 or something that impact? For example, are there pools where mosquitoes 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.

Mr THOMAS GEORGE: Is that the same attitude from all councils around the table—that you go through that process?

Mr RICHARDSON: Yes, pretty much.

Mr McKIERNAN: It is harder to justify and if someone really pushes the buttons and challenges it, it is hard to follow through. That is probably the key. Ninety per cent are fine. They are direct: You tell them, they do it, but I guess it is the one in 10 that does not do the right thing.

CHAIR: It is a very good point. It seems to be a common thread that if it is just unsightly and still causing a lot of angst, you do not have the ability to enforce the clean-up or the mow or whatever it is because you have not been able to tick the vermin or the health issue.

Mr LERANTGES: That is right. We do not pursue that if we do not find the evidence. Of course, part of this is always speaking with the members of the community who raise this with us as well, just to keep them informed of our decision. It is not without their knowledge and understanding of what our limitations are.

Mr GREEN: I think that the two pieces of legislation, POEO and the Local Government Act, 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. The issue of orders under 124 of the Act is time-consuming. 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 at court.

Further to that you have the penalties involved in the two pieces of legislation. With the Local Government Act it is \$2,200 if you take it to court. Taking it to court will cost the 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. But I think the main part of it is that when we take action under 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 it is more mishmash-y and there is uncertainty in there.

Council officers across-the-board always try to work with their community. They do not try to bang them over the head with a big stick all the time, but it is very much an easier sell if we are quite deliberate and quite firm as to what our course of action is going to be. Under POEO, we tend to have that; under the Local Government Act, we do not.

CHAIR: Thank you for that very good summation. Do members have any questions on this?

Ms CARMEL TEBBUTT: Geoff, in relation to what you were saying, is that because of the difference in the legislation or the differences in the Acts, or is it because of the differences in the circumstances you are dealing with and the people who are responsible for the waste or the pollution? I get the sense under the Protection of the Environment Operations Act you are dealing with companies and organisations a lot of the time, more certain circumstances and more obvious threats, and the Local Government Act is dealing with far less clear-cut situations? Would that be fair, or do you think that the actual pieces of legislation also contribute to the difficulty?

Mr GREEN: No, I certainly believe that the legislation is framed in a different manner. POEO is much more forceful in its application and under POEO we still deal with private individuals on private land, not necessarily all companies or major pollution incidents. It can be down to the level of a couple of bags of rubbish dumped on somebody's land. I still believe that the hinge point is the determination as to whether or not it is a risk or an impact on the environment or whether it is a health and safety issue. The council officer must make that decision early in the piece as to which course of action they are going to take.

Ms CARMEL TEBBUTT: Thanks.

Mr GILLIGAN: I would add that the definitions within each of those pieces of legislation are much clearer in the POEO than they are in the Local Government Act. From memory, and perhaps my colleagues may

correct me if I am wrong here, "unsafe" and "unhealthy" are not actually defined terms in the Local Government Act whereas water pollution, a pollution incident, land pollution and all of those things are defined terms in POEO. It is much clearer for us to determine whether or not we have met a statutory test under that legislation than it is in the Local Government Act.

Mr LERANTGES: In response to Carmel's question, in terms of level of cooperation we find that that is an issue as well. People who have waste or have their land in a certain circumstance are very difficult to deal with. It is not like a normal process. Even going to court, if it ends up in court, we would not be seeking punitive action. We would be looking at the court to issue orders to get an outcome. That will be discussed further but I thought I would throw that in as well.

CHAIR: Absolutely.

Mrs TANYA DAVIES: I have a further question that is open to everyone around the table to respond to: Adam mentioned one of the differences between the two pieces of legislation and the fact that "unsafe" and "unhealthy" are not defined in the Local Government Act to assist council officers in administering their duties. What other changes or improvements could you suggest to those two pieces of legislation that would make the job of the council officers clearer, more distinctive and therefore more effective?

Mr McKIERNAN: In addition to being overgrown from the vermin point of view, nine times out of 10—and the current climate has exacerbated it—most people are ringing up because they consider it more of a bushfire risk, but you cannot really consider that. It is hard to even do that. If there were some sort of parameters with assistance from the Rural Fire Service [RFS] or a hazard assessment, it would give a lot of weight. Most people ring up for an overgrown lot thinking it is going to be a bushfire risk, but in Gosford we seem to take it more along the lines of a harbouring for vermin. That would add a lot of weight and that is the real reason why people are ringing up and complaining in the first place. We are sort of responding in a different way to address a different concern.

Mr ACKROYD: Fire and Rescue NSW—this is actually an example from Botany I think—they send out letters to councils with examples of squalor and hoarding and a schedule of deterioration, really, in people's living circumstances. Within Sutherland we have developed a squalor and hoarding policy which also starts listing a matrix of the types of squalor that people are living in and various areas within the home that can be categorised. You can then track that as you go through the process of working with people. The challenge is that although in 90 per cent of cases in terms of the clean-ups things do happen, the problem is when things do not occur and recurrently do not occur and the impact that that has on the community. Fire and Rescue NSW basically have this schedule on their website which they then send to council for council to do the clean-ups. There is no liaison with Fire in New South Wales; they simply give us a letter saying, "Go out and clean this up."

From my perspective what I need is more joined-up solutions between different levels of government, community-based organisations who are in some instances the people who have the responsibility to actually work with the clients and mental health institutions. That is another issue and is one of the key issues in terms of recurrent problems for maintaining cleanliness in homes. When you get to such a stage that you are issuing orders for private individuals having an impact on surrounding residents, the capacity of the people on whom we are serving orders, those 10 per cent or 5 per cent in some instances—we are serving orders on people who have no capacity to implement those orders.

That is where the issue is from my perspective as a community worker. I recognise that I am a very different person from the people around you here today in that they come from a compliance perspective whereas I am coming from a people perspective and actually working with community organisations and residents themselves, but whose role is it to actually work with the residents? Is it a council role, is it a State Government role or is it a community role? I think we need to clarify between those roles and responsibilities, and also get those joined up solutions across those organisations to provide services that make a difference.

CHAIR: Could we have a copy of those documents?

Mr ACKROYD: The policy, yes.

Mr THOMAS GEORGE: I had four constituents who backed on to a national park and the council had no problem with them mowing out to keep the national park away from their fences, but the national park

did have a problem with them mowing into the national park, even though it was only for the protection of their houses, so we do need the cooperation that Mr Ackroyd was talking about of government agencies.

Mr GILLIGAN: It is our submission that in addition to some better clarity around what is unsafe and unhealthy, as Shannon McKiernan has indicated, a lot of people are simply concerned because properties are poorly maintained—they do not like the fact that the neighbour's yard looks as messy as it does—and a simple statutory test for untidy, poorly maintained or unkempt would allow us greater capacity to deal with those. If that is the core of what people are concerned about, that is where our efforts should go rather than trying to fit a square peg into a round hole by establishing that something is unsafe or unhealthy. Certainly there is an overlap with the rural fires legislation, and that is a little clearer where you have an urban bushland interface and perhaps you manage it through the Rural Fires Act provisions, but people still have concern about fire safety with an overgrown property in an entirely urbanised area. "What happens if a cigarette butt is thrown in there" is the sort of concern that people express to us.

Mr LERANTGES: Touching on what my colleagues have been saying, I agree with getting changes to the legislation, but it is also the fact that you are managing people in a sense who do not have a capacity perhaps to understand, to cooperate or even to get the work done, so even changing the legislation to allow councils to make it easier, we still need to consider what agencies or what there is to manage people's mental conditions as well.

CHAIR: Thank you, and it was a very good point made by Mr Ackroyd. I will now move on to the second question, although I think we have answered a lot more than one question, which is the way we would like this to go, and we have probably already touched on the regulatory arrangements for clean-up of waste on private lands. Under the Local Government Act 1993 councils can only issue certain clean-up orders where they have previously issued a notice of intention to do so. How useful is the notice of intention, particularly where repeat offenders are concerned? I see Shannon McKiernan shaking his head. Would you like to start for us?

Mr McKIERNAN: It is really just a warning letter. If you need it to get done, get it done. For a food shop, if something is wrong you issue a food improvement notice and give them a period of time to comply with it. You can still have rights of appeal. It is just an extra layer of red tape really. If there is an issue and you have demonstrated it to be a problem, issue an order to rectify it. For a clean-up, you just issue a clean-up notice.

CHAIR: For clarity, you are saying that it is the first layer that adds 28 days to the process that should not be there?

Mr McKIERNAN: You could take 28 days off the process. You could issue a warning letter and then go straight to an order.

CHAIR: Do the people in the room think that is fair and just?

Mr LERANTGES: Reducing the process, if an officer makes a determination, I think it just justifies the determination. The notice gives someone an opportunity to make representation as to why it should not go to order. For an officer to make that determination, they have the evidence, they have made that decision and they are happy to process, that would save time. The other aspect is that when an outcome is achieved, like somebody said, 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, a capacity to maintain the land, so once 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.

CHAIR: From what you have said, and with my limited experience, if you have a property that has been through that and then comes before you again within a certain timeframe, say six months or 12 months, should there be something where you can go to the second step automatically, because you could have repeat offenders who know the system and three, four or five months later they mow their lawn.

Mr McKIERNAN: Yes, we become the reminder service for them to arrange a contractor to do the work, but hoarders and emergency 22A remain in effect for five years, so there is no reason why an order could not remain in effect for one year or something like that. The provisions are already there for the emergency 22A.

CHAIR: So you are saying bring it back to the Local Government Act in relation to the issue of orders?

Mr McKIERNAN: Yes, for certain types of things it could remain in effect for a year and that might resolve a fair bit, but at the moment the notice of intention 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."

Mr GILLIGAN: I have mixed feelings about notices of intention. They certainly add time to a process, and particularly with repeat offenders it is an added step, but it is important to note that in some cases the works that we are requiring people to do are quite significant. In some cases where we have people who might have been hoarding waste on a property, they have been doing so for an incredibly long time, and we are turning up saying, "You now need to do it." We still have some capacity to be flexible about how long we give them to comply and we might stage it over time, but given the complexity of some of those it really is important to make sure you are giving people an opportunity to comment on what you are proposing to require them to do, perhaps amend the timeframes—you know, "I want to keep this, but I want to get rid of that and I need a little bit longer before I can organise for that to be removed", that sort of discussion, and a notice of intention can be a useful process to ensure that they get that procedural fairness.

CHAIR: Mr Gilligan makes a good point on hoarding. I understand what he is saying and I think if there is mental illness it is justified, but in my time as a councillor I do not think I ever had a problem with hoarding; it was the people next door that literally had a pigsty and would not do anything about it, and the council's hands are tied. When you take hoarding out of the equation, do you think this is an extra layer of bureaucracy that ties council's hands? Is that fair or unfair?

Mr McKIERNAN: Hoarding is the only one that does not have a notice of intention, you can just go through an emergency 22A and put it in. That is probably the only one that you can actually not use a notice of intention for.

Mr GREEN: The thing that we cannot forget here is the right of natural justice. Notices of proposed orders [NOPOs] were put in specifically to provide people natural justice. Prevention notices under the Protection of the Environment Operations [POEO] Act built in an ability for natural justice whereas clean-up notices did not. Clean-up notices did not, under POEO, purely and simply because it was deemed then that if council thought that the issue was of such a significant risk then there needed to be immediate action taken. A couple of years ago there was a court case which set a legal precedent that said that even under POEO and clean-up notice, council did not provide natural justice to the recipient of that clean-up notice. By the way, that was not a Camden issue but it set a precedent just the same. Councils now are generally advised by their legal people to issue a draft clean-up notice, which once again gets back to the whole NOPO issue under the Local Government Act. So I think that the Local Government Act could easily be amended to have the notice of intention built into the order when it was finally issued, but I think that if you test it at court we have to make sure that we still preserve those rights of natural justice to the recipient.

CHAIR: We will never know what the judge was thinking, but do you think they came to their decision taking the Act into account that said you issue a notice? Do you think if the Act changed to take that out, natural justice would then have a different definition?

Mr GREEN: I think that when it gets to the court the magistrate will still look at whether or not the legislation provides natural justice. Whether council provides the natural justice or otherwise, it is still incumbent on the legislation to provide that natural justice.

Mr GILLIGAN: My recollection of that case was that while, generally speaking, clean-up notices are given following a pollution incident, if you find something spilt in a waterway you say, "I need that fixed straight away", and naturally the legislation is designed to smooth that process and allow you to get that clean-up effected as quickly as possible. In this particular case, as I recall, the council involved had been aware of the situation for quite some time and then acted without warning straight to a clean-up notice, and it was for that reason that the court formed the view that they had not afforded appropriate natural justice because if it had been going on for 12 months then what was another couple of weeks while due process was followed?

Mr ACKROYD: From my perspective, when you are dealing with people with mental health problems, some action will be put in place to clean up the premises, but it tends to be a one-off, it is not really sustained in the long term, and once you actually start having to issue new notices of intention then again that slows the whole process down. People should be afforded natural justice, but once you have actually been going down that track two or three times with the same person with the same mental health issues that have not been

fundamentally resolved, then to go through that process each time slows the process down and has an impact on local residents, neighbours, and in effect is serving no purpose but red tape.

Ms LENSON: To add to that, there are provisions and emergency orders that council can issue, so if it is critical issues we can do so under the POEO Act and also the Local Government Act. The notice of intention, whilst it is time consuming and the final outcomes are more costly to local government, the overall provision is still sound. The problem we have with repeat offenders and particularly associated with squalor and with hoarders is that the legal mechanisms do not actually give us the outcome. The legal provisions are there, but they do not actually give us the situation where our constituents, our residents that actually want the site cleaned up—that is not the outcome that is delivered through the legal mechanism, so we need to look at other mechanisms to assist councils to deliver those outcomes.

CHAIR: I think that is an overriding theme, that all councils feel hamstrung that they cannot deliver community expectation.

Mrs TANYA DAVIES: There is a bit of debate on each side as to whether to keep the issuing of the notice of intention in the process. Could that be resolved if the order given was an order for two years, so even if you have to keep the notice of intention in the process it would not perhaps kick in until two years in advance because the order is in place for an extended period of time longer than it currently is? Would that be an improvement to the current timeframes and the workload of councils?

Mr GREEN: Yes, I believe that that would significantly address a lot of our wishes in relation to the issue of a Notice of Proposed Order [NOPO]. The next step, obviously, is if council issues an order and it is not complied with and we then choose to issue a penalty infringement notice, if it reoccurs shortly thereafter, council is obliged to go through the whole process again. If council had to be satisfied within a certain time frame that that natural justice was satisfied, that would overcome a lot of problems.

CHAIR: That is a very good point.

Mr JAMIE PARKER: When a penalty infringement notice [PIN] is issued, if the problem continues, the council goes back to the beginning again; you cannot continue to issue PINs?

Mr GREEN: That is the advice that we have received, yes.

CHAIR: That makes a good point. Whether there be an application or whatever, council ticks the boxes very well, so why should this be any different? If it has dealt with an owner of a property and it has met all the criteria, and if the owner of that property is a repeat offender, in essence, the boxes have been ticked for that time period. As David may have touched on, it is the neighbour, the community, or the eyesore. It is a very good point. We will move on to the next question: Unsightly waste or overgrown vegetation on private land. Should councils have greater power to issue orders to clean up waste or overgrown vegetation on land where it is unsightly but does not create a health or environmental threat? If so, under what conditions? We do not want a carte blanche answer.

Mr GREEN: 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. If council is going to take that action, it should not ever get to the point of issuing a notice that it is not prepared to stand by and follow through because that waters down the whole essence of our legal structure. Council officers must have the evidence and the confidence to go forward to the fullest extent, if need be. If we have a burden of proof beyond reasonable doubt in our mind, then we have to stick by it.

What generally develops is that it becomes a whole neighbourhood issue—one person against another because their lawn is 150 millimetres high and is overgrown. Is there a harbourage for vermin? That terminology has been waning into the background of our legal structure for many years because it is very difficult to prove. We get people complaining because it is a harbourage for vermin—rats and snakes—in the middle of suburbia. It might be, but does it pose a significant risk to public health and safety? No, it does not, so we have got to keep a balance on that.

Mr GILLIGAN: To echo those comments from Geoff, 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? We have other pieces of legislation. Again the Protection of the Environment Operations Act [POEO] is an example. While councils can get involved in managing offensive noise, residents also have an avenue to go directly to a chamber magistrate and seek a noise abatement order from the court. That is an avenue that we encourage for low-level noise complaints that we simply do not have the resources to enforce. For example, minor domestic noise and barking dogs is an area that councils struggle to resource.

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 it 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.

Mr McKIERNAN: From the side, in relation to health, I think safety is the other aspect. 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 hardcore rules, you would be all over the shop, even within your own local government let alone across the State. The one thing that could be added is the safety aspect, such as bushfires. That is what most people ring up about. As I said earlier, we are using another tool to fix a different problem.

CHAIR: Shannon has made the point about consistency. Do you think that your staff can come under criticism unfairly because it is subjective? Are the three questions we have discussed too subjective? Do things need to be put in place? How often have we heard—and I say unfairly—thrown at a council officer, "It is only his opinion", or, "It is only her opinion"? Is that a problem?

Mr LERANTGES: We always base our decisions and our consistency on the wording of the Act. For example, with the "unsightly" situation, when you go to the orders of the Act, they give you a number of ways of dealing with it. Three out of the four means that the actual matter stays there and is just screened from view, from a public place. One of them is removing. Now, removing what? From sight? Relocating? Should it be removing and disposing? There are some limitations to the officer's ability to get a resolution to the expectations of the community. Should councils be involved in every single aspect when, at the moment, they are struggling with resources and regulatory work as well as with the compliance work—to the point of arbitrating taste?

CHAIR: It is hard. There is a community expectation that this will not change, that councils are involved, and, if in doubt, blame the council. It may be our role to make it easier for you to do that, if asked. I certainly agree.

Mr GILLIGAN: There is a lot of subjectivity and it comes back to the point that there is a lack of definition. You would find a lot more consistency in how councils around this table apply POEO than to how they apply the Local Government Act. There is ambiguity that will continue to drive different results. The other thing is that a lot of these matters do not get tested in court. In my view, very few of our local government orders end up in court, almost for that reason. When we are taking some of the serious matters forward, our solicitors encourage us not to simply go in and give effect to an order that might involve \$30,000 worth of work, it is to get a court order before you do that. We do not necessarily do that with other pieces of legislation because we have far more confidence that we have made the right determination based on clear statutory provisions than we do in this case.

CHAIR: Geoff made that point a little earlier. Can that then influence your decision to not go down that path because of the uncertainty of whether you will get a good result at the end of it or whether it will be wasted council resources?

Mr JAMIE PARKER: It is clear to me that there needs to be some greater clarity in the Local Government Act. That is something the Committee will consider, but that is from my perspective, and I have learned that from my involvement in local government over the years. The "unsightly" issue is an important one. I like the point that was raised that councils do not want to be the pretty police. The last thing the State should be doing is putting more pressure on local government to police everything that is possible to be policed. There needs to be a balance—for derelict buildings, in particular. In my electorate in the inner west there are quite a few derelict buildings that are not necessarily a health and safety risk per se, but they are a major eyesore, particularly in residential retail strips, because it looks like the area is unkempt. We need to be considering

things like that. Under this question I want to ask about the issue of overgrown vegetation and bushfire safety. That seems to be a valid issue. What is the current situation for someone who has bush growing near them and they want it cut down or thinned out? What do councils do if the Local Government Act does not provide a direct solution? Tell us the steps that are taken so that we can get an understanding and whether that process needs reform?

Mr McKIERNAN: I can only say from the point of view of Gosford City Council. We are not fire experts, so if it is a fire-related issue we refer it to the Rural Fire Service. During the bushfire season, the Rural Fire Service might issue a hazard reduction—I am not sure of the exact terms, but it might give an order to reduce it. Council only deals with the vermin-related issues because we are trained as an environmental health officer, but we are not trained in bushfire techniques.

Mr JAMIE PARKER: I am not proposing we give councils something else to do, but councils are saying it is a Rural Fire Service issue, it is not for us to deal with?

Mr McKIERNAN: If it is an issue. I have a current case where the Rural Fire Service has issued an order and the council has issued an order and the lady has challenged which one takes effect. At this stage we cannot even determine which one takes effect. During a bushfire season, I would guess it would be that, but even those tricky terms are coming out at the moment. When someone says, "I am not going to clean this up because I think it is fine", and two regulatory agencies are addressing it, the next issue is that even if council wants to enforce it but is not allowed entry, it has to go through the courts.

Mr JAMIE PARKER: That is the next question.

CHAIR: I am going off memory, but it can go the other way. The Rural Fire Service is absolutely outstanding. I remember that once, in Camden, the council wrote to the Rural Fire Service, hoping to get a response, and they wrote back to the resident and said, "We do not think it is too bad." Clearly it was not bushfire hazard, but when you are relying on a third party to intervene, both parties need to be singing the same tune.

Mr McKIERNAN: In all honesty, from the point of view of Gosford City Council, it does not have that many resources. During peak times, they do, but during off times—the local government does not have the tools to get there, but it says that they do not have the tools to get to every overgrown property. That is an issue that has arisen.

Mr RICHARDSON: It is certainly an issue that needs some clarity. What we find is that our residents shop around for an answer and we will receive referrals from the Rural Fire Service, saying that this person has come to them and said, "We have bushfire hazard"; they will inspect it and say whether it is or not. It will then come back to council and they say, "You need to do something about it." Purely it is based on being unsightly, but all these resources are being utilised and there is no legislative tool to deal with the issue.

CHAIR: That is similar to the example I was using where that has occurred.

Mr SCORGIE: We have touched on bushfires. Another item that we have not addressed is endangered ecological communities, which can also be overgrown land. The council does not have the legislative responsibility to issue a notice that impacts upon an endangered ecological community. The council may determine it is overgrown and is a harbourage for vermin, but we then have to send that through to the Office of Environment and Heritage for them to make that determination. Like bushfire, council cannot make that decision on its own.

CHAIR: That is a very good point, again, across agencies. Thank you, John.

Ms CARMEL TEBBUTT: A number of people have raised the need for greater clarity in the Local Government Act and I can understand that. How far should that go? Is it useful to have some ambiguity because it provides councils with more flexibility to deal with situations that are not always black and white? I am still not clear whether it is possible to set rules that would enable councils to respond to issues of overgrown vegetation without necessarily becoming arbiters of good taste? Is that possible or, once it comes to overgrown vegetation, are councils put in an invidious position where it cannot possibly win because it has to decide whether someone's lawn is overgrown or not?

Mr GILLIGAN: I think there is capacity to still operate in that space without being arbiters of good taste. There are some challenges there—for example, a car parked in a front yard tends not to draw attention if it is a nice new car; if they are an older car they might. So there is some subjectivity there but I think council officers have enough discretion to be able to manage that. In relation to your other point, you do not want the legislation to be too restrictive. Perhaps one avenue that could be considered is to have guidelines that are called up by regulation that set some basic standards that council officers can have regard to in determining whether a breach occurs under the Act. So the Act itself can remain a higher level document and you can have the department adjusting some guidelines that sit behind it from time to time to get the level right.

Mr GREEN: I think Adam's suggestion about some guidelines would be beneficial. I think we have got to be careful that we don't remove local government's discretion because there are a lot of different circumstances that council officers face day in, day out. If you hamstring us too much then we are forced to take action. So we have got to strike a balance there. So if I could just encourage members to give that some serious consideration.

CHAIR: It is a very good point. Again I go back to David's comments; it brings that community and social aspect in. It sounds as if you would like the ability to do something but not be forced to go down that path. Everything is different; everything on its merits.

(Short adjournment)

CHAIR: The next question concerns council's right of entry to carry out a clean-up order. How effective is the current process requiring councils to obtain a warrant to enter residential property to carry out a clean-up order? Could it be improved? And if so how?

Mr EVANS: We have received some recent legal advice in terms of obtaining a warrant. By way of background, we had a hoarder on a property that was fairly well fenced in and the neighbours were complaining about the amount of rubbish. A *Current Affair* came in and took over the fence photos et cetera. We wanted to get into the property. The advice we received was—can I read this small paragraph that is associated with it?

CHAIR: Please do.

Mr EVANS: "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." This is a circular argument; a catch 22.

Document tabled.

CHAIR: Are other councils finding the same issue?

Mr GILLIGAN: Yes, we have got some pieces of legislation that allow us access to premises at reasonable times but one of the key ambiguities that exists here is about a provision that says you can only enter that part of premises used for residential purposes with permission or a warrant. The ambiguity is what that really means. Does it mean the bit where you sleep? Does it mean the habitable rooms? Or does it mean the residential backyard? A conservative view is that it includes the residential backyard—you are not using it for industrial or commercial purposes so therefore it must be residential. Some greater clarity which would provide appropriate protection for residents to ensure that they have not got council officers wandering through their bedrooms but allows council officers reasonable access to the backyard to assess not only things like overgrown land but also things like swimming pool compliance and so forth would be much easier. We have had no experience with warrants for Local Government Act matters but for companion animal matters we have had some success with that. It would certainly be far more efficient if we could avoid the need for warrants unless we wish to enter an actual dwelling.

Ms LENSON: In areas of improvement potentially we could strengthen the power of entry for council officers, which would not make it necessary to actually get a warrant. That would be advantageous. But around that we also need, as was indicated, better definition of what "residential" is. Our legal advice is that "residential" is the whole property inclusive of the curtilage. The question then arises as to what constitutes the "curtilage". Council officers often need to undertake inspections and are not granted permission by the property

owner, so this is also a time delay. Local courts are often not familiar with some of the requirements or provisions of what local government is requesting and they may not actually issue the warrant also.

CHAIR: Firstly, legal advice in anything is challengeable. For example, we have had two councils with potentially differing advice, and that is the norm. Secondly, does there need to be something in place that allows councils that ability without needing to apply for a warrant?

Mr McKIERNAN: When the emergency order 22A is issued it can remain in effect for five years and there is no right of appeal from the person. But it is only effective if you can enter to actually take the waste out. From a community's expectation you say: We have issued an emergency order and they have got no right of appeal. We can fix this; we can recover everything for the next five years. But unless you have actually got the permission of the person who has got some serious issues associated with it, and you have got to deal with that, you cannot go in and clean-up the work, yet you have invested a lot of time and energy and you have got waste contractors on standby. But at the end of the day you can turn up that morning and they can say, "No, go away." We have not challenged it through the warrant process yet but if that one piece could be allowed it would certainly help.

CHAIR: That goes back to what Deb said: You potentially need something in place to stop the person who you are impacting upon, who clearly may not be a fan of councils, the ability of saying, "Go away." I am guessing in the past you have actually had people agree to things and then on the day say, "Sorry, we have changed our mind."

Mr McKIERNAN: And they know that.

Mr JAMIE PARKER: How do we do that? It has been suggested that getting a warrant is painful and can be difficult. Is there another power we can have? What power would that be? How would that be managed and how would we protect privacy and people's property rights and other things to make sure that it was not abused by councils?

Ms LENSON: I think if you could define what "residential" means so that council officers are very clear as to what component of the property they are able to enter. We are able to enter rural lands but not residential lands. So it makes us hamstrung there.

Mr JAMIE PARKER: What would you suggest the definition should be?

Ms LENSON: The immediate house and perhaps the immediate surrounds, inclusive of the garage or shed. But generally for councils if it is overgrown, particularly with hoarders, you need to enter the front and backyards. You may not be able to see because of fencing there or because of obstruction. But you cannot enter the property without the permission of the landowner, and certainly their house I would suggest we would not endeavour to enter. But even for derelict buildings, if you cannot undertake an inspection you cannot determine the state of the building.

Mr GREEN: I have been around local government long enough to have served under the 1919 Act—

Mr JAMIE PARKER: That long!

Mr GREEN: That act used to talk about the "residential portion of a building", and that is all the clarity this issue needs. If you talk about the residential portion of a building, whether or not that residential portion of a building is in a factory unit, we have to do that with the consent of the owner or the occupier. Subsequent amendments to the act removed that phrase "residential portion of a building" so now it just refers to "residential". Therein lies the dilemma. It is about being careful with revisions of legislation, and not revising legislation without seriously thinking about the full ramifications. We also have legal advice that says that the council does not have the power to enter the residential area, and that includes the yard as well. We do have powers of entry under the Local Government Act where we can issue notices of entry but, once again, we are constrained by that interpretation.

Mr GILLIGAN: I echo those views. You can still have appropriate protections in place, like giving notices of entry, that give people due warning and that protect their privacy. Those are the provisions that protect the part actually used within a dwelling. But I think there is some ambiguity that could be clarified around when you are giving effect to an order, again regardless of the circumstances. If you have served a

notice, you have served an order, and then you have said, "You are now not compliant and we are coming in next week with a contractor to remove the waste or mow the grass," then that should not require a warrant or have any ambiguity about it. It should be quite clear that we can go in and do that work.

CHAIR: Would anybody else like to comment on that?

Mr THOMAS GEORGE: If it is about fixing up the residence or anything to do with it then it would apply to the whole block, would it not? You would want to not only get into the house but also have a look at the whole property.

CHAIR: You would be looking within the property boundaries—within the fence basically.

Mr McKIERNAN: Normally you do not want to go into the house; it is generally about the outside area. That is the key.

CHAIR: But, as Ms Lenson has said, there is an issue with derelict buildings—and I know that the member for Balmain and the member for Marrickville have brought this up as a potential issue in cities—when they are privately owned.

Mr GILLIGAN: In that respect, because the legislation talks about the part of premises used for residential purposes, you could actually have misuse of a building that compromises our powers. So, for example, a vacant warehouse that is derelict may have some squatters in it. While obviously the owner is not likely to challenge you on this because they are going to want to resolve that issue, there is a capacity to say, "Since there is a squatter in there the property is now being used for residential purposes, albeit unlawfully." That would compromise any evidence that you might obtain through an inspection.

CHAIR: There being no further comments on this area we will move on to the issue of the ability of councils to recover costs for carrying out a clean-up order. What options are available for councils to recoup clean-up costs? Should further options exist? If so, what should those be?

Mr GREEN: I would go so far as to say that councils are generally reluctant to burden the rest of the community with the cost of cleaning up a person's property or a person's waste. It is almost a last resort, primarily because councils have no confidence that if it goes to court, for example, then we are going to get awarded those costs. We cannot lodge those costs as a debt against the property. The owner of the property may in actual fact not be financially capable of paying the costs in the first place. So it leaves council with that element of doubt as to which is the right course of action here.

There are all those burden of proof requirements. If you have already gone down that path and are quite satisfied that it is the right thing to do then, once again, you revisit that community good—that is, whether or not it is in the interests of the broader public, whether or not it is a neighbourhood dispute of one resident against another or whether or not it is a perceived risk to public health. The Protection of the Environment Operations Act is quite clear: we have compliance cost notices. That gives us the ability to recover those costs. It is quite clear. The Local Government Act is not the same—it is open to interpretation and legal challenge.

CHAIR: There is that common thread again of the Protection of the Environment Operations Act and the Local Government Act. Under one you can achieve outcomes but under the other you struggle because of the unknown factors and the unclear definitions.

Mr GILLIGAN: Our legal advice is that when we have a local government order that involve significant costs then we are well advised to take the matter to court and seek a court order to basically reinforce our position. I am thinking of examples like a fire-damaged dwelling where we have asbestos issues and so forth. The costs to go in and complete that work might be \$50,000. That is a significant risk to expose ratepayers to if we do not have confidence in that original order. It is our submission that if an order has been served and the appeal period has passed without an appeal being lodged then the judicial system should take notice of council's order. So the onus essentially would be back on the owner to utilise the appeal period if they do not think the council's order is valid—rather than simply ignoring the order and then, after we go in and do the work, challenging it at the time when we are seeking to enforce it. That would give us some more confidence about our ability to go and invest significant ratepayer funds in a clean-up—rather than having to incur a further cost of going to court to obtain that confidence.

Mr McKIERNAN: This is not so much on the clean-up costs, but another thing to do with just managing resources. The Protection of the Environment Operations Act provides the ability for councils to recover some administration costs and so forth. Issuing those notices, which are not so much fines, means that people do not usually do it again. Yet the notice of intention and order process takes up a lot of time and energy. So from a priority point of view you have two jobs, and you would do the one that you are going to be able to recover costs for first. So even if there was an administrative process associated with the Local Government Act measures, it allows you to provide more resources because you know you are going to be able to cover your officers' time and also there is a small punitive cost to the person who is constantly abusing the system. At the moment it costs them nothing—they can take it right to the end of the process and then do it—yet the council has expended a lot in costs in that process. I just wanted to add that point.

Mr JAMIE PARKER: That is an important point. I think it is important that we recognise the costs imposed on local government and opportunities for imposing at least some cost recovery and preventing people from exploiting and manipulating the system. Can you outline the costs associated with the Local Government Act? I understand there are no costs.

Mr McKIERNAN: Yes, there are no costs.

Mr JAMIE PARKER: As opposed to the administrative charge under the Protection of the Environment Operations Act.

Mr McKIERNAN: That is \$466.

Mr JAMIE PARKER: Everyone at the witness table knew that answer!

Mr McKIERNAN: So when you issue a clean-up notice it comes with that administrative cost and the council still has to do the work. If they do not comply at the end of that then you may issue a penalty infringement notice or something like that. So you know you are going to outlay some resources and face those costs.

Mr JAMIE PARKER: So in your experience that relatively small charge actually influences the future behaviour of the person who the council issues the notice to?

Mr McKIERNAN: Yes, and as a manager within that section you can allocate priorities knowing that it is going to be paid for. You also have the ability to waive it if a council does not want to charge that fee. I think when they initially get the bill they say to themselves, "My goodness, what is that for?" And then the person who received the bill will ring up the council. If they just get a notice of intention in the mail then they usually just chuck it into the bin and wait for the order to come. So I think getting an actual invoice makes recipients think to themselves, "I had better find out what this is all about." Then the council can engage that person through the process. Whether or not the council decides to waive the fee is a business decision.

CHAIR: It comes back to one of our first points. I am guessing that, for repeat offenders, if you get a \$466 bill then you are going to think twice about whether you want to put yourself in that position again in two months' time and get another \$466 fine. That is very good point.

Mr GILLIGAN: I have two very quick points on that. Firstly, those administrative fees can actually provide greater incentive to do the work before you even serve the notices. So if you are going out and doing the inspection then you can say, "How about you give me an undertaking to do this work by next week. If I have to go further and serve a notice then it is going to come with an invoice for \$466." We may not even need to go through doing that paperwork. So that is a great tool. The flipside of course is that where we are dealing with people with mental health issues, the aged or the infirm who have a genuine difficulty in getting work done then it is always going to be like drawing blood from a stone to get the work done. If anything, that \$466 might be better spent on getting Jim's Mowing in rather than paying us—because it is not going to get the work done.

CHAIR: And, as Mr Green said earlier on, the Government should never take away the discretion of councils to make those decisions as to whether or not it is a case of someone who is genuinely infirm.

Mr GREEN: I would like to reaffirm what Mr Gilligan said there. The thing is that with the clean-up notice under the Protection of the Environment Operations Act you have 72 hours to confirm it in writing. So a council officer will go out to a property and say, "This needs to happen; and you have 72 hours to do it

otherwise we will issue a clean-up direction and that comes with an administration fee." It is a mandatory fee under the act. Council officers are not normally given the discretion to waive that on-site. A person must make representations to have that fee waived. There is also a penalty involved if you refuse to pay that administration fee—I think it is \$1,000 or \$750; I am not quite sure which. So that penalty fee is on top of the administration fee.

Unfortunately under the Local Government Act—because of the multitude of letters, the Notices of Proposed Order [NOPOs] and the orders involved—it becomes a bit like paper warfare. People start to disregard correspondence from the council. So it is really frustrating because you are going nowhere and you are just duplicating the process. We are all tight on resources and we cannot afford that. The flipside of that is that with a notice under the Protection of the Environment Operations Act the officer must be of a mind that they have the substantive proof. In my experience, they tend to rush in—particularly junior officers—with a Notice of Proposed Order [NOPO] and stuff under Local Government Act when it is a little doubtful as to whether they have the burden of proof. So we need to try to balance those two expectations.

Mr ACKROYD: I would like to make a couple of points from a community perspective. We have entered into agreements to recover costs for clean-ups. Where you have family who are around and are prepared to get involved then you can enter into agreements with those families and then recover the costs once the sale of the property has occurred. We have done that on a couple of occasions. For me, again, the issue is about the ongoing maintenance in terms of squalor and hoarding. In many ways, I do not want to take away from the need for families to get involved. Families are the most powerful way of actually having an impact. If you can motivate families to get involved and actually assist people in overcoming some of those squalor issues, and have regular visits from family members, then that is the best way to actually bring about change.

I will turn this around a little bit. Why can we not simply recover the costs from the sale of the property without having to go through legal agreements with families once we have actually made that decision and we have come to a point where we know that people are living in severe squalor, we know that there are fire hazards and we know that there are significant mental health problems? We do not want to turn people into criminals. Again, in terms of serving notices we turn them into criminals when they fail to comply with those notices. We could simply recover the costs and then arrange for an organisation to go in and do the maintenance work if families will not get involved. At the same time the actual costs coming from the asset, which will be for sale at some point in time, gives family incentives. If they do not step up to the mark then we simply recover the cost from the property sale

CHAIR: Obviously, you are not going to want to sell the house to recover the costs. There is no expectation of that. What if the house does not come on the market for 20 years?

Mr ACKROYD: Yes, so be it.

CHAIR: With interest and all those things? I know that if you sell a property you can get rates eventually. That is something you would say we should perhaps look at?

Mr ACKROYD: Yes.

Mr McKIERNAN: We have probably done about five hoarders through the emergency provisions through assistance with the families. The two that we have not got are the ones that have no family and just do not let you in. With the emergency order we send out information on financial hardship and say that if you fill out these forms you are not going to have to pay it up-front, we will pay it and cover the costs at the end of the day. You can do that with a good process. I guess it comes down to when they have got no family and they are in denial and they are obstructionist.

CHAIR: It is food for thought. Thank you for that.

Mr JAMIE PARKER: What dollar value are we talking about for clean-ups? Is it \$1,000 or \$50,000? If we are going to consider applying these costs in some other way it would be useful for us to have a sense of how much these things cost.

Mr ACKROYD: In one instance that I dealt with it was in the region of \$20,000 to clean the place up. Some of these places are where health staff will refuse to go into premises because of workers health and safety

issues. Yet somebody has to go in and actually make a change, make a difference. Some of them are squalid beyond belief.

CHAIR: And there are other examples that could be 10 times that amount. There are some major examples out there.

Ms CENEDESE: Just to echo what has been raised in that, there is a need to clarify in the Local Government Act that if a landowner does fail to undertake the works or adequate clean-up measures then council can undertake those works and claim it as a debt against the property. Whilst some councils have found ways around it or ways to negotiate those measures I think it is important that the Act actually provides for that so that there is no ambiguity.

CHAIR: Then with the debt against the property when is the collection of that debt down the track?

Mr LERANTGES: I wanted to echo what was just said. One of the issues that we are going to discuss shortly is hoarding. We recently had a circumstance where we got involved with a premise, we got a quote and it was \$50,000. That is a significant cost to council. You will see from our experience that we work to the nth degree to get an outcome and work with the actual owners, but of consideration was the significant cost to council. That occurs particularly where the property may not be sold for some time and because we are inner city and we have a number of such premises. If there is clarification and a way forward then by adding up the number of premises that council can get involved with, all of a sudden it puts significant costs on the ratepayers. I just wanted to raise that for consideration.

CHAIR: It goes back to things we have said before. Does that then give you a mindset that we had better not go down this path because we do not have the \$50,000 for two or three instances?

Mr LERANTGES: When we discuss hoarders I will go through an example that talks to that.

Ms LENSON: I believe for our council there is a reluctance to undertake clean-up work as a council because of the cost impost and that cost then is put, of course, onto our community. The issue of the clean-up is only one component. It is physical as in we can see that cost, we can get a contractor or a quote to do that. But the cost that council incurs is the time that it takes council officers. That period of time is lengthy and very costly overall, which does not equate to a cost that is transferred to the offender. Perhaps in some circumstances State agencies may be able to support with funding say for orphan waste that we can do under the environment trust. There might be mechanisms and hardship cases where we need to actually gain some support to assist with that clean-up. I would also say that we need to look at how or if we are able to put the costs against the property; that might be one mechanism for local government to recoup some of those costs.

Mr ACKROYD: I guess my question then is if councils are not going to do anything because of the costs that are involved, who is? We have people here living in extreme squalor. In some instances health authorities will actually refuse to enter premises because of workers health and safety issues. We know that people are living in these conditions. My question then is: Is it acceptable for us to simply turn a blind eye to those when we then get newspaper headlines saying that this was an accident waiting to happen? If it was an accident waiting to happen in a workplace we would be fined and yet we turn a blind eye to it. That issue of turning a blind eye to these issues is simply not acceptable.

Mr LERANTGES: I have to say it is not a matter of turning a blind eye for the wrong reasons but the staff who get involved, for example environmental health officers, what experience do they have outside of applying an approach under the Act? In terms of managing people's behaviour, there needs to be a support mechanism to provide that. Again, I will talk specifically to hoarding and what we have experienced with it but when you think about it the approach that council has of applying the Act, you could call it punitive. We want an outcome one way or another. Managing everything in between, considering costs plus the process that is involved requires some specialist knowledge and some specialist assistance. We do follow a process but it would be good if there were avenues available to council officers to be able to get a desired outcome.

CHAIR: Absolutely. I think that point has been made abundantly clear. We will move on to the next question, which concerns penalties for non-compliance with a clean-up order. Are penalties for non-compliance with clean-up orders set at an appropriate level?

Ms LENSON: 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. If there was some level of consistency, the application of those two pieces of legislation might be utilised. 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 up-front with the community we may get higher levels of compliance.

CHAIR: That is in all of your submissions. Are we all basically happy with what Deb Lenson has said? I think that has summed it up very well. I am concerned about the time, so I will move on.

Ms CENEDESE: Just to add to that though, I totally agree with what Deb Lenson has said but I would also suggest one provision that the Protection of the Environment Act has is penalties for continuing offences. Where the work is not undertaken, 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.

CHAIR: We are going to move on to hoarding and squalor. The next question relates to maintaining premises in a clean state following clean-up. What options currently exist to ensure premises are maintained in a clean state following clean-up? Could there be improvements in this area? If so, how?

Mr LERANTGES: We have recently had an experience that I am happy to talk about regarding a premise that was hoarding for 20 years. The first thing I want to talk to is the definition of waste as opposed to materials and items. Waste is defined in the Local Government Act; there is nothing about materials or items. A lot of what the hoarders have is more items and material as opposed to waste. But the thing that makes them hoarders is, obviously, the volume of it. When you look at getting an outcome, it relies on cooperation of the owners. That is the key thing. If there is resistance it makes our job harder. Going through the process of serving an order under the Local Government Act knowing that these people are not in a position to comply with the directions of it is something that we have considered as well.

We found that in this particular circumstance trying to work with the owners to get an outcome was very difficult because the owners were not cooperative. While they made attempts to remove some of the items, it was very short-term and it would just filter back into the property. It was very time consuming and very resource heavy to try to get the property cleaned up. We did not manage it. Unfortunately, there was a fire and that caused another set of circumstances to involve. The owners themselves nearly perished in that fire but the fire brigade said that by nature of the volume that was on there the fire was not as bad as it could have been.

After that they left the property, they went to a hospital because the lady suffered some burns and we were then negotiating with the owner of the property to get a way forward, to get an outcome. In this circumstance the house was burnt, items were burnt and the house was damaged but we could not go in there to make an assessment because of the danger to the officers and the risk involved in accessing the property. The burden went back on the owner through council to try and get an outcome. He did not speak English very well. We sat down, we started an initial conversation with him and then we got professionals involved or people that could help us get an outcome. That involved getting Legal Aid. The Catholic Church has a squalor and hoarding—

Mr ACKROYD: It is CatholicCare.

Mr LERANTGES: We got CatholicCare and we got an interpreter as well. We walked through a process where we met on site, had a look and we worked with the occupier to try to get an outcome. In other words, we are managing a mental and emotional state. Previously when we were speaking with him about getting an outcome he went so far as to say, "If I do this I'll kill myself." So there was that self-harm aspect to it. Added to that, we were managing the expectations of people who lived in close proximity to it.

It was a very complex manner in which to get an outcome through the Local Government Act where we did not identify waste on the premises. I have got photos that I can leave to show you if you would like. It was more defined as articles or materials outside of waste. There was no impact—there was very little odour that came from it that one could say, "Right, that gives me cause to now take action." We ended up getting legal advice and serving a notice under the Local Government Act claiming a fire load. That is what we pursued and, ironically, that is what occurred.

CHAIR: In summation, Mr Lerantges: You see inadequacy in the lead-up to the incident in which council felt powerless to deal with that specific incident. Then post the fire you again felt your hands were tied

and council did not have the ability to undertake a number of clean-up and safety procedures. You felt hamstrung from the outset of the whole process in relation to hoarding, because of the definition.

Mr LERANTGES: It was like that but also managing his mental state was very important as well. That is why we got other agencies involved that had experience in such matters to get an outcome. What we were negotiating with him, firstly, was whether the house was livable and what was his capacity to rebuild and do what he needed to do? There was none. If council was considering doing the work, we were looking at negotiating a mortgage with him that he would take out to pay for the costs. That was something on which we were working through Legal Aid and through the other agencies as a way forward to get action going on that.

CHAIR: I want to emphasise that time-wise we have a number of things to get through. We will all have hoarding stories but can we get a consensus? One issue is: What options currently exist to ensure premises are maintained in a clean state following the clean-up? Is there consensus that there are not the options? It goes back to our first question. I think Tanya may have asked whether we need to put a time frame or look at putting a time frame once a hoarding incident has been addressed. Do we need that approval, for want of a better word, to be on that property for a certain amount of time?

Mr LERANTGES: Again it comes down to the capacity of the person who is able to deal with it. For officers attending the hoarding and squalor conference in 2011 the unanimous consensus was that there was nothing to do with enforcement or outcomes. It is managing and helping these people's emotional and mental state.

CHAIR: Absolutely.

Mr LERANTGES: We are very cognisant of that.

CHAIR: You make that point very clear, thank you.

Ms CLARKE: I just want to point out, along the same lines as George said, we are talking about the Local Government Act order 21, which is unsafe/unhealthy premises. That is normally what we talk about with orders and it is items, like George has mentioned. There is not anything under that. Under a 22A order we are referring to waste, which is defined under the Local Government Act, and there is a time frame of five years. We can have the order in place for five years. But there is not anything under the Local Government Act order 21, and I do not know about other councils but that is definitely the one we use the most when it comes to hoarders.

Mr GILLIGAN: Because it does not require you to define waste, so it is more holistic.

Ms CLARKE: Right.

Mr ACKROYD: The issue for me again though is: Who is going to do it? We know when we go into these places that the people who are in there will not be the people who will maintain the properties, yet there are really very few options in terms of providing that support on a persistent basis to actually make a difference in terms of the properties. Council staff do not have those skills, least of all the majority around this table who are coming from a compliance perspective, but also from a community services perspective within councils. We do not employ caseworkers. The casework staff who need to visit these people and actually give that support to make a real difference to people's lives are really State Government employees, and they are the people who I think need to stand up and actually start doing some of the work as well.

CHAIR: I will take that on board and that will be noted by the Committee, thank you for that.

Ms LENSON: I think David just covered that. Certainly there is case management and estate agency support. The other thing with community services is that the participation of the potential offender is voluntary. That can be problematic in that they may refuse all of that assistance and the council is still left with the issue, but certainly councils are not resourced and do not have the expertise in relation to some of the requirements and the mental health issues or the other issues associated with hoarding and squalor.

Mr McKIERNAN: We have probably done about five with the order 22A and even in that five-year period, we have gone back three or four times and cleaned them up, and that is even with the assistance. I think the best idea I have heard today was similar to the environmental trusts and some sort of quarter trusts for those

ongoing costs if you have an ongoing thing. We paid them for those four or five and we have done a budget for that, but they keep coming back despite all our efforts.

CHAIR: Stop me or correct me, but the very clear message from local government is, quite obviously, that hoarding is not a local government stand-alone issue. It is across-the-board. You need and are asking for different levels of government and different agency help in assessing hoarding situations. Basically, we have answered the next question. If you agree, we will move on to the definition of waste. I think Nicola gave a very good take on that. Under section 21 of the Local Government Act, there is no definition of items or materials. George touched on that very well. Are you asking us or suggesting that with 22A you have a clear definition of waste, but with 21 you have no definition of items and material and you believe you need one.

Mr EVANS: Correct.

Mr GILLIGAN: I will just briefly add that there is potential for the reversal of the onus of proof around some of that whereby in proceedings that arise from these matters you put the onus back on the owner to demonstrate that something is not waste rather than the council having to establish that it is. The old saying that one man's trash is another man's treasure is very subjective, but if you have a process and some guidelines, that will allow council to make a determination. I would also encourage guidelines or prescribed limits for certain items. Having a car in the backyard is not particularly unusual. Having 20 or 30 or in some cases, seriously, 50 vehicles in a backyard clearly is not normal.

Mr THOMAS GEORGE: On top of each other.

Mr GILLIGAN: It would be good having some guidelines established that say it is okay to have a couple, but you have gone over and above some prescribed limits. In relation to many of the items we are dealing with, it is not actually about the item but about how many of the things you have.

CHAIR: That is an exceptional point, and it is a common theme within local government that there is a lot of subjectivity. With that goes Sutherland shire, through no fault of its own, possibly seeing exactly the same incident differently from Newcastle, depending on who is doing it, and differently from Camden or what have you. But then going back to Geoff's point of view, we need the fine line or the balance between giving those guidelines but also not taking away the ability to be compassionate and to work with other agencies or what have you. Without dwelling on that point, it is very clear from you guys you would like a definition or like something to deal with items and material. I think Adam made an exceptional point, which Thomas just touched on, that in a house environment you would expect to see two cars out the front that you drive to work in, not 15 out the back that are being worked on.

Mr THOMAS GEORGE: That are stacked on top of each other.

CHAIR: I think that happens regularly in Lismore.

Ms LENSON: I would add that perhaps also with those guidelines not only just the definitions but a time frame of how long or the duration that material has been on the property. We are looking at some properties that have had materials and an accumulation of materials or an accumulation of waste for over a decade. Again, that might be that person's treasure but the community sees that as waste.

CHAIR: Just quickly in relation to that decade, have they had an instruction to clean up? Had they been through that process and it has just re-accumulated, or in some instances have they not been through that process?

Ms LENSON: It can be in both circumstances.

CHAIR: Again we come back to this: If the properties come to the attention of the local authority, that property has something over it for a specified period to ensure that it does not fall into that state of ill-repair, at least during that period. That point has been taken.

Mr THOMAS GEORGE: Mr Chairman, we have three more areas to cover and less than 30 minutes. Rather than run out of time, we are conscious of that?

CHAIR: Absolutely. I just was not going to give you a lunch break, and I had not told you that.

Mr THOMAS GEORGE: In that case, we now have 35 minutes left.

CHAIR: We move on to non-regulatory approaches to hoarding. What possible non-regulatory approaches are there to resolving the issue of hoarding? Some submitters have argued mental health and assistance for hoarders should be mandatory. Do roundtable participants agree? If so, who would provide this assistance? What possible non-regulatory approaches are there to resolving the issue?

Mr ACKROYD: I guess this is my big area. Within Sutherland we are working on a memorandum of understanding but I think you do have to understand the complexity of the community networks that are actually involved with people and who is the best person to get in at one time. With this memorandum of understanding we are working between the hospital and the mental health units within the hospitals. We are working with Catholic Community Services in terms of CatholicCare, which is an organisation that has been funded to undertake some works and work around squalor and hoarding. They are an organisation that is also providing education and in-training for people to better respond to issues of squalor and hoarding. We are working with the Benevolent Society, which again is an organisation that has been specifically funded to put in some trials to work out how we can better respond to squalor and hoarding.

Housing NSW is often the alternative housing provider for people who are living in squalor. We include ourselves and a number of other organisations who do get involved, such as our own local community-based organisations who are very limited in their capacity to respond but in many ways have the best relationships at times with local communities. Another part of the service network is the police and the police is another component that is often caught up in these matters with very little capacity to expand. But, again, like councils they are often the last resort that people will complain to. Then we are all running around trying to get a joined-up solution to meeting the needs of the local resident, but not just the local resident; it is also the people who are surrounding those people.

From my perspective the issue of squalor and hoarding is certainly not confined to the individual. The fact is that 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 neighbours. When people leave the site of the squalor and hoarding, neighbours then come into interaction with those people and potentially that results in some issues and some fights between people. People who have never been involved with the police potentially become involved in assaults and in escalating situations. There is a whole range of reasons why we need to get involved in a much earlier stage rather than leaving things until things really escalate out of control, result in local conflicts and then things really do start escalating and place people in danger, not only in the properties but let us say outside.

Another issue for me is the need for persistence. We are dealing with people who have mental health problems, many of whom are frail and aged and may be suffering from early signs of dementia and really have very little capacity to respond to the notices that have been served. We need a joined-up solution across government to put in resources that will enable people to reside safely in their own homes and, if that is not possible, then look at the alternatives for placing them into other residential opportunities, really. Persistence is a big thing for me. We will often go into properties and get things cleaned up but within one or two years you can see again that deterioration taking place. It is not unusual to go through what we call our community quest management system and go back over 20 years to track these issues through on a regular basis.

We are simply not delivering the outcomes to make a change and put in a circuit breaker to address the presenting issues as opposed to dealing with the issue that is in front of us. I think we need to get these sorts of agreements in place and then also put some weight behind these agreements so that the memorandums of understanding have some weight and make people participate from hospitals, social work areas, the police and all of those organisations, such as the Benevolent Society. Some of this is related to funding in terms of getting the resources to those organisations.

CHAIR: The point has been made very clearly, thank you. We will have CatholicCare in next week and some of the organisations you have referred to. I think we can sum up and move on. Regulatory or non-regulatory, this also is not just for local government. It is across the community, other levels of government, local government, community groups and charity organisations and it is bringing in everybody involved.

Mr ACKROYD: That is right.

CHAIR: We will move on. Just remember that it is a huge issue. We have all your submissions and we have the ability to seek out individuals after this inquiry and ask for more information, and we may well go down that path. Thank you very much for that, David. In relation to clandestine drug laboratories, are councils the appropriate bodies to clean up potentially contaminated properties used as clandestine drug laboratories after police have concluded their investigations? In what ways, if any, could legislation on this issue be improved? What are the issues around property owners whose premises have been used to house illegal drug laboratories?

Ms McGURRAN: Just quickly, because some of the issues are the same as what we have spoken about earlier, in brief, our position is that councils are not the appropriate bodies to be cleaning up drug labs. We receive notification from police often at the conclusion of their investigation and, similar to what has been raised before, the skill level of council officers, of health officers, are no different from probably the general duty police in terms of our skill to know the level of contamination on that site. I think one of the solutions raised earlier was around the multi-agency solution, which is what we have to look at with the police. We have fire brigades with hazmat units and WorkCover, and our experience is that these situations often involve chemical contamination of the site. We can go down the process of issuing notices and orders. Often the people involved on these sites have better things on their hands and their responsiveness is often not very good in terms of wanting to come back and clean up the drug lab, so our submission is that it should be a multi-agency response and it should not be passed on to councils.

CHAIR: As David Ackroyd said in relation to hoarding where a council officer in community services may not be best equipped—they are not counsellors—would you argue the same thing, that your compliance officers are not the best equipped because they do not have the expertise on the health issues and those types of things?

Ms McGURRAN: Absolutely, and we go through the process like we would with any other site where we have complaints, but what does council do when the order is not complied with? We have had recent examples where the people are in jail and they are not going to respond to an order issued by council to come back and clean the site up.

CHAIR: As it now stands, councils are left to do that job when the police leave.

Mr LERANTGES: The expectation is that councils do that and I have had recent experience where, without consultation with council, the police go to investigate criminal activities, seize the items and equipment and place a sticker on the front of the premises advising that you need to go to council in order to get clearance for the premises. We have had a number in our area, and I have rung them up and asked what is going on in that process, because we were unaware of it, and the response I got was, "Well, you've got the health officers there, they know what to do". That was the assumption. When we look at it pragmatically, the police go in and do whatever, they make arrests and seize all the equipment, and what is left is an empty house. How does one go in and obtain evidence, when the evidence is gone, that the house is unhealthy or unsafe? We are assuming it is. I am not disputing the fact that materials could have fallen or saturated vapours could have gone in and out, but what evidence is available to our officers to go in and say, "I deem this house to be unhealthy or unsafe"?

The way we managed it was that the owner, who was not involved in the criminal aspect, came to council for advice, and I was very limited in what I could tell her, but it was done through a forensic cleaner. I pointed her in that direction, that it needed to be dealt with, so she got a forensic cleaner who came in, did the tests and made recommendations. The lady undertook the recommendations and the forensic cleaner ticked off that everything was done, because the lady wanted to rent out the premises again and there was obviously that liability and concern. Councils are very limited based on the fact that we do not have the expertise or, if there is no material there, even the risk aspect. That always can be dealt with by personal protective equipment [PPE] but getting the evidence to trigger council action is the challenge. I think it should sit outside of council and I agree with Nicole McGurran.

CHAIR: What is the legislation? The police go and make their arrest or whatever. Can council say, "We are not going in there", or is that a grey area? From what our submissions say, the community or police expectation is that the council goes in, but do you have to?

Mr LERANTGES: Going in there is not the issue if we get clear guidelines, but there are no clear guidelines. That is the first thing. The second thing is for councils to take action—you take action based on evidence. This is the challenge. What evidence is there left? We have a police report which obviously outlines certain information, but there is a disclaimer provided to say you cannot use it for compliance purposes.

CHAIR: Clearly you are not happy about it and the guidelines are not anywhere near what they need to be or the handover is not what it needs to be.

Mr GILLIGAN: I do not think it is easy for us to pick and choose where we are dealing with provisions that allow us to deal with health and safety, to say which of those we want to deal with. Some of them naturally are going to be within our skill set and some are outside. It is my view that where it is outside our skill set what we are most likely to do is engage an occupational or environmental hygienist. It seems that 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. They should have to formally notify us and the owner. If, in reality, council's first step is going to be to get an occupational hygienist involved, I think there is capacity for the police to trigger that process.

There is a parallel here with how we deal with development non-compliance where private certifiers are involved. The private certifier can serve a notice of intention to kick off that process, send it to council and council follows it up. If the police were to kick that off with the owner and say, "We have just seized these items", and give some guidance as to what the items of concern are, what drugs were being manufactured, the occupational hygienist process can kick off, council gets a copy of that and can then monitor and manage that process. Certainly it is more challenging if there are people in custody, but where there are other tenants coming in, or the family of that person in custody is still in the dwelling, I think there is a real risk that we need to make sure we manage.

CHAIR: What happens when, to protect their staff, council employs a forensic hygienist and has to recoup its cost, which would not be cheap, if the person is in jail, or what about the person who owns the property that genuinely rented it out and did not realise it was a drug lab?

Mr GILLIGAN: We would be doing our best to put the costs back on to the owner of the premises.

CHAIR: What if the owner was mortified and completely ignorant that it was being used as a drug lab?

Mr GILLIGAN: That would be something for them to pursue through the tenancy arrangements.

Mr GREEN: There are no guidelines in relation to clandestine drug labs and how they should be handled. The Local Government Act is silent on it and POEO is silent on it. It is really interpretation between the words. I think that some councils have tried to use POEO, but you have to still prove whether or not it is a risk to the environment, so I would go so far as to say that unless the chemicals are proven to be outside of the dwelling or the shed you may well use the POEO in that circumstance. Other than that, if it is in the house or in the shed then really you have to use the Local Government Act.

The Local Government Act provisions are significantly ill equipped in both penalties and process to deal with the matter, and when we are talking about a clean-up cost that might be \$50,000, \$60,000 or \$70,000, where all wall coverings and floor coverings and so forth have to be stripped out of the building, we are talking about huge costs. If that falls to the owner of the land, that may then put them into bankruptcy and council once again is put in a position to kick the can to undertake that clean-up work. But to my knowledge there was no consultation with local government when the police made this decision that they would advise council, similar to what George Lerantges from Marrickville raised a little while ago. There was no consultation with local government in relation to the passing of this responsibility on to local government and we are poorly equipped to deal with it.

CHAIR: These are relatively new things in the scheme of things. Drugs and drug labs have unfortunately progressed, and probably when the Act was looked at it was not thought to include them, so we may need to bring the Act up to speed.

Mr SCORGIE: I tend to disagree with Geoff. There are actually guidelines for clandestine drug labs. I have attended the workshops. There are processes, and I know there are problems with clean-up associated with tenants who end up in custody. Again we are dealing with chemicals that can be enforced under POEO. They are hazardous materials that have the potential to contaminate the land. Personally, as to my involvement in dealing with these, I have never had any concerns, but I can foresee problems when people are in custody. I do not have the documentation with me, but I wanted to make sure that the Committee was clear and reiterate that there are guidelines available.

CHAIR: At what time it fell on local government's shoulders is something we really need to address.

Mr LERANTGES: A lot of times you ask why it is local government's role in every single circumstance to manage to get outcomes. Because it seems to be so universal and on the increase, if local government is to undertake something like this then there has to be a different skill set, perhaps a different type of officer, a different type of responsibility that councils may not at this point be ready to take on, so again I say why does it always have to be local government?

CHAIR: I think that is a point that is very loud and clear in the submissions, or you need the ability to employ an expert but not at council or ratepayers' cost.

Ms CENEDESE: Speaking to the point about the costs and recovering those costs, we are aware that probably a few years ago now there was a discussion about setting up an Innocent Owners Financial Assistance Program, which would be funded from the proceeds of the New South Wales Proceeds of Crime Fund. I would be interested to see if that could be looked at as a potential source of funding to assist with the clean-up of labs.

CHAIR: That is a very good point. I think there is a pretty clear message that it has landed in local government's lap and you think that there needs to be a lot more consultation and information sharing, expertise sharing, if you are expected to do that job. Moving on, how significant a problem is illegal dumping on private land for councils? What strategies could be adopted to reduce dumping of hazardous waste, for example, asbestos?

Mr LERANTGES: Reduce the costs or make it free.

CHAIR: To then take it to landfill?

Mr LERANTGES: Yes.

CHAIR: That is any illegal dumping, non-asbestos and asbestos related, that council picks up? Is that what you are saying?

Mr LERANTGES: No, I am saying for the operators themselves. It is cost-prohibitive, it is very expensive, so I guess the temptation comes to dump, and my thought is to perhaps review the costs associated with it. They seem to have gone up and the incidence of dumping has increased. It is just a thought.

Mr GILLIGAN: One of the key costs involved in disposing of waste lawfully is the waste levy imposed by the New South Wales 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, as George Lerantges has said.

CHAIR: A number of councils have put that in their submission. There is a huge cost for the operator to get rid of asbestos, and you are obviously saying that that should be absorbed or subsidised by the Government, at the end of the day to enable the ratepayer to drop off for free.

Mr GILLIGAN: There is always a cost in lawful removal and transport, and of course still a cost in paying for its disposal at the tip, but the waste levy is simply a tax over and above that, so the Government is not actually in the long run losing money by removing that levy because we reduce the cost to the community of cleaning it up from bushland, et cetera, when it is disposed of unlawfully. We need to encourage it to go into lawful waste facilities by making it as easy as possible.

CHAIR: That is a theme in a number of submissions. Is that shared by everybody in the room?

Mr GREEN: I totally agree. The section 88 levy is an impediment for a lot of companies to lawfully dispose of their waste. Asbestos is particularly insidious, particularly in our area where we get asbestos mixed with "clean fill". Unsuspecting property owners accept fill material to come in, there is asbestos in it, the transport is gone overnight, not to be found again, and there are significant costs in testing and then remediation of that land. If you remove the section 88 levy for asbestos in particular, it would remove a lot of that incentive to mix it and dispose of it illegally.

CHAIR: Is that what everybody agrees? Are there any other strategies that can be recommended? Is it the cost of nothing more than that levy? That clearly is not going to mean free disposal. Would there be any other strategies that can be recommended, or does it hinge on that?

Ms CENEDESE: In terms of other strategies, I think stronger penalties for illegal dumping, particularly for hazardous materials, but also information and education about the risks, particularly for asbestos, and a compliance program to follow up on that would certainly help. Broadly, in terms of illegal dumping, not just hazardous materials, councils have also called for funding, or some sort of tip subsidy for when councils have to collect that waste and dispose of it on behalf of the community so that council does not then have to pay the levy or the costs of that clean-up as well.

CHAIR: Thank you.

Mr GREEN: Yes, I fully concur. One issue that is growing in Camden is the illegal depositing of demolition waste, for example. A truck with a dog on the back will come up one of the main roads, the driver will find a pull-off area and, within 30 seconds, he has deposited \$20,000 worth of material on the side of the road that then has to be disposed of by the Camden community. The Environment Protection Authority Act has made the demolition of a lot of buildings "complying" or "exempt development", and then council officers in that area have no control or knowledge of what is happening with that material to ensure that it is disposed of at a lawful waste facility. The level of proof is so incredibly difficult and challenging and for councils to go through a building used for dumping, for example, to find out where it comes from, cross boundaries, cross jurisdictions and the whole privacy issue comes to play with the sharing of knowledge and sharing of data between one agency and another. That itself is a challenge.

CHAIR: Back to Susy's point, if the same outcome is achieved—stronger penalties, more deterrence—as with an asbestos dumper, the same thing is needed. If council find the ute with the dog, should there be stronger penalties so he does not do it again?

Mr GREEN: Yes, I believe there should be stronger penalties. I think the Government is already thinking about that. Once again, it gets back to proving who it was. For example, if it is dumped on the side of the road during the night, how do you prove it? Once again, it falls back to the community to pay for that cost.

CHAIR: Is that shared by everybody in the room?

Mr McKIERNAN: 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 example such as criminal activity in the bushland—they have containers or something and then we might have to remove it. 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. I just want to add that, from a council's point of view that could be reduced.

CHAIR: We will skip a couple of questions because we are coming to an end. What is the burden on local council of illegally dumped orphan waste? There are the resources to pick it up. In monetary terms, is this costing the ratepayer a fair whack?

Mr GREEN: Only recently we were the recipient of two incidents when some methamphetamine was dumped into our waterways. We removed something like 300,000 litres of water that was affected by the methamphetamine. If I recall correctly, the PH was off the scale; meaning it was acid. 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 oncosts 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. With that instance, we were expected to get three quotes for the removal, but no-one could give us a quote because we did not know to what extent we had to go. They were generous in that instance, but they have made it much more difficult to get the funding.

CHAIR: Is that because it is becoming a big issue and so many people are putting in for funding?

Mr McKIERNAN: I would imagine so. Gosford allocates \$75,000 a year for roadside clean-ups for random things, which is what I found as a result of coming here. The other week we had a miscellaneous 20 litre drum that had nothing in it, but we had to pay someone \$550 to tell us that before we could do anything with it. If you times it by ten because you have to test every drum because you do not know what it is, it can be quite onerous and costly. Councils are getting more and more of it. It is the multiplying effect.

CHAIR: What is the recommendation to ease the pain? Obviously the Environment Protection Authority offers a service, but you are telling us it is too onerous to use and it has dramatically reduced the funding. From what time did that kick in?

Mr GREEN: It has only happened over the past 18 months or so. I cannot recall what the level has been reduced to, but the Environment Protection Authority pool has been reduced significantly.

CHAIR: Any other comments from the other councils?

Mr SCORGIE: From a work, health and safety aspect as well, and that is where Shannon was coming from, with orphan waste you have to determine what the material is before you can move it and before you put your employees in a position to move it. Our council has gone through a review, and we annually spend \$100,000 on roadside collection, illegal dumping as well. There is a huge cost to the council.

CHAIR: Do you find it is like the removal of graffiti, that if you had the budget, you could spend three times that amount and still have stuff to do, or are you finding that you are setting aside \$100,000, which is a heck of a lot of money, but you could go on and on?

Mr SCORGIE: It is exactly like Geoff said. One year you could spend no money and the next year you are spending \$250,000 on a clean-up for which council has to bear the cost.

CHAIR: And you cannot budget for it.

Mr SCORGIE: That is correct.

Mr ACKROYD: From the perspective of Sutherland Shire Council, it is spending \$300,000 and it is reactive.

CHAIR: It is a lot of money when added up across 152 areas. How do we address it?

Mr McKIERNAN: At the moment, Hazmat turn up, they hand it over to council and then council basically has to do something with it. So whether there is a—

CHAIR: Have they handed it over because they have analysed the barrel and have determined it is safe? "It is not going to blow up; have it."

Mr McKIERNAN: That is pretty much it. They have responded to someone calling in. We had a miscellaneous container wash up on the beach. They thought it could have been a bomb. You go there, it is not, now get rid of it.

CHAIR: It is yours.

Mr McKIERNAN: Yes. What do you do? Then a contractor has to be arranged and there might only be one in Sydney that has to come all the way up to take this one thing away. That is occurring more and more. It is reactive. You do not go looking for it. It is purely what comes to your door at any one time.

Mr GREEN: The orphan waste issue is an interesting one. When Fire and Rescue NSW says, "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 fire will write on it, "Refused to sign."

CHAIR: Clearly officers are covered by the council if it is their personal responsibility, but you are right, you are taking on ownership and an onus that you know nothing about. What happens when you refuse to sign? Do they sign it and go?

Mr McKIERNAN: Basically. You are stuck on the side of the road with a miscellaneous drum.

CHAIR: We will spend two more minutes on this. I am cognisant that we have gone over time, but this is too good an opportunity, so I thank you all for your time.

Mr GILLIGAN: Further to Geoff's point, 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 station where it came from but to get it back to headquarters in Sydney. Those sorts of expectations on local government are just a further burden that we do not need.

Mr McKIERNAN: I forgot about that point. That is a very good one. Yes, we have to return their equipment to them at our expense.

CHAIR: We will go to the last question, which is derelict buildings. It concerns all councils, but particularly Marrickville, Balmain. Are they a problem for councils of the round table participants? Is there sufficient power in the Act in respect of derelict buildings? If not, how can they be improved? We are probably looking not just at safety, but is it an eyesore, is it impacting negatively on the aesthetics of the community? Generally, is it a problem, and do you have enough power to rectify those problems?

Mr GILLIGAN: Certainly in relation to safety there are powers available to us, particularly under the Environmental Planning and Assessment Act, but again it is a question of ambiguity and clarity around when you can apply those powers. There are a couple of the tests that allow us to serve an order to demolish or remove a building that is or is likely to become a danger to the public or if a building is so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood. "So dilapidated" that is a really difficult subjective test. Clearly a building that has been fire damaged and has imminent risk of collapse of a wall onto a footpath meets that test. We have sought to apply it in situations where a building is regularly unsecured, has squatters in it who are engaged in lighting fires and drug activity in the neighbourhood. We have argued that the presence of those people in a dilapidated building makes it prejudicial to people in the neighbourhood. But it is one of those ones where in doing so you kind of feel you are stretching the bow a little bit and it is not entirely clear what sort of tests were envisaged when the legislation was drafted.

Mr LERANTGES: Following on from what Adam said, I think there should be clear instruction, not ambiguity—not I feel or I think—because that comes into play a lot of times. With a derelict premise you can find it as unoccupied or in such a state that it does pose a risk but technically without an engineer's report how do you know? This is something we find frustrating as well. So we come across the situation in the inner city where there are squatters and there is a safety issue for the officers even getting in to make a determination one way or another. A lot of times we cannot get hold of the owners because the default postal address is the subject premises themselves. We feel that is a limitation in going in there and making that determination. But who makes that determination—the officers can go in but they are not engineers—about the structural adequacy of premises? Unsightliness is an issue to discuss as well because it is not in keeping with the general area. Again the powers need to be clearly defined.

CHAIR: So do we go back to where we started this morning with the Local Government Act being subjective? Is the thought process that compared with the Environmental Planning and Assessment Act guidelines are not in place to enable local government to do not so much even its job but to meet community expectation? Is that correct or not?

Mr GILLIGAN: Again I would suggest a guideline document sits behind the legislation that says: A building may be considered to be dilapidated if these tests are met, and perhaps with a clause to say: Without limiting the generality of the clause it might include these things. You would then have some guidance as to what government had in mind. Are squatters engaged in drug activity enough to demolish a building? Or do we need an engineer's report to say the building is structurally unsound? So those sorts of considerations, and then what the test might be.

CHAIR: With those guidelines—subject to what Geoff from Camden said earlier about not being limited to that but still not taking away the discretion—do you then ask: If it meets this criteria we should have this, this or this? Or is that taking it too far?

Mr GILLIGAN: I think it is best to leave the suite of regulatory tools available to you separate from the decision as to what the test is to when you apply them because each circumstance will differ. Sometimes you go to the demolition order because that is the easiest one when you really are just wanting something repaired. But the test for the repair order is different so you do not feel you can use it. Some clarity around the tests and some clarity around the works that could be required by those orders could work together.

CHAIR: Do you agree or differ with that? David, you have obviously taken a very community-based approach, which is great. Do those same things happen with a private business? Obviously if it is not somebody's house there is not the emotional attachment, but quite often is it just somebody not caring or are there potential issues? Have you found that a business has been left that way because of hardship? Or is a derelict business on private land very different to a residential building?

Mr ACKROYD: I cannot really answer the business side of things. But I would say that we have had a couple of occasions where those derelict buildings have had owners living in them.

CHAIR: Do you mean squatters?

Mr ACKROYD: No, people who own those buildings. One instance is probably a property with a \$1 million-plus price tag in a row of probably \$2 million houses where an old man is living in those conditions without a roof and nobody reported him. Another issue was where a lady was living in a house with a roof that was failing and in danger of pulling the electricity wires from the street. Again it comes back to my point of treating people with dignity and empowering them to make decisions in their own best interests, which then leads them into a more secure environment. The question is whose role it is to provide that support and how can it be best provided?

Mr EVANS: Building on what Adam said about putting together guidelines, I think the Land and Environment Court commissioners have done that very well in assessments of development applications where they have put a series of planning principles together. So you can use those behind the scenes to have a look at how they came to their decisions, what they took into consideration and those items. Land and Environment Court cases might help us in dealing with local government, where we can call upon them without doing great big searches back through case law.

CHAIR: Every council is different because every council chooses to either look at certain cases or they do not. Do you think some of those principles should be made into a set of regulatory guidelines for local government across the board?

Mr EVANS: I think you then have the basis for doing so.

CHAIR: But using the Land and Environment Court as the basis for the guidelines?

Mr EVANS: That is correct. How they are interpreting those circumstances when you are issuing notices and orders.

CHAIR: Thank you all for appearing before the Committee today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr SCORGIE: Yes.

Mr LERANTGES: Yes.

Ms CENEDESE: Yes.

Ms LENSON: Yes.

Ms MCGURRAN: Yes.

Mr GREEN: Yes.

Mr GILLIGAN: Yes.

Mr McKIERNAN: Yes.

Mr ACKROYD: Yes.

Mr RICHARDSON: Yes.

Mr EVANS: Yes.

Ms CLARKE: Yes.

CHAIR: As I said earlier, the level of expertise in this room is fantastic. You are the experts; we are not. What we have been spoken about today will be recorded in the *Hansard*; it will have a major impact on this Committee's recommendations.

Mr THOMAS GEORGE: I endorse the Chair's comments. Also, if you have any other documents that you would like to table the Committee would be more than happy to accept them.

(The witnesses withdrew)

(Luncheon adjournment)

SHANNON McKIERNAN, Director, Environmental Health Australia, on former oath:

CHAIR: I declare open this session of the Committee hearing. I thank Mr Shannon McKiernan for reappearing before the Committee in a different role this afternoon. I do not need to swear you in because you are still under oath from your appearance this morning, and so you are appearing subject to the same guidelines. Ms Jody Houston, who was to appear this afternoon with Mr McKiernan, cannot be here. Mr McKiernan, I will now hand over to you to give your presentation to the Committee and we will ask questions as we are going. Feel free to ask us things if you think that is appropriate.

Mr McKIERNAN: I am representing Environmental Health Australia so I will be referring to comments from our members. Environmental Health Australia is a peak body similar to those in other fields based on professional membership. We have up to 300 members at any one time. It is a national organisation which has New South Wales members. We put this issue out for comment just as you had representations from councils. Individual members put forward their own individual views, not representing the views of their councils. We coordinated the response on their behalf. In the most recent correspondence from the submission you addressed a number of those questions. We put that out to key members and they have provided some comments. Do you want to go through any questions? I can address them one by one.

CHAIR: Thank you for that submission. You were involved in the roundtable session and you know where we are headed. Given your expertise and your role, could you tell the Committee what you believe we need to know? We will jump in with questions. I am happy to hand the floor to you and let you give us a rundown on what you think will help this Committee in its role.

Mr McKIERNAN: As I mentioned in the previous session, I think the key is consistency. Although some councils want that freedom to make decisions or not make decisions, from the point of view of an individual environmental health officer you need to have some basis to work towards. So you need to have some basic ground rules. I guess from the point of view of an enforcing officer, having parallel pieces of legislation with quite different powers is probably the key to that. The most recent example was where the food legislation changed so then the public health legislation was quite out of date. When they took the opportunity to review the public health legislation they made both of those consistent. We have a good revised tool with the Protection of the Environment Operations Act [POEO]. It would be nice to bring some of those local government health and safety aspects into line with it. For example, when you are issuing an order they should come under the same sort of terms and conditions, starting with having the same look and feel.

When you are enforcing an order, the question is: what is the reason for it? So you need a reason to issue the order. I guess that ambiguity between health, safety and the environment is the key. So if you could define what exactly those are in those pieces of legislation and make them consistent then a lot of the issues would be resolved. The clandestine lab example was a good example. In that example there was a clean-up notice issued under the Protection of the Environment Operations Act. Why was that really issued for inside a house? It was for health reasons. That is why we had an occupational hygienist and a health person to clean it up for health reasons even though it was issued under environmental legislation. That did not come out from the session this morning. The outside of that property was contaminated land. There is an environmental point of view but there are also some health aspects involved. So there are opportunities for both to be involved.

I guess when you are an environment and health officer you have both of those key areas mentioned in your title. You can always link health issues to environment issues because it is the next layer—that is, how does the environment impact on my health? That is particularly the case if you are living next door to an affected property. So this is about having real enforcement tools that are consistent—whether it is powers of entry or the regular tools of issuing a penalty notice or an order. It is about the spectrum between the Local Government Act and the clean-up notices under the Protection of the Environment Operations Act. The tools are quite distinct and varied. That is probably the key issue from the point of view of our individual members.

Mr JAMIE PARKER: This issue of harmonisation is something that most of the submissions have talked about—the need to harmonise definitions so that there is clarity in the different acts. I think it is pretty obvious to all of us that at the moment what is happening is that we are crafting each act to try and deal with a problem that it is not really designed to meet but for which it is the only tool that we have. So we are kind of tweaking it to make it work. I think that is something we are all taking very seriously. My particular area of interest is derelict buildings. I wonder if you, from your experience, and your members—I am not sure whether

it is something that is an important issue for the council for which you work—have any advice for the Committee about how derelict buildings should be managed?

Mr McKIERNAN: I am here representing Environmental Health Australia but I work for the Gosford City Council and we are trying to revitalise the Gosford CBD. Half of our main street is derelict buildings, and the council has no real 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 the right not to. Most people just board derelict buildings up, which makes them look even worse.

I fully understand the issue and the complexities involved. I battle every day with those questions as the one who acts as the interface and tries to talk the person into it. You try to mediate and to discuss ways to do it. But maybe the owner cannot afford to demolish the building or to redevelop it. I thought long and hard about this before I came here today because it is the one gap in the latest submission. No-one really gave me a response on this issue.

Mr JAMIE PARKER: What options are there? For example, you cannot force someone to board up a derelict property so sometimes properties have a fallen down fence and people can walk in and out.

Mr McKIERNAN: But you can render it secure.

Mr JAMIE PARKER: So you think that security factor is sufficient?

Mr McKIERNAN: It covers this from a safety point of view. But again it comes down to the reason behind it. If it is a derelict building then putting up a security fence and boarding up the windows will remediate the situation by stopping people from getting in there for a certain period of time. But it is not going to resolve the issues behind that people want resolved—for example, if you want to revitalise the city. I guess that is the issue. I can easily go in and ask for a security fence to be erected. The Environmental Planning and Assessment Act also covers this area. If a site is unsafe then you have to put a secure fence around it. From a health and safety point of view, to stop squatters or to prevent people gaining access, you can ask for a security fence to be erected and for any openings to be boarded up. But the young kids know how to take those boards off—they just take a drill with them.

CHAIR: I am interested in the point of view of the Committee members here. There is clearly no legislation covering the situation you are talking about where there is a derelict building which is an eyesore. Does anybody else here think there should actually be an onus on the owner? If you own a dog, you have to look after it. But if you own a property there does not seem to be that same onus. Surely there should be an onus here? I am interested in everybody's opinion on this, including you, Mr McKiernan. If you take ownership of a building or have had ownership of it for whatever reason then should there not be something in place so that the buck does stop with the owner? The buck might be, in the worst case, that if they cannot afford to maintain it then they have to sell it to somebody who can provide a better use.

Mr JAMIE PARKER: It is very difficult. We have struggled with this issue in my electorate where there are some derelict buildings. In Arundel Street in Glebe there is a classic example. There is an old hotel there which is huge. It has been derelict for years and the police are always being called there because people are rough sleeping there and there are hundreds of syringes all over the ground.

CHAIR: So why does the owner not have to take responsibility for that?

Mr JAMIE PARKER: That is the problem, as Mr McKiernan said, a hoarding will go up but that is easily bypassed. People can easily enter that property. The neighbors around it, who are all in normal terrace houses, are having huge problems with it and asking somebody to do something about it. I do not have the solution. I had hoped that Mr McKiernan might. It is a challenge.

CHAIR: Should the Committee be looking to recommend a solution along the lines of considering what community expectation is. A derelict building is a derelict building regardless of what you do to it. I am wondering if there needs to be guidelines in place. If several boxes are ticked does the owner then potentially lose their rights?

Ms CARMEL TEBBUTT: I do not know. I do not have any answers. It is difficult because it is a great cause of concern to the community and can create an eyesore in an important part of area. But then the other side is if someone cannot afford to redevelop it is it fair to force them to sell so it can be redeveloped? I think there would be a huge community reaction against that. Maybe what we need to look at nonetheless are some standards that at least have to be met so that it does not cause an impact on the neighbours by being misused. If the cost of keeping it up to that particular standard has to go against the property that might encourage the owner to do the right thing, because they know they are going to eventually have to pay this cost to the council for the upkeep and maintenance of the property.

Mr JAMIE PARKER: Maybe the Committee Secretariat could have a look at what is going on in other jurisdictions. Maybe other States have already grappled with this and we can look at what is out there.

CHAIR: Ms Tebbutt makes a great point. I am not saying that we enforce a sale but I am saying it should not impact the community just because an owner unfortunately for whatever reason cannot address the problem. We have seen buildings that do not just impact on the immediate neighbours; they impact on the social fabric that is the community. At what point does responsibility come back to the owner to meet a minimum standard for a derelict building.

Mr McKIERNAN: Legislation is usually just enforcing the minimum standard. All these derelict buildings do not have running hot water; they are not liveable, they are not habitable. But if you own a building it should be maintained to a certain level of standard from a habitability point of view through the building code, for example. That is the only time I have considered it. I have thought whether there are there some basic functions of a house other than the situation at the moment which is getting an engineer's report saying whether it is going to fall down. Nine times out of 10 they will find some engineer who will say it is not going to fall down.

CHAIR: If there is something there that puts a minimum standard which poses even a small maintenance cost it may make the owner think that each year it is costing them and that may provide a reason to not just board it up and leave it.

Mr THOMAS GEORGE: Can I give you an example of the commercial side of costs. Mr Lerantges from Marrickville Council said that clearing that house of all the hoarding over the years was going to cost them \$50,000. Just listening to it, \$50,000 is a major cost to anyone but then they had the fire and then it becomes a bigger cost. But if the bloke who owned that house had it cleared right out and cleaned up it would probably be worth \$100,000 more. As it is, it is worth nothing to anyone. No-one is going to buy it. If it was cleared out, the value of the building could have doubled. Sometimes you need to see what the cost means commercially. Is the hotel at Glebe subject to any heritage orders?

Mr JAMIE PARKER: No, it was built in the 1960s. I know that derelict buildings are a big issue in the Sydney city. There is an enormous Griffiths Teas building in Surry Hills. The *Sydney Morning Herald* has reported that there is a woman who owns a lot of large buildings around Surry Hills and the central business district worth many millions of dollars and they have been empty and boarded up for 20 years. I wonder whether it might be worthwhile for us to write a letter to the City of Sydney and ask whether they have any suggestions about how to deal with this. There have been a few articles in the newspaper talking about the city's concern about revitalising and providing more accommodation in the area but these large buildings have been boarded up for years and years.

What used to be an old golf shop on Elizabeth Street just near Central station has been boarded up for years, and the same person who owns the other buildings owns it. It might be worthwhile at least hearing from the City of Sydney about that. I do not think we would do anything draconian but it might be worthwhile to at least hear from the City of Sydney about that. Mr Chair, could I request through you that we ask the Secretariat to write to the council to see if they have any feedback. They may have the same situation as our witness here today, but it might be useful.

CHAIR: I am happy to do that. The only thing I offer on that is out of the 152 councils they were obviously written to, we tried to engage them and no interest was shown. That said, a direct letter on a direct topic might be different.

Mr JAMIE PARKER: Waste on land is not so much their thing but a derelict building might generate a bit of excitement.

Mr McKIERNAN: Gosford City Council has gone through the whole Gosford Challenge and won quite a few local government awards through trying to revitalise the city. There is probably expertise there if you wanted another example. Again, as I say, one landowner owns half the street and has not done it up for over 25 years. They have probably done the research just recently. I know it is topical but I am probably not the expert to talk on it because I do not know everything about it.

CHAIR: The Committee might well now write to the council for further information on your recommendation. Thank you.

Mr JAMIE PARKER: Can I ask another question about companies avoiding clean-up of hazardous waste and declaring bankruptcy and then starting a new company. We have seen that in the building industry with phoenix companies that try to get out of paying superannuation, workers compensation and all the other requirements to the workers. After the workers have built the building they go into bankruptcy and just start up another company. There have been some changes in New South Wales and some discussion federally to stop that from happening. How can we fix the problem of companies avoiding the clean-up of hazardous waste on their land by declaring bankruptcy and starting a new company?

Mr McKIERNAN: I was trying to think what number question that was because one of the guys provided a detailed response on that. It is not something that I am 100 per cent aware of in my local jurisdiction.

CHAIR: It was question 7.

Mr McKIERNAN: One of the members said, "Given that New South Wales Land and Environment Court provisions take on the bankrupt directors rather than councils having to go to the Supreme Court to do this, which is then an additional cost to council and ratepayers"—they have highlighted that there is an opportunity for New South Wales Land and Environment Court provisions to take on bankrupt companies rather than a council. But I am not an expert on that so I could not comment exactly on how. But that is feedback from a member. Did that help at all?

Mr JAMIE PARKER: That does help. I have only known of one instance where this has happened. There was asbestos, the council went for them but they just declared bankruptcy and started again next week with their waste removal business. Obviously, that is something that we should examine to see if we can come up with options to try to help address that problem.

Mr McKIERNAN: That is similar to the clandestine labs. The orphan waste thing is just becoming more and more. I guess it is through the firefighters knowing more of the procedures. Before, they might have taken it away and so forth. Now they actually hand it over. If it is uncontained they will put it in their own special containers and everything and you are left holding the baby and all the costs at the moment through local government. Probably for the last three years I have noticed it just as someone who has been in the industry for 15 years.

CHAIR: Mr McKiernan, did you have anything else you would like to offer?

Mr McKIERNAN: A strong flavour through the members was additional powers and provisions, which I guess is a compliance person's nature—they would always want more power and so forth. I also manage the education section. There are a lot of good agencies out there. There is the Hunter Central Coast Regional Environmental Management Strategy [HCCREMS]. They do regional approaches for education for illegal dumping campaigns and things and put it on the local television and so forth. There is good money getting invested regionally through funds and coordinated by good groups, but I guess that can be expanded across the State. The flavour was that everyone thought the Environment Protection Authority [EPA] should take a real lead on that just from an illegal dumping and holistic point of view and giving it a lot more tools of the trade from an educational point of view. Again, it was all about consistency. Each council is doing little bits of good ideas but maybe there is a need for a bit more of a lead from the Environment Protection Authority in relation to illegal dumping and those things.

There was mixed response in relation to the Regional Illegal Dumping [RID] groups. I guess the smaller councils that would see benefit from getting it wrote into us to say they would like that. I guess some of the bigger councils that have already been doing it and spending their own money are sort of asking what they would get out of it. From a member point of view I think it was a bit of horses for courses and on a needs basis. The main person that did respond and provide a lot of the advice was one of the directors from Holroyd City

Council. He was a very strong advocate of the RID squad and has seen the benefits in that regional area. He was actually suggesting more resources to make it better because it is limited by how big it is. They could do a lot more with it. That was some feedback from that Holroyd type area.

CHAIR: You mentioned education. Question 14 was whether public education around illegal dumping could be improved and, if so, how? Like so many things we have discussed before, is that the role of others as well as the local council? Do you envisage it being across agencies or across governments? What are your thoughts on that?

Mr McKIERNAN: I think on all levels. The old Dob in a Dumper is quite renowned by everyone but that has probably passed. If we all had to think of what is the common message for illegal dumping now no-one could come up with an image or a slogan automatically in their head. From a consistent New South Wales point of view it is a big problem. If there was a campaign and people would resonate with it, it would be getting to the broader community. I personally do not think that is coming across other than the "Dob in a Dumper", where we would give someone \$500 if that led to a prosecution, and then we would say, "But the fine is only \$750." You know what I mean.

We are only a small council, but if there is the incentive the community would do them in. If there was a reason for them to do it in, that would also exacerbate us responding to a lot of it. The neighbours are the eyes and ears so I think education is the key to addressing it. You have got rangers and environmental health officers driving around and responding to the one-off complaints, but if people actively know what is right and what is wrong, I think you can do it and I think it should be the same across-the-board. At the moment, I think if you logged onto Health NSW and the Food Authority you would get an information package and an education campaign, and then you just put your logo on it and run with it. You do not really have that in the illegal dumping spectrum at the moment, but there has been a lot of good funding put towards regional cases. It would be nice to just see it sent out to everybody.

CHAIR: Could that be something to get to everybody by having an attachment, potentially, on your rates notices?

Mr McKIERNAN: Yes.

CHAIR: Is that something you would think is money well spent?

Mr McKIERNAN: Yes, just common messages but also I guess you have got the commercial people. I think the biggest point was that asbestos is the biggest illegal dumping issue because it is just too costly. Even the local guy who is knocking down his shed does not know how to do it and does not know where to take it and all those things. There has been a lot of targeted campaigning. November is Asbestos Awareness Month. I am tapping in on the back of that with extra illegal dumping messages, and a lot of people are. With Environmental Health Australia [EHA] product, if we get some good resources we send it out, but we only represent members and not every council.

CHAIR: This may be a fair way off, but do you think that by natural attrition the asbestos problem will get less and less eventually because it has not been used in so long, or is that just wishful thinking? Is there just that much out there that we will forever be doing it?

Mr McKIERNAN: I think it is only going to increase. We are only just realising it and just about everything prior to a certain date is ageing. Apparently more and more people will be renovating and upgrading and now people are also aware of the health aspects, so only more and more people are going to get sick. I think it is only going to get worse before it gets better.

Mr JAMIE PARKER: You mentioned penalties. Obviously by the tone in your voice it sounds like a \$750 penalty for dumping is not the most effective deterrent at that level of \$750. Would you make any recommendations to the Committee about increasing or decreasing the penalty, or on what your view on penalties is for this behaviour?

Mr McKIERNAN: It is \$750 for any type of pollution offence, and littering is one of those. To put it into context, for doing something without consents, such as building a shed or doing something illegally on your land, the minimum is \$1,500 and \$3,000. That is an automatic reaction: "I won't do that because it's going to cost too much." People seemed to run the gauntlet. 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. I do not know why or how, or whether there is a risk assessment of "How much it is going to cost me to hire someone to do it and dispose of it, or should I just put it somewhere else?"

Mr JAMIE PARKER: With the escalating costs of dumping waste, \$750 is a relatively minor amount when you look at a couple of hundred tonnes to get rid of.

Mr McKIERNAN: That is right, yes.

Mr JAMIE PARKER: It is cheaper to dump it and pay the fine.

Mr McKIERNAN: That is what I am sort of getting at, yes. 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.

Mr JAMIE PARKER: Can you give us an example of where you think \$750 or \$1,500 was inadequate in your experience, just so that we have a flavour of what that is? The Government is always interested in increasing penalties because it means that revenue, but if the Committee were to look at some type of graduated penalty to try to mitigate that behaviour, can you give us an example of something where you think \$750 does not work?

Mr McKIERNAN: If someone knocked down their asbestos shed and just threw it in the back of a reserve and we identified it was them, we could take them to court or we could issue them with a clean-up notice and they would have to clean it up. In all likelihood we would also issue a \$750 penalty if it was an individual. If they do not proceed to pay and offer no cooperation, we would probably have to engage our local qualified asbestos contractor to remove all that, pay for the disposal cost and then we can issue may be a cost-compliance notice, if it is successful and so forth. It would be all those things. I guess it is the initial outlay with the potential for it never to be paid back. It is \$750 and they are probably not going to pay that either, so that is sort of where it is.

CHAIR: In relation to Jamie's point and just for clarity, you have a \$750 penalty infringement notice [PIN] or court proceedings, in essence, or nothing in between.

Mr McKIERNAN: Yes.

CHAIR: To pick up where Jamie left off, in your experience and potentially from what you are saying, would you recommend something even smaller than a \$750 penalty infringement notice—\$750, \$1,500; like, two or three steps pre-court, which might be the deterrent?

Mr McKIERNAN: Fire safety is a great example where if you do not issue a fire safety certificate within one week, it is this penalty; if you do not issue it within two weeks, it is this penalty; if you do not issue it within a month, there is the maximum penalty. From a fire safety point of view, there is already a graduated enforcement tool, which does seem to work. You ring up and say, "If you don't do it now, it goes up", but I guess the waste has already been dumped so it is a bit different.

CHAIR: But then it could be proportionate to the size.

Mr McKIERNAN: I think it is proportionate to how big it is. Is it one bag, or is it three truckloads? An individual is probably only ever going to do it once. It is more of a company.

CHAIR: Do you think the Committee needs to look at the available provisions to fine companies before court action?

Mr McKIERNAN: There is potential there, yes, but the Regional Illegal Dumping [RID] squads are probably more empowered it because they would deal with the companies more so. We are dealing more with isolated incidences of probably your local backyard guy. But I find that it is mostly people just cutting the waste costs. When you interview them like I do, they play a bit of ignorance: They do not know where the tip is, or they could not afford those things.

CHAIR: It sure as heck is not on the side of roads at 3.00 a.m., I am guessing.

Mr McKIERNAN: Yes.

CHAIR: Are there any other questions for Shannon?

Mr THOMAS GEORGE: Most questions have been covered in both sessions or between them.

Mr McKIERNAN: The hoarders is probably the big one. From an environmental health protection and consistency point of view, the emergency 22A order was put in place to deal with hoarders so it was a bit interesting to hear experts in the field using a local government 21 order for that reason. The emergency 22A was put in place for hoarders. That was for the Bondi lady. That is why it was put in place. If they are still only using the local 21, I think that is probably an education matter as well from the tools of trade perspective—where to use and how to use things. They might be using the wrong things. The powers of entry that needs to be fixed for that emergency to be perfect 22A from a community expectations point of view. Only last week I have walked up and down a street talking with five staff. There was one lady that we cleaned up four years ago at \$40,000. You know the compacting trucks?

Mr JAMIE PARKER: Yes.

Mr McKIERNAN: Three of those we filled up over two days with four people. Over the period of four years, she has got back to the same level. Last time she let us in—we probably just wore her down—but she knows her rights a bit more now and she is refusing us this time. The order may remain in effect for five years but if you cannot go in to enforce the order, you might as well have not issued the order. It is called an emergency order for a reason—having some ability to just get on to the curtilage to remove the public safety issues. She is living in a car out the front because she cannot fit in her house now. We are not touching the inside of the house, but I guess from a public safety point of view the outside is the main concern because it is going onto everyone else's fences. I think there are grounds to consider some sort of powers of entry just for the yardage area that would affect an immediate adjoining neighbour or something.

Ms CARMEL TEBBUTT: Some of the participants said this morning that they were using the section 21 and that seemed to be because section 22 had the definition of waste that they did not feel that they could apply to items and material. Has that been your experience, or have you found the definition in section 22 is okay?

Mr McKIERNAN: If you have items of material harbouring vermin and sitting outside four or five years in a state of disrepair, I think it is quite easy to determine that it is waste. They might think it is a car park, but if it is rusted and broken down and deteriorates over time like newspaper—anything that is meant to be stored inside but is kept outside and is stored for a period—personally I can determine it as waste. I have never tried to enforce something on the inside of a house.

Ms CARMEL TEBBUTT: No, but you have had success on the outside using section 22.

Mr McKIERNAN: Yes. We have probably had five perfect examples where we have issued the 22A. I think from a political and media point of view, when you say, "We have issued an emergency 22A and now we're working with the agencies over the issue", I think it nips the community thing in the bud and gives council a lot of confidence. But when you say, "Yes, we have issued this emergency order and they have no right of appeal and it will last for five years", but we are not actually allowed to go in and do anything, it is a powerless tool at the moment. We have just been lucky. You just work with them and you get in, but this is the first time—and it is real right now. I have dug right down to see if we can enter it, yes.

CHAIR: That is a very good point, Carmel. I think the Committee needs to be very cognisant that you have got that in play, but without the owner's consent it is absolutely useless. That cannot be lost on us. In relation to the burdens that are placed on local government, you needed the ability to follow through.

Mr McKIERNAN: We do, yes.

CHAIR: I really do not think that should be lost.

Mr McKIERNAN: Yes.

Ms CARMEL TEBBUTT: Although, to go back to what some of the others were saying as well, unless you can find a way to work with the owner you are not going to get a long-term solution. None of this is a compliance issue.

CHAIR: No.

Mr THOMAS GEORGE: The only big stick they had was to say, "Well if you don't do it this way, we're going to come back with an order that says you have to pay \$466." Was that it?

Mr McKIERNAN: For the clean-up notices, yes, and for environmental offences. But the hoarding does not come with any money and the overgrown properties.

Ms CARMEL TEBBUTT: It would not work properly anyway.

Mr McKIERNAN: We are only dealing with a \$200 lawnmower at the worst.

CHAIR: Carmel, David and everybody else made a very good point: Clearly a number of agencies and issues are involved in the problem of hoarding. That said, I am guessing you may have somebody who is mildly or happy to work with the definition of hoarding and the degrees of offence. I just think that we need to offer something more from a regulatory point of view that takes into account bringing agencies into the future ongoing concern for people doing the same thing over and over.

Mr McKIERNAN: I think one of the grounds for issuing an emergency 22A order is maybe you have had to contact Health NSW and discussed the case. One of the reasons for the order is that you have already gone through a process. You do that anyway. You are not going to issue an emergency 22A without discussing it with anybody and you have tried to work with the person, but they do have mental issues and they are in denial and they do not think it is a problem. It is all well and good when they have got family, but we have got two cases in which they are there on their own and there is no one left to fend for them. All you are doing is just whittling their savings and their money away, and every agency has the same battle and the same problem. Especially in Gosford or Wyong, you do know your local public health unit and you do know that we have our own community people. You all go out as a team but at the end of the day you certainly need the cooperation of the other side. Sometimes you are just not getting it.

CHAIR: It is a very good point that quite often gets lost: For people at a local government level and at a community services level, this is not about just the regulation. I know that we need to give you potentially enabling things, but by the very nature of the job that you do, you have the people's interests at heart.

Mr McKIERNAN: Yes.

CHAIR: It is a matter of trying to get that outcome by bringing everybody together to get the correct outcome and help the individual. I do not think that is lost on anybody here today.

Mr McKIERNAN: I surveyed 15 nearby residents of this habitual hoarder, and 13 of the 15 were not worried about the hoarding but they were worried about the lady.

CHAIR: Absolutely.

Mr McKIERNAN: While the community will ring up and say it is hoarding, they are genuinely concerned for people as well.

Mr JAMIE PARKER: That is a nice thing.

CHAIR: I will just say that time is going to beat us. I know Tanya has a question for you. Unless you have anything else, we might leave it there and write to you if we need.

Mrs TANYA DAVIES: In relation to one of the comments you made, the issue of the Environment Protection Authority [EPA] compelling waste facilities to reduce waste to a level below the threshold limits outlined in schedule 1 of the Act so that the facility ceases to fall within the EPA's jurisdiction and falls within councils' jurisdiction, could you explain what that is and what could the Committee take on board to consider addressing it?

Mr McKIERNAN: I rang the person up that raised this and I could probably talk on specialist examples. There are different categories. There is a waste threshold limit, so to run a waste facility you take in a certain amount of waste. I do not have the exact figures, but you need a certain amount of tonnage, and from there you need a licence from the Office of Environment and Heritage and you have a heap of licence conditions to meet. Under that threshold, it falls to the local government as the appropriate regulatory authority, so they are your smaller waste facilities, some of your smaller quarries and the like. If it is on the cusp, they are saying that the EPA gives advice to reduce the threshold because they are not meeting their licence or whatever, and then it falls to the council. We do not really have any licence conditions on them, so there is probably a lack of consistency for, say, a quarry, and we have probably got a legal case up in Gosford City Council at the moment where a waste facility was thought to be a council one but was actually probably an EPA one.

They are saying, "You don't have a licence, so just reduce it back to your normal ones", and we are saying, "You are so far above, you just need to get a licence". So whilst it looks good to have a line, it is probably that dual regulation that they were getting at. I guess it must be the experience of that officer with the regional EPA office. It is probably more of a localised issue. We were saying that they were just saying to reduce it so that then it was not a licensing issue for them, but it became a council issue. I guess it was more of a localised council issue, but I have seen that blurring of the lines. There are also planning laws, because you need development consent to run a facility, so if you have a licence and you go above it then you are not meeting council planning laws, and if the organisations do not talk then you can have some major legal issues. Does that clarify it?

Mrs TANYA DAVIES: I think we may need some more information on that.

Mr McKIERNAN: It was the Holroyd City Council officer.

CHAIR: The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr McKIERNAN: Yes.

CHAIR: Going back to what Tanya Davies said, I think we will definitely be doing that. Thank you very much for your time.

(The witness withdrew)

SUZANNE EDITH NADEN, Consultant on Land Management and Resource, Darkinjung Local Aboriginal Land Council, affirmed and examined:

CHAIR: Do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Ms NADEN: No.

CHAIR: Although it is a formal process, we would like it to be as informal and comfortable as possible. I am the Chair of the Environment and Regulation Committee, Mrs Tanya Davies is the member for Mulgoa and Deputy Chair, Carmel Tebbutt is the member for Marrickville, Jamie Parker is the member for Balmain and Thomas George is the member for Lismore. Thank you for appearing before us today. Please feel free to give us a presentation, let us know what you would like, and we will ask questions if we need to.

Ms NADEN: Okay, that is easy enough. Questions were actually provided to me before I came here, so I have written answers as well.

CHAIR: Would you like to go through those questions and give us your answers?

Ms NADEN: I am happy to go through the questions and provide our answer. I have also brought some other evidence to support those, because I did throw in recommendations for our submission. It may be overkill; if it is, let me know. I was not sure exactly how many committee members there were, but I have information packs here. Under the Land Rights Act, all land councils have to have a community land and business plan, so the pack has Darkinjung's community land and business plan for you. We are very professional, so we have a stakeholder brochure, which gives you a very quick overview of the land council itself.

We also have key sheets on major developments that we are currently doing. At the moment our biggest is the 109 land lot subdivision that we are doing. We also have a strategic land management plan, which is linked to community benefits. It is not just for members of the land council, it is for all members of the Central Coast, including Aboriginal and non-Aboriginal people. There are some stakeholder bulletins, which go out at the corporate level, as well as this year's annual report. This gives you a quick understanding of the level at which Darkinjung operates.

Documents tabled.

You have my responses to your questions. I do not know if you want to read those quickly and maybe ask me questions, or we can speak a bit further in detail.

Mr JAMIE PARKER: It is great to have so much information provided, thank you very much. Dumping is obviously an issue on property that you have coverage over. You have done a lot of deterrence work, and that is something to be commended for because it obviously has 100 per cent effectiveness.

Ms NADEN: Yes, it does.

Mr JAMIE PARKER: You have raised an issue about enforcement, saying that you took some photographs to the police but they were not really followed up. That enforcement issue is obviously something that would concern you and, from a committee perspective, if there are things that we can do we would like your feedback. You have had CCTV, you have taken photographs of vehicles, but you said that follow-up was an issue. Is that because of a technical legal problem or is it just a diligence thing?

Ms NADEN: Both. The CCTV cameras are located at two entry points to our larger fire trail network, which starts from our property, goes for five kilometres around the Wallarah area and ends at one of our properties, also accumulating a large number—I think in total there are nine of our properties in that whole fire trail network. I was the previous Operations Manager of Darkinjung for four years, so I actually introduced all the operations at the land council before becoming an external consultant and still managing all the land, and we did assess each fire trail. Fire trails are inherited, as is illegal dumping, through the land claim process, so we did assess the need for a fire trail to begin with and whether we should just cut off all natural access to those properties. The fire trail was there for State Emergency Services to get to the rail corridor between Wyong and Gosford. It was a necessity for that to be there so we did not shut it down, we kept it open.

A lot of motor bikes and vehicles get in there without valid registration, so that is the first issue. There is nothing that can be done at that point because you cannot follow up on it. However, we have taken photographs numerous times to the police station and even rung the Police Assistance line to say we did have a vehicle plate, we did tell them to leave the property and so on, and we have never had any follow-up. Even though we have had numerous discussions with the local police at the table with our security company, who has good relations with them, we still just do not get it at the local level, and we have had difficulties with that before.

We also have difficulties with the policing laws. We do the right thing and gate it, shut off all access points, and as soon as a vehicle is on the other side the police cannot enter because it is considered private property. However, if you do not have the gates and you do not have the bollards or any of those other things, they can actually follow them on to the property because it is still considered on road. Gradually, with over 6,000 hectares at the moment and we will continue to increase that land over the years, over the next couple of years you can see as we move along, either way, we will continue to have the issue of illegal access and illegal dumping and no control over spot fining—and that was more about the enforcement laws that I was leading to with spot fining because one of your other questions is what other revenue, or what other ways do we land manage. We do not accrue revenue for land management at all unless, of course, we inherit a property that has a telecommunications tower on it. That is another issue.

In negotiating with Telstra, or whoever owns it—it could be a RailCorp tower—they would have had a fantastic licensing agreement with Crown lands. However, when it comes to us, they tend to drop the price down to nearly 80 per cent and still think that 10,000 is a great deal when they are paying Crown lands nearly 80 per cent of that. There is no revenue there. Wyong Shire Council, as with Gosford City Council, do not have rangers—if you know the area, it is geographically isolated, it is huge. There is a lot of rural land, it is not all suburban. To give credit to them as well, they do not have the rangers to patrol half of our lands as well. If they catch them and spot fine, the revenue goes back to their agencies. It does not come to us.

CHAIR: This is an outstanding submission, and I thank you for taking the time. I would like to have it recorded in *Hansard*, so we might go through the questions. You have given us your response in writing, but articulate it however you would like, whether you read from that or whether you do as you have done for Jamie, which was excellent, but I would like to get the questions on record. What are the current remedies available to Darkinjung to manage illegal dumping and how successful are they?

Ms NADEN: To date, the way that we have looked at land management itself—I suppose I should start from the beginning to understand how we got to where we are today. Having walked into a lands council and not having previously worked in the lands council—I have always worked for State Government—it meant going from a government agency to a non-governmental operation and thinking how do you do this? Land management is completely new and there are different legislation Acts that impact the Aboriginal Land Rights Act, and I had to understand that.

What we have done and why we have targeted the North Wyong shire area with the land management and the specific information that we have is that I have become an active member of the Bushfire Management Committee, which is the Wyong and Lake Macquarie area committee. Through the risk management plan I have identified 18 properties of Darkinjung's lands that were either marked low or extreme, so we decided to start our land management with those properties, because we had a legal obligation to manage those properties and address whatever the issues were with those lands at the time, whether it be an asset protection zone, or a strategic fire advantage zone, or fire trail, and so on.

As we started that process we had to understand all the other legislative impacts on our land, whether it be people requiring access or assuming they had a given right for access, those sorts of things. We did not have a budget. We started off, "How do we do this with no money?" Even though Darkinjung is well resourced asset-wise, we did not have a budget for land management when we started, so we had to start looking outside of the box for ways to fix and manage this issue. For us, the partnerships with other key organisations and agencies become a great opportunity. With Crown lands, we targeted our 18 properties that were only granted lands. While they are granted, they are still under the legal and financial obligation of Crown lands, even though we have to give approval prior to any work being done on those lands. To move us away from the land dealings under the Aboriginal Land Rights Act, we had Crown lands target those for hazard reduction burns, asset protection zones, gates, fencing, those sorts of things. We thought outside of the box how to manage all these things.

We then started closing off access points. It was simple. It was three priorities, which still exist, for Darkinjung lands council, which is access points, illegal dumping and fire trails. You cannot be a big pie in the sky. Some of the properties are nearly 20 hectares and some of them are slap bang in the middle of State forests, national parks, that sort of thing. Slowly but surely we closed off access points. A number of our neighbours started to see that we were managing our land. One nursery shut down and offered us 100 cement blocks at \$20 a block. We got a bargain—they cost a fortune. We had another friend who was more than happy to relocate them, so we started to make some serious connections through the other care agencies.

As I stated, my background is from government, so I am very good at writing submissions, funding, tendering and things like that. As we moved along, we started to understand what funding was available to us that we could apply for. That is when the illegal dumping for Aboriginal lands came in, so we started to apply for that. I do not think they like me very much. I keep throwing curve balls at them—let us try this; let us try this. We targeted some of the larger properties. Through that process we targeted asbestos, mainly. We found that was the biggest dangerous material that was significantly dumped on a number of properties that were easily accessible and nobody was around to see it being dumped. It is correct to say that we are 100 per cent successful in the reduction of illegal dumping.

CHAIR: That is a fantastic outcome.

Ms NADEN: At the end of the day, we said that we cannot stop motorbikes. They will continue to get through the smallest of trees. What we have to worry about is the four-wheel drive vehicles that will continue to run down trees to get to new access points, the ones that damage gates, run over a fence, try to bulldoze sand blocks down the road. They are the people we need to be targeting. We would probably lose the plot if we had to monitor motorbikes, because they zip around. We noted through the closed-circuit televisions that the motorbikes did not stay on the one property. They were cutting through an existing fire trail, which they should not have been on, but you would see them nearly six hours later, so they would be passing through and coming back. They were on an existing track. They are not our priority. They do not have a load of stuff that is being dumped there. We probably cause more havoc now for Roads and Maritime Services, the local councils, Crown lands because nobody can get access to our properties.

CHAIR: By stopping their access?

Ms NADEN: Yes. By stopping access, what we have done—it has been frustrating. I think for the first 12 months of my life at Darkinjung I took everything personally. It was like it was an attack on me if a block was removed or a gate was damaged. However, we went back out and put a new block in, put up a new gate. We just kept at it until people started to realise that we were on top of it. Our neighbours too then started to notice we were on top of it and would ring and say, "Hey, somebody has tried to get your gate." Not only that, we have a terrific working relationship with Crown lands. We have gates. They have gates on our properties. If their gate gets damaged before they can come down, we will pay for the gate to be fixed. The same goes both ways. We try to maintain and limit that access as much as possible for anybody, particularly dumpers. We monitor it. We go out and mark it. We do all of that.

Through Wyong Shire Council, an environment officer approached us one day and said, "I happened to be sitting on a committee up at the Hunter, the Central Coast Hunter Regional Environment Committee, and they were like you and put in an expression of interest in regarding the access down here." I was like, "Okay." We gave up two properties and they said to us, "You have 12,000 for each property. Go ahead and show us what you can do for deterrence works." I said, "What do you mean?" They said, "You come up with any new ways you can to deter the works, stop access, and we will give you the money." We did. We came up with new locking mechanisms, so every single gate that is on Darkinjung land has a different locking mechanism. No gate is the same.

CHAIR: That is fantastic.

Ms NADEN: We tried different things. They go to the next one and it is not the same as the last one, so it is more difficult as they go along. We also had a working partnership with Attorney Generals and the Sydney University of Technology. Their undergraduate students did a big study on illegal dumping on one of our properties to come up with new deterrence works. One came up with a possible open space to use for another rehabilitation site. Along the way, we have been able to make connections. We think out of the box. I have met with a large number of people from Crown lands and other departments to assist with their land management as well to give them ideas.

Mr JAMIE PARKER: It is important for us to know what works. To hear you talking about deterrence and that it is effective is great for us to hear. In terms of where to from here, what recommendations would you make to us as a committee about things that should change? Is it a change in legislation? Is it more funding for deterrence, if that works effectively? What can we effectively consider to improve the situation?

Ms NADEN: The first one. As a priority, other legislative Acts need to change.

CHAIR: Such as?

Ms NADEN: Ausgrid, TransGrid, RailCorp. Under their guidelines, they do not have to maintain their access points. For Ausgrid, an 11kV easement is about 10 metres wide or, in some cases, as on most of our properties from the Hawkesbury up to Gosford, they can be nearly 15 metres wide. That means when they are coming off a main access road they do not have to close it off, they do not have to put any deterrence works in front of that access point. For our current four properties at Wyee, where there is a major one, we gated off everything, blocked off our access points, but there was still a massive access point. Ausgrid would not come to the table. They simply said, "We do not have to do it. We do not have to cut off any access points. We need access at all times." We said, "As we do with other agencies, we will give you a key to our gates. The gates are wide enough and the easements are wide enough for your trucks to get through and it will assist us with the access clean-up." I cannot clean up the illegal dumping if there is still a major access point. They still would not budge. The next day we went out there—I was sneaky. They went out there and cleared it, and we did not get formal notification of them clearing, so I put an official complaint into the Office of Environment and Heritage. For that complaint to be dropped, they put bollards and gabling in and gifted it to us.

Mr JAMIE PARKER: That is not a long-term solution?

Ms NADEN: No, it is not at all.

Mr JAMIE PARKER: You mentioned Ausgrid, RailCorp?

Ms NADEN: TransGrid have the same authority, however, they do not play that card. They are more than happy to put a gate in, to put a fence in to help manage the access points. I do not see them as the bigger issue. Ausgrid and RailCorp, particularly, at different levels, you work with their external facilitator for agencies and they are more than helpful in the partnership, to understand it. At the local level it is completely different. Again, it is that tiered level of agency of what one will do compared to what one will not. The environment officers at Ausgrid do not have a problem and work exceptionally well when they have to maintain sites. For aboriginal sites, we sign off on their maintenance work, same as TransGrid. However, when it comes to closing off major access points, their easements, we have got no say. Illegal dumping access is going to continue.

CHAIR: That is a very good point. For the record, you are making it very clear you have no issues. You fully understand they need access, they are granted access. What you are saying is: Be responsible. You guys cannot block off 90 per cent if one or two major arterials that are out of your control are left open, because that is where the dumping evidence is coming from.

Ms NADEN: Exactly. In most of those cases, on the 11kV easements, you could have a motocross there, because that is how huge some of the easements are. You could get a large party of semitrailers there, if you liked. That is how wide they can be. The relationships and partnerships at different levels is not the issue. The issue is the maintenance and monitoring of their access points or their easements, where to do that.

Ms CARMEL TEBBUTT: Do you know what the issue is? Is it because they do not want the cost of putting in the various bits of infrastructure and maintaining it?

Ms NADEN: I think it is their legislation and that is what they are told, that they are not required to do that. Some of them may have the view, "Yes, I think we should do something." However, they are not required to.

Ms CARMEL TEBBUTT: So they do not.

Ms NADEN: Under their legislation, they are not required to cut off, maintain or cover the access. All they need to do is maintain it, which means slashing.

CHAIR: I would say under the legislation—and I am happy to be corrected—the onus falls on you, not them to provide an unimpeded entry point?

Ms NADEN: Yes.

CHAIR: However, you are saying: "That is great. We are providing everything you need but work with us to achieve our other outcomes—namely, stop illegal dumping on our land."

Ms NADEN: Yes.

CHAIR: The Committee needs to be very cognisant of the fact that you are saying, "We are a good neighbour. We want you to be good too; work together with us."

Ms NADEN: We knew that the gabbling and bollard gifted to us was a one-off. I made it quite clear to the bush fire management committee [BFMC] when it was done. I sent it to all agencies and said, "Who did this?" I had not seen this easement in five years—it was that overgrown that I did not even know that an easement existed. So they are very much aware of it. They are like: You are pretty much on the ball with this. I said, "Yes, and I understand your legislative Act quite well and how it impacts the Land Rights Act." I have tried to give recommendations or solutions to the issues that we currently have in being able to manage our land. With the lands council being the largest private owner in most cases across the State, we are the only private organisation at the table at BFMC as well. So there are those identifiers that link us with other major organisations as well.

CHAIR: Can you tell us what the clean-up of the illegal dumping costs you per annum or over any specified time?

Ms NADEN: I think I was able to put down in here that in the last three years we have spent close to \$300,000. I think up until June 2012 we have spent about \$175,000. So if we are lucky enough to get the \$50,000, which we have each year—the maximum you can get is \$50,000; it depends on the committee and how much money they give out—we normally contribute. The clean-up of the next three lots of property at Wye will now cost \$74,000 and they will only give \$50,000. So we said, "You give us the \$50,000 and we will pay the extra \$24,000 from Darkinjung to clean these properties." Rehabilitation is the next step." So we tend to have done that for three years in a row. We have also spent money on a number of other properties so we can offer strategic bio advantage zones under the BFMC as well. Our lands council is different to other lands councils because we are extremely resourced and we now currently have a land management that is quite significant from other revenue.

CHAIR: In the clean-up of those properties—and I am not being judgmental—is some of that mess contributed to by Darkinjung?

Ms NADEN: It is clearly inherited.

Ms CARMEL TEBBUTT: When you say it is "inherited", do you mean that no active dumping is going on now because of the work you have done to secure the land or is dumping still ongoing?

Ms NADEN: We inherited a lot of stuff and there is still active illegal dumping—illegal dumpers will dump it anywhere. When they found one of our properties up at Chain Valley Bay blocked off—just where the fires went through—they dumped a whole semitrailer's worth of asbestos in the middle of the road. They found our property blocked off so they just dumped it in the middle of the road. It is inherited and that is another issue. When people do a desktop survey of Aboriginal lands they consider it to be all pristine but when you actually drill down into the proper evaluation of the property you realise there are multiple illegal dumping. I think in north Wyong shire alone we are looking at close to \$3 million worth of illegal dumping clean-up. That is just for north Wyong shire. We are not talking about all of Wyong or all of Gosford; just the top end of the shire. That is just an estimate because nearly all our lands in the north Wyong shire have also now been surveyed and under conservation lands and all those sorts of things as well.

CHAIR: How is Darkinjung's relationship with Gosford and Wyong councils? Are you positive in your working relationship or do you have any recommendations as to how that could be strengthened?

Ms NADEN: I think from when both the chief executive officer and I started—Sean has just come up to five years I think and then I started a number of months later—I think it has been a great working relationship on his behalf for the past five years to work with Wyong and Gosford city councils at that level. However, I have worked at the level with the town planners and sewer guys and all the day-to-day sort of contractors. As I have broken it down there, the working relationship with Gosford City Council at the moment is all to do with major developments. Within the Darkinjung area alone there are several thousand registered Aboriginal sites and Gosford has the high majority of those significant sites, whether it is rock art, midden sites and things like that.

We are currently dealing with them on major sites and they have a major strategy down there that identifies all the places where there are Aboriginal sites. We work fantastically with them under that. However, the same cannot be said for Wyong Shire Council when it comes to notifications of major developments or the possible impacts of Aboriginal sites—we have to find that out—but when it comes to illegal dumping we work very well with Wyong Shire Council. We are a partner with them; however, we manage all of that illegal dumping—we just get them to support us.

CHAIR: When it comes to development you are not on an automatic neighbour notification?

Ms NADEN: We are on a neighbour notification; Gosford City Council notifies us of all developments.

CHAIR: You find they are a lot more inclusive in their dealings?

Ms NADEN: Yes. Darkinjung has a "principles of cooperation" with Wyong Shire Council, which has just changed and that is probably for the best. Now it is just Sean and I and another consultant, we deal directly with the mayor and the general manager. That is the same with Gosford City Council as well. I think they are about to sign a memorandum of understanding. They are working towards a "principles of cooperation". But in saying that, for different reasons we have a very good working relationship with both councils. There is nothing there to say that it cannot be strengthened—anything can be strengthened. I think they are working towards actually strengthening that relationship to become more inclusive of the information that is shared. Darkinjung will be a big priority in the near future with developments with the land conservation offsets, all those sort of things. It is moving towards that. I think our relationship was non-existent a number of years ago and now it is very good.

CHAIR: That sounds very positive. Obviously a lot of work goes into building that relationship—

Ms NADEN: Yes.

CHAIR: —through yourself and your chief executive officer and their town planners and what have you. It is heading in the right direction.

Ms NADEN: Yes, it is. I am the deputy chair of the Aboriginal heritage advisory panel for New South Wales and I have been out to Moree and places like that and their relationship with Aboriginal people and organisations is non-existent. So compared with our relationship with our LGAs we have got no complaints.

Mr JAMIE PARKER: I thought it was great that you outlined a specific recommendation in terms of Ausgrid, TransGrid and RailCorp for illegal dumping. It is quite unbelievable that people take these trucks up and dump asbestos—I suspect that a significant portion probably comes from Sydney. When I asked what things you would recommend the Committee do, you said, "There are lots of them but the first one is this." Do you have any other insights about illegal dumping in particular that might be useful for the Committee to take on board in terms of making recommendations for legislation or changing practice?

Ms NADEN: I think the big impact was the first one that I said: deterrence funding itself particularly from a lands council point of view. This is not from a Darkinjung point of view because, as I said, we are very well resourced and have the capacity to manage those things but for other local Aboriginal land councils they are probably not as well resourced. Darkinjung's core business is land management and the care and protection of Aboriginal sites, and they have taken those two cores out of the Act. As autonomous bodies other local Aboriginal lands councils can set their priorities. They do not have to just focus on Aboriginal sites and land management, they can focus on numerous other things; however, it is outside.

Some people are starting to pick-up land management practices and get an understanding. Darkinjung receives some significant money from the environment trust, Office of Environment and Heritage [OEH] and NSW Rural Fire Service, which I am on and I facilitated to four lands councils in the Hunter on fire management. I developed a land management training package for lands councils, which they can ring up and grab a package—we can deliver as well—regarding how they connect, how they communicate, how they deal with land management issues. It can be as simple as assessing whether a fire trail is worth it or not. We may sit on a bush fire management committee but as a private citizen we cannot go for any of the mitigation funds. However, we have to convince the Rural Fire Service to go for mitigation funds to fix up any fire trails and things like that. People do not know that stuff because they do not have that communication at the local level.

There is a massive breakdown in a large number of areas where Aboriginal lands councils will not even talk to the Rural Fire Service or their local LGA or Crown Lands—they do not even know who their reps are in some cases. The illegal dumping funding was reviewed earlier in the year and I actually provided them with a significant response to what I thought would be better. Darkinjung can manage the program ourselves. We do not need to be a partner with a LGA but other land councils do. I can understand the significance as to why they do the program because the communication needs to be there. But what is stopping a lot of people in applying for that funding is that they do not have the connection with the LGAs. They do not have the opportunity. They do not have maybe the knowhow or everybody is just so used to not having a conversation or connection that they do not know how to move back towards that. I have also recommended as part of the illegal dumping funding that all lands councils have to be an active member of their bush fire management committee.

CHAIR: I think Darkinjung is very lucky to have someone of your calibre and skill. Even the fact that you said you would like to give evidence today is absolutely fantastic. Unfortunately, from what you are saying you may need to play a bit of a role with other land councils and share your expertise—that is, not reinvent the wheel—in what you do so well.

Ms NADEN: We do that. Quite often someone will ring up and say, "Can you help us with something?" We will say, "Yes, we have got that in a template." That is what the land management training package does too—it provides all the templates that I have ever created, from a simple letter of notifying police about access or giving access to the Rural Fire Service. All our teams across the coast have access to our gates, the Rural Fire Service. We already do that. We are very open. We do probably a bit more than what we should, but the way that Sean sees it, and the board of Darkinjung as well, is that you end up becoming what everyone calls a super local Aboriginal land council [LALC], which we do not want to be known as, but we want to bring other land councils with us. We do not want to be out there in the forefront with everybody else sort of fooling around at the moment.

Just to follow-on from that, eight land councils within the lower Upper Hunter have just agreed to a sustainable land management initiative, which is in conjunction with five major government agencies—Urban Growth are also a leader on that initiative—to bring all those things in and look at those issues. It has taken four years to try and get people to understand that land management is a major obligation and responsibility as a lands council, which they need to take. A lot of people are actually now taking that because I keep giving packages and other little hints and that sort of thing. 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.

CHAIR: I think you have made a good point that cannot be lost on this Committee. As we all know with our government or local government backgrounds, and you have certainly brought this to the table, communication between the groups is paramount. Your land council, through your efforts, seems to have it down pat; you know that to get good outcomes you have to deal with the police, the NSW Rural Fire Service and the local councils. It is important that that message gets out to all groups, and equally the NSW Rural Fire Service and the local police need to know that they need to deal with Darkinjung Local Aboriginal Land Council. So it is about information sharing. It is a case of why reinvent the wheel when your model looks like it is working, and working very well. It is a credit to you.

Ms NADEN: That is why I have pushed the active participation in the Bush Fire Management Committee [BFMC], because all the essential players who are land managers sit on that committee—from the police to fire and rescue services to Delta Electricity. We have everybody on the Wyong Lake Macquarie Bush Fire Management Committee. That is where you make the connections. I sat around for a while and listened to people in the meeting. The following week I went back and said, "No, it is not like that; and you owe me this." And they said, "What do you mean?" I said, "I went back and read that." They figured out fairly quickly that I

just sat there and took it all in. You are right though that a lot of people do not necessarily have the capacity that I do or what I can bring to the table but we offer our expertise to everybody else.

From my point of view, I am not precious about it. Darkinjung is not precious about the stuff that it has the ability and resources to do. We offer our assistance out to other parties. I said to Sean Gordon, the Darkinjung Chief Executive Officer, this morning, "They want to know if we have support from other Local Aboriginal Land Councils." We had a bit of a giggle to ourselves, because if we did put this forward to other Local Aboriginal Land Councils then it would not necessarily be their priority. They might be more focused on conservation or commercial ventures or a new local highway wrecking an important site. Those things might be their priority. But once they get around to land management and actually taking the time to do it then it will end up being a major priority issue for them, and a financial one.

What we are trying to push is the legal obligations and liabilities. The question was put to me: Is it people from Darkinjung dumping rubbish on that land? Nearly every member of Darkinjung does not know where most of our properties are located. They would not know. Unless of course you go past a property with a very big sign which says "Darkinjung private property: keep out". We do not advertise where our properties are to our members or to the public. Even when we put out media releases for the illegal dumping funding and all those things we are required to do we do not publicly identify the properties. We say what suburb the property is in but we do not actually identify where those lands are—for that reason alone.

CHAIR: Thank you very much for your time and for appearing here today. It was a very professional presentation. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Ms NADEN: Yes, that would be fine.

CHAIR: Thank you, again, and thank you for appearing today. Your presentation has been extremely professional and a big help to the Committee. Do you mind if we publish your outstanding response and make it public as well?

Ms NADEN: Yes, that is fine. I have some other information here about our deterrence measures work.

CHAIR: If you could submit that to our staff then that would be wonderful.

Ms NADEN: I also have a copy of the response that I did for the Environmental Protection Authority on the illegal dumping project. It is similar to what we have discussed—it covers the same issues and provides a response in dealing with illegal dumping and deterrence works.

CHAIR: Thank you, if the Committee sees that this can help in any regard, and I am sure that a lot of it will, would you mind if any of that is made public as well for the benefit of the Committee.

Ms NADEN: Not at all. That material is okay to go on the public record. I also have some sustainable land management information to give you a bit more an idea. I brought it down to show you that Darkinjung is more than capable in the area of law enforcement issues.

CHAIR: I think you have made that very clear.

Ms NADEN: So this material provides more information on that. It gives you an idea of the work and the level of detail that has gone into the information and knowledge that we hold on our lands, vegetation, fire history and those sort of things. I do not need to leave it with you—like I said, it could be a bit too much information.

CHAIR: We would prefer you to. So if you are happy to then please do so.

Ms NADEN: Yes, I can. I have copies with me.

(The witness withdrew)

(Short adjournment)

ANDREW JOHN DOIG, Chief Executive Officer, Australian Sustainable Business Group, sworn and examined:

CHAIR: Good afternoon and thank you for attending the Committee on Environment and Regulation inquiring into waste management and the disposal of waste on private land. I welcome Mr Andrew Doig from the Australian Sustainable Business Group. Before we proceed, do you have any questions on the procedural information sent to you in relation to witnesses and the hearing process?

Mr DOIG: No, thank you, it was all clear. I am the Chief Executive Officer of the Australian Sustainable Business Group, which is a business representative body.

CHAIR: We will keep this as informal as we can. I invite you to make an opening statement and we will ask questions as we go.

Mr DOIG: Would you like me to commence with some of the questions that were provided to us?

CHAIR: If you would like to, but do not feel obliged to. We sent a list of questions on what we think are the key issues but if you think there are other things that the Committee needs to hear then do not be shy about raising them. The questions are a guide but feel free to let us know what you believe, and we will then jump in if we would like to go in a different direction.

Mr DOIG: Firstly, I think you should probably know my background. I started off back in 1984 in what was then called the Metropolitan Waste Disposal Authority dealing with hazardous waste issues. I am a chemical engineer by training. In those days I was particularly dealing with hazardous waste. I was there for about 7½ years and then took a job with what is now known as the Australian Industry Group as the industry advocate for business members for that group. In that time I joined the board of what was then the Waste Service NSW. It has since changed its name. I served on that board from 1996 to 2000. So I have a very strong background in the waste sector. I have seen the waste sector change, grow and differentiate over many years. One of the things that has long been known in the waste game is that there are problems associated with illicit behaviour.

It is not just in Australia; it is fairly common knowledge around the world that the waste business can be associated with organised crime. There has always been an element there. There is always an element of illegal dumping that has been going on or illicit behaviour where some wastes have swapped with other wastes and gone to the wrong location. They have been illegally disposed of in landfills but they are the wrong type of waste to go into that particular facility. Or they have been applied in the wrong way. Sometimes that is through negligence or mistakes or even legal technicalities, but probably another hardcore I would suggest would be the intentional criminal element that comes up.

CHAIR: There has been a bit of media on that lately. The criminal element is taking waste and disposing of it and in your opinion it is worth thousands and thousands of dollars. How do the criminals gain from doing that? Are they just getting rid of it at no cost, which is a win, or are they being paid to get rid of it at a lesser cost, which again is no cost to them, or is it a combination of both?

Mr DOIG: It is complicated. There are all sorts of tips and tricks there to substitute loads so you get someone else paying for someone else's waste. For example, a truck could pick up one or two loads from two different businesses and bill each for half the truck weight. When they pick it up they know that less was actually picked up than was stated and then they go around to somebody else and pick up their waste and charge them but of course they have doubled up on the charge. So there is fraud elements associated with it. Then there is blatant illegal dumping, which is an environmental element. There is a whole range of different things and, sure, the dollar is the main driver there.

If you are going to attempt to undercut someone you are not going to abide by the rules. For hazardous waste there is a complex tracking system. If you go below that type of process and intentionally avoid that system then you can probably undercut your competitors by 5, 10 or 20 per cent and still make a much more healthy profit than your competitors would. Of course, if too much of this happens it drives the whole market down and those trying to do the right thing suffer financially because there is a market intention there that the whole price should be this when you want to charge that.

Mr THOMAS GEORGE: But that is not just happening in this industry, is it?

Mr DOIG: Of course not.

Mr THOMAS GEORGE: If you talk to any trucking industry, whether it be freight for one of the bigger supermarkets or whatever, there is always that issue.

Mr JAMIE PARKER: Can I ask a question about the buck passing between agencies. We want to make sure that we are providing an effective framework for business to operate in and also make sure that we are protecting the environment. You talked about this buck passing between council, the Environment Protection Authority [EPA] and the police. Can you explain what you think the problem is and what you think the solution is?

Mr DOIG: The buck passing was probably a comment put in by one of the members who had difficulty getting some illegally dumped waste policed properly. They had the right evidence—video evidence—and actually contained in the waste was the information as to who it was. They gave that to council, who did not really want to know about it. This was in the rural sector; it was not in the Sydney basin. Council did not want to know about it. The police said yes, they would do something but, what happened, two weeks later the same guy dumps a similar load of waste in a somewhat similar area on the same land. There was a repetitive nature to this and they assumed that nothing really eventuated from the follow-up.

I suppose that is one of the key issues here. Waste has changed a lot in terms of its cost of disposal. Going back just even 15 years ago it probably would have been much less. In 2000 the levy would have been probably about \$20 a ton and now it is \$107 a ton in the Sydney area. Up the North Coast I think it is now \$53 a ton. That is north of Port Stephens along up to the Blue Mountains on the western boundary. There is, I suppose, a catch up by the local policing agencies and the local government. They are not realising how much profit is involved with illegal dumping that is creeping into the process. As the levy process continues to increase up to \$135 a ton in the Sydney area and I think it will probably hit about \$80 in the northern strip—by the way, they are the only two areas that actually have the waste levy—the incentive will be there. My opinion is that when any government adds any tariff on to anything, as we do with tobacco and liquor and other products, you have to follow it up with an adequate policing process and ensure that those who are trying to do the wrong thing are caught and made examples of.

Mr JAMIE PARKER: Do you think the reason for that is that the fines are relatively low and the police do not see it as an important issue?

Mr DOIG: No.

Mr JAMIE PARKER: Do you think it is a policing or resourcing issue from local council?

Mr DOIG: It is policing.

Mr JAMIE PARKER: We have to make recommendations about how to improve the system, so what do you see as the cause and what might be worthwhile for us to consider?

Mr DOIG: The laws are there but, being the Committee on the environment, you know it is probably one of the most rapidly changing areas of law on the books. As a consequence I think there is this lag of time, which probably is a decade in most people's minds, of how tough these laws are. Illegal dumping laws date right back to the original Environmental Offences and Penalties Act 1989, which introduced the first \$1 million fines for illegal dumping. That is still on the books and we have far more many layers and layers of different regulations and other penalties under the Protection of the Environment Operations Act [POEO] that could be used.

Recently, we have also had the change to the POEO Act illegal dumping bill that was also recently passed and introduced further penalties on top of repeat offenders. There are certainly a lot of rules there. The prosecutor has a smorgasbord of opportunity to take someone to court. The issue is the amount of policing that is undertaken. This is again coming back to problems with the buck passing that we do have, I suppose, with the police, the local council and the Environment Protection Authority [EPA].

The EPA is very good at policing licenced sites. That is, those who hold an environment protection licence. They are very active in that area. They are not so active in non-licenced sites. Certainly, that could be improved. The Regional Illegal Dumping [RID] Squads are very active and one in particular that we hear a lot about is your Western Sydney RID Squad. From what I hear and the reports that I see come out of them, they are very active in that area. Only a couple of weeks ago I met one of the members of that squad. He was indicating that he had a lot more powers than the police did but, again, they are very limited by their area of operation.

Mr THOMAS GEORGE: After listening to the councils for two hours this morning I am disappointed that one council did not want to do anything after you presented them with all of the information on how loads were dumped illegally and no action was taken. It is disappointing to hear that, because most of people who were here this morning were very proactive and wanted tougher laws to be able to come down even harder on these people. I come from a regional area. If you are telling me it is a regional council I would love to know which one it is. I will talk to you later about it, because if it is anywhere in my area it is not acceptable. The police do not have the powers to handle this; it is the EPA or the council.

Mr DOIG: Correct, but the EPA is very active on those who have the licences set in place and they are very heavily policed by the EPA. It is easier for the EPA to deal with those who are trying to do the right thing and screw up rather than those who are deliberately doing the wrong thing. We see this gap in which deliberate criminal intent seems to not be as well policed as the ones that I suppose are making illegitimate mistakes. They are trying to do the right thing but are just falling down because they are not putting enough resources into their compliance issues.

CHAIR: Would you find in your experience that, not the councils you have mentioned but the ones we heard today, there is a very clear thread. Councils are dealing with a wider spectrum of people either making mistakes or being caught out illegally.

Mr DOIG: Yes.

CHAIR: However, the Environment Protection Authority [EPA] has the teeth and has the ability. All the councils said there is a huge difference between the Environment Protection Authority and the Local Government Act, which is a toothless tiger.

Mr DOIG: Yes.

CHAIR: That is what they are finding. Councils that deal with drug laboratories or the bloke who dumps waste on the side of the road and even hoarding to a lesser degree, the Local Government Act just does not give them the ability to follow through. Would you see that in your experience?

Mr DOIG: I can understand where that is coming from. Again it comes in for more complicated legal reasons. Certain council officers are what they call authorised regulatory agencies, or ARA, and therefore can enforce components of the POEO Act but a large number of general officers do not have those powers. Subsequently maybe just transferring those powers over plus a lot of training would be an appropriate way in terms of minimising legislative change and maximising the output.

CHAIR: In your submission I thought a very good point was to increase surveillance to combat illegal dumping. We had it down to speak to local government representatives about that, but probably got beaten by time. Increased surveillance sounds great. How do we do it and what about the limitations, such as expense? Talk about opening Pandora's box. Where do you start and stop? Obviously with increased surveillance, I am guessing you are getting a much better rate because you can follow through and you can prosecute and all those types of things. But where do you recommend we start and stop that one?

Mr DOIG: Increased surveillance is one thing, but following up police work is another and that is what seems to be falling down. The members keep telling me in very anecdotal terms that they have lots of video evidence of actions occurring. They take them over to the police or to wherever the authority is and nothing happens. Unfortunately it is more an issue of policing and resourcing in the policing, whether that is the Environment Protection Authority's, the councils' and the police's, or the Regional Illegal Dumping [RID] squads'. There are limitations, benefits and skills that each one has and the others do not. Combined, we could probably get a better outcome.

CHAIR: With the types of surveillance, what are some of the things that you would be advocating for?

Mr DOIG: Video surveillance is becoming so cheap. I think you can buy a video camera that has motion sensors built-in for under \$100 and it stores 4 gigabytes of data on the chip and you can download that. You can tie it to a tree. It runs on batteries. It really is a case of educating people on how to do it. But, more importantly, it has to be followed up if illegal action has been taken.

Mr THOMAS GEORGE: We have spoken about inter-agency collaboration.

Mr DOIG: I can give more of my opinion on where their weakness and strengths are. The Western Sydney Regional Illegal Dumping squad is doing quite a good job but is limited by area. It is a bit disappointing, I suppose, that we do not hear much from the other Regional Illegal Dumping squads. We do not see very much transparency in that area and maybe that is a resourcing issue. Certainly the current Government is allocating \$58 million to address illegal dumping. I assume that will feed through and filter through and we will see improvements in this area. The police are probably better dealing with criminals with intent. The Environment Protection Authority seems to be better dealing with licence holders who are doing the wrong thing rather than a criminal action. Each could learn from each other. The Environment Protection Authority certainly has a much more scientific skill set than the police do and more powers, and so do the authorised regulatory agencies' officers and councils, but it is still a case of resourcing it getting it and together so that we can get a better police outcome.

CHAIR: Coming back to your initial point of the buck-passing, also maybe getting a mentality of working together for an outcome not defensively "This is not our job" or defensively "This is your guys". Would you think that you are seeing a lot of that?

Mr DOIG: Or "Waste is such a trivial action. Why are we doing this when there are real criminals out there?" That kind of mentality also probably prevails because the laws of the land have changed, the opinion of the people has changed, and the environment is much more important than it was even 10 years ago; yet the levels of importance are still trickling down to the officer levels and various jurisdictions.

CHAIR: That is a very good point you make. Depending on the type of waste and where it is illegally dumped, such as a truckload of asbestos in a children's playground, you have a huge health risk and a huge long-term effect on the people exposed to that, which—perhaps not for this Committee to deal with—constitutes a very major criminal offence and something that we need to address. If you knowingly put somebody's life at harm, maybe that is something we need to address as a society. You are not just dumping rubbish on isolated land but it is a matter of what you are dumping and its potential impacts. It is a very good point that you make.

Mrs TANYA DAVIES: In relation to a comment you made earlier when you said that metropolitan Sydney and the northern regions of New South Wales are the only areas that have a waste levy and how that seems to be causing a little bit more illegal dumping because people are trying to avoid the waste levy, in the other regions of New South Wales do they have any form of waste levy operating?

Mr DOIG: No.

Mrs TANYA DAVIES: Do you have statistics on the rate of illegal dumping in those other regions?

Mr DOIG: No. Illegal dumping was probably always a bit of a problem but all we have is anecdotal evidence that it has increased. The waste levies have expanded across all State jurisdictions. Queensland did have one for a very short time and now it does not, and that causes other issues as well. We are getting reports of very low rates being quoted for hazardous waste disposal to go to south-east Queensland. Those rates are lower, including transport, than the gate fee would be for municipal waste in Sydney. You are getting into that kind of category. I am not saying it is illegal, but it is very suspicious that these types of charge rates are offered in the market. That is probably illegal dumping in Queensland but in fact if it is hazardous waste, it would also be breaching New South Wales rules to take it into Queensland without the proper tracking process.

CHAIR: Do you have numbers or quotes in the difference between the two that you could give to the Committee or that we could get at a later date to show the difference and why it is occurring?

Mr DOIG: You are talking about—

Mr THOMAS GEORGE: You could provide that later if you have not got it here with you, if you have access to it.

Mr DOIG: I do not think we do. What I tend to do, being the chief executive officer of the industry representatives, is get a whole lot of stories back from the members saying, "We got this. I'm a little concerned about this." They will not give me any more detail because they are also concerned about their own identities, reprisals and illegality. I am not a particularly good witness in that area.

Mr THOMAS GEORGE: You could take that on notice and if somehow you could give us some idea, I am sure this Committee would appreciate it.

CHAIR: Very much so.

Mr THOMAS GEORGE: You might be closer to it than we are in terms of trying to get an indication—

Mr DOIG: Of how much it has increased.

Mr THOMAS GEORGE: Or what it is doing.

Mr DOIG: Definitely. The only things that we have are what the Western Sydney Regional Illegal Dumping squad indicated it had, which is in my submission. It had 220,000 tonnes identified. I gather if you say that is one-quarter of Sydney and multiply that by four, that is getting close to a million tonnes, which probably comes up to the Minister's figure of \$100 million in missing revenue. However, a lot of that might not be going on illegally dumping. It might be going to other landfills and just bypassing the levy. It might be going to south-east Queensland. Apparently there is cooperation between the Environment Protection Authority in New South Wales and the Department of Environment and Heritage Protection in Queensland to try to find out how much is actually going on in terms of cross-State-border transmission. There is nothing wrong with that. It is a constitutional right to do that. It happens a lot on the Queensland border as well. The issue is how much.

CHAIR: That was extremely helpful, thank you. We will have the Environment Protection Authority attending next week and it just gives us a few things to add to what we have noted from our local councils and whatever, and we have a few little questions we would like to ask. That was good, thanks.

Mrs TANYA DAVIES: The waste services levy was established in part 2 to try to encourage recycling and avoiding wastes to landfill. What we are hearing today is that it seems to also be encouraging illegal dumping. It is really important that we recycle as much as we possibly can and that we become sustainable in our activities. Do you think there is another range of mechanisms that the Committee could look at to encourage recycling that would not also then encourage illegal dumping and avoidance of the levy?

Mr DOIG: I could write a book.

Mrs TANYA DAVIES: You have about nine minutes.

Mr DOIG: Okay. There is not a direct link between waste levies and recycling rates. There are a number of State governments that have set up independent agencies to promote recycling and to achieve similar rates to other States, with and without waste levies. Records have been available on that. The issue of whether the levy is actually encouraging waste dumping is probably just one of intuition because you are saying the landfill prices have gone up and therefore there is a big incentive.

I do not think that is really such a big point because when the Regional Illegal Dumping squad is saying over 220,000 tonnes is being illegally dumped in their region, is that not enough evidence to suggest something has to be done and done a little better, considering the waste levy raises nearly 2 per cent of the State's revenue or getting close to that? Like I said, 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 appropriately and, as an add-on to that, that also will improve illegal activities as well. Governments have been putting tariffs on goods and services for over a millennia and Customs is another good model to probably look at to see how they deal with something that has a tariff attached to it.

Mr THOMAS GEORGE: In your submission you referred to waste, and you described it as orphan waste.

Mr DOIG: Yes.

Mr THOMAS GEORGE: You indicated that for insurance purposes, if I owned a block of ground in Parramatta and someone comes along and dumps illegal waste on it, my insurance would not cover it. If it was asbestos, it could cost me a lot of money to get rid of it. I probably would not have insurance on a block, but if it was a house block on which the illegal waste dumped, it could cost me a lot of money to get rid of it. You indicated my current insurance on my house and that property would not cover that, would it?

Mr DOIG: It is a little more complex than that. It depends on the insurance policy. If you have a policy that covers criminal damage, you might be covered. The point I was trying to make is that there have been a number of cases where the government agency, like the EPA, has required clean up through a clean-up notice, and because they have done this the insurance policy has failed to perform. There are a number of interesting cases. There is one that occurred in Brisbane. Binary Chemicals, which stored pesticides, had a fire. The Queensland EPA, as it was called at the time, required them to clean up, which they did and it cost them \$10 million—it was not just contaminated water, it was contaminated soil as well. They went to their insurer and the insurer said, "No". They went to court and the court said the insurer did not have to pay because they were directed to clean up and that was not a third party civil claim of damages.

The way that general insurance is written, it is written for third party civil claims. If you have waste that is dumped on your land it is not uncommon for the EPA to require you to clean up the mess that has been made and if they do direct you to do that there is a loophole for the insurer to say, "Sorry, you are not covered." The insurance industry knows this and actually has environmental gap insurance available if you are willing to pay a little more. I suppose the issue is whether government agencies realise that if they are actually requiring clean up, not many out there understand that their insurance may not perform and may actually be under-insured in this area. It may be better for them to say, "Look, you should clean this up, but we will not do anything at this stage, check with your insurance company first." Maybe that is the approach.

CHAIR: Where do you think the onus lies—a level of government or the insurance company, or a combination, to ensure that people are aware of the matter?

Mr DOIG: That is a very difficult and complex issue. I mean everyone is responsible for their own land, and certainly there are some ownership issues associated with that, so landowners probably should be aware that they need to be insured for this. Government agencies need to be probably a little more aware of how general insurance works so that they do not cause undue cost to people who cannot claim, and companies or other landowners probably also need to consider if they do need additional insurance. It is an educational process. This is an international issue as well. We are even finding that if you have a fire, the fire water is generally now required to be cleaned up by the environmental regulator because it is pollution, but if they require that to be cleaned up then the company may not be insured.

In fact there is a case going around in the New South Wales courts involving a company called Mistring. They were a janitorial company that had a fire. The EPA—I am not too sure on the details, but I assume it was the EPA—could not find the responsible party and they organised the clean up of the fire water, and then sent the company a \$1.15 million bill. I am not sure, but this company may be going into liquidation because it probably cannot pay that and it cannot claim it back through insurance, and therefore you end up with an orphan bill on the New South Wales taxpayer, which probably is not that welcomed. I think the EPA has changed its behaviour and the fire brigades have changed their behaviour as well—it is not just making the site safe but minimising environmental harm. So there are lessons for everyone in these processes as the priorities on environment change with society.

CHAIR: That is a very good point, and it was made earlier today in relation to clandestine drug laboratories, which have popped up since the legislation was made and the legislation has not kept up. As we become aware of things, we need to ensure that the relevant Acts are keeping up with modern day community expectation and modern day societal values. Do you have anything that you think the Committee should be cognisant of or did you want to leave us with anything further?

Mr DOIG: I suppose I could just sum up that there is a lot of money—\$58 million—allocated for better policing and I think that is probably the main crux of my submission, that better policing will lead to

better collection of the levy and hopefully less illegal dumping, better coordination between agencies, and perhaps even setting up some sort of organised crime waste taskforce with the EPA and the police, because then that would cover the whole State rather than the RID squads that just have area sections. Better transparency out of these squads that are being made would also be welcome to at least identify how well this issue is being addressed across the State, and where it is not, and the appropriate questions can be asked as to why not, and finally education.

CHAIR: You mentioned a statewide task force as compared to geographical RIDS. Can you take us through that again?

Mr DOIG: Well, the RIDS are a bit limited.

CHAIR: You have said that we have one that is doing exceptionally well and others that do not seem to be as proactive, depending on the local government area or location.

Mr DOIG: I do not know, because there is just no information about what is happening. The only information that I have is that the reports that have come out of the Western Sydney RID squad seem to offer some glimpse into what is actually happening, but the other RID areas are silent.

CHAIR: You just thought there might be a need to look at it at a State level through a taskforce.

Mr DOIG: Yes, again because the RID squads are regional. If we are having organised crime that is transporting waste large distances, across large areas, are the RID squads appropriately able to be equipped to deal with that? Having a statewide agency and perhaps even an interstate agency, because some of the potential issues that may be going across borders of illegal or potentially illegal hazardous waste disposal are another concern—perhaps it is even an issue for COAG.

CHAIR: You have already mentioned south-east Queensland as being a border issue and potentially where a lot of our illegal waste is going. It is a very good point. Was there anything further you wanted to say?

Mr DOIG: No, I think that would probably sum it up.

CHAIR: Thank you for appearing before the Committee today. The Committee may wish to send you additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr DOIG: Yes.

(The witness withdrew)

(Evidence continued in camera)

The Committee adjourned at 4.10 p.m.
