

**REPORT ON PROCEEDINGS BEFORE**

**PORTFOLIO COMMITTEE NO. 6 – PLANNING AND  
ENVIRONMENT**

**'ENERGY FROM WASTE' TECHNOLOGY**

**At Macquarie Room, Parliament House, Sydney on Thursday, 17 August 2017**

**The Committee met at 9:30 am**

**PRESENT**

The Hon. P. Green (Chair)

The Hon. L. Amato

Mr J. Buckingham

Dr M. Faruqi

The Hon. J. Graham

The Hon. S. Mallard

The Hon. M. Mason-Cox

The Hon. P. Sharpe



**The CHAIR:** Good morning and welcome to the inquiry into energy from waste technology. This is the fourth hearing of the Portfolio Committee No. 6 inquiry into energy from waste technology. This inquiry is examining the waste disposal industry in New South Wales, including relevant legislative and policy provisions, the impact of waste levies and the capacity of the industry to meet future demand. The terms of reference also consider the need to identify and to manage the risk of monopolisation in waste disposal markets, the role of energy from waste technology in addressing the State's waste disposal needs, and opportunities to encourage a circular economy within the industry. The terms of reference for the inquiry were extended on 10 August 2017 to include the prevalence and scale of illegal dumping across New South Wales, the transportation of waste outside of the State, and the sustainability of the current waste and landfill regime in New South Wales.

I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay my respects to elders past and present of the Eora nation and extend that respect to Aboriginal people who may be present today. The hearing today is the third of four hearings we plan to hold for this inquiry. Today we will hear from the Waste Contractors and Recyclers Association of New South Wales, HZI Australia, Dr James Whelan from Environmental Justice Australia, Dr Stephen Goodwin from the Mountain Districts Association, the Australian Industrial Ecology Network, Dial A Dump Industries, and the Environment Protection Authority.

Before we commence, I will make some brief statements about the procedures for today's hearing. This hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography.

I remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside their evidence at the hearing. I urge witnesses to be careful about any comments they may make to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to claim an act of defamation. The guidelines for broadcast of the proceedings are available from the secretariat.

There may be some questions that a witness could answer only if they had more time or certain documents to hand. In these circumstances witnesses are advised that they can take the question on notice and provide an answer within 21 days. I remind everyone here today that committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry's terms of references and avoid naming any individuals unnecessarily.

In terms of delivery of messages and documents tendered to the Committee, witnesses are advised that any messages should be delivered through the Committee secretariat. To aid people with difficulty in hearing, there is an opportunity to sit closer to the front seats. We ask witnesses to speak into their microphones and to keep their microphones close to them so they can be heard. I ask anyone present to turn their mobile phones to silent or switch them off for the duration of the hearing.

**TONY KHOURY**, Executive Director, Waste Contractors and Recyclers Association of New South Wales, sworn and examined

**HARRY WILSON**, President, Waste Contractors and Recyclers Association of New South Wales, sworn and examined

**The CHAIR:** Do you wish to make an opening statement?

**Mr KHOURY:** Thank you for the opportunity of addressing this New South Wales upper House parliamentary inquiry. I will deal with four issues in my opening statement. The first is waste to energy and the proposed Eastern Creek facility. The Waste Contractors and Recyclers Association [WCRA] supports the New South Wales Environment Protection Authority's [EPA] Energy from Waste [EfW] policy. We recommend it be made a mandatory condition for all EfW plants that a processing system be in place to extract and process organic waste and all traditional dry recyclable material, and that only the residual waste remaining after this process be used as in-feed for EfW.

When assessing a large-scale project such as proposed at Eastern Creek, planning regulators should take care to not close the door on opportunities for new, future and emerging technologies. In a market where volumes are locked in under contract, future technologies that provide a higher level of recovery and recycling may never be able to be developed. In assessing the market need for a disposal facility of this magnitude, WCRA is concerned at the lack of an integrated and coordinated plan for the future of waste management in New South Wales.

The second issue is long distance transport of waste. I note that the terms of this inquiry have been extended to include that subject.

**The CHAIR:** That is correct.

**Mr KHOURY:** WCRA first expressed its concerns about the negative impacts of the interstate transport of waste to the NSW EPA in 2012. WCRA has long submitted that the issue of interstate transportation of waste needs to be resolved independent of the determination of any single proposal such as the proposed waste to energy [W2E] plant at Eastern Creek. Transporters of general waste from within New South Wales to interstate facilities are motivated by dramatically lower landfill costs, and this activity is an unintended consequence of a high New South Wales waste levy system. Built in to the pricing of New South Wales landfills is the waste levy of \$138.20 per tonne in the metropolitan area and \$79.60 per tonne in regional areas. Under current New South Wales regulations, the levy is paid on waste that is landfilled, thereby allowing waste to be transferred to interstate facilities free of the waste levy.

The average cost of landfill at a Western Sydney facility for general non-putrescible waste is \$220 per tonne inclusive of the waste levy and GST. By comparison, the general cost of loading ex-Sydney from a waste facility, transport and disposal to a south-east Queensland landfill, along with the cost of an empty return truck is approximately \$150 per tonne inclusive of GST. A gap of \$70 per tonne is encouraging the long-distance transport of waste.

The third issue is illegal dumping. The motives of illegal dumpers include the avoidance of high tip fees, which include the waste levy. WCRA supports a better regulatory and enforcement regime for the waste industry and has repeatedly asked the Government to consider whether the EPA is adequately and suitably resourced to enable a fair and proper regulation of waste activities across New South Wales. We urge the Committee to examine this matter in great detail. A further question that this Committee should contemplate is whether or not the New South Wales penalties associated with illegal dumping actually deter rogue operators from operating sizable unlawful facilities.

The other area that we would like to comment on is recycling and commodity markets. Over the last few years our members have expressed significant concerns in relation to the lack of end market options for recycled glass. As a result, our association commissioned a detailed study and we are now encouraged by the fact that the New South Wales EPA has recently appointed the Centre for International Economics to undertake an economic assessment of issues and options for glass recycling. It is a further concern that China has recently announced a ban on imported recyclables such as plastics. With a worldwide maturing of the recycling market, this looming issue is an indication that Australia needs to focus on the development of local re-use and reprocessing capabilities for recovered plastics. They are our opening comments.

**The CHAIR:** One of the inquiry's terms of reference is the section 88 waste levy. A lot of councils are paying that levy and it is going into the general revenue of the State Government. Would the section 88 waste levy be able to fund innovations to deal with our own glass and plastics recycling?

**Mr KHOURY:** The Government currently collects a lot of money from the waste levy. Approximately only 16 per cent to 17 per cent is hypothecated back through the Waste Less, Recycle More initiative. That is certainly a question for government to consider whether they hypothecate more. Industry would love to see more come back in to help us with these emerging issues.

**The CHAIR:** If it was hypothecated to at least 50 per cent but ring fenced by environmental initiatives so you could not squander it, what sorts of things could your industry do with that money?

**Mr WILSON:** I also run a materials recovery facility. One of the issues we have in glass is producing products to suit the marketplace. One of the big issues with these products is government, both local government and State government. It is very difficult to get local government and State government motivated to use what is defined under the Act as waste. That is what glass is as defined by the Act—waste. Assistance in that area as well as funds to provide the washing facilities and the crushing plants would be of great assistance. It is not just producing the material; it is also utilising that material. It can be helped by government. We are working on that with government now.

**The CHAIR:** What are the opportunities for glass recycling? On *Four Corners* we saw it packed to the roof in a few factories in Victoria, but what are the opportunities to use glass?

**Mr WILSON:** Concrete, road base.

**Mr KHOURY:** Road base would be one. Aggregates, drainage material, used as a sub-base in other products for drainage mediums and for road bases. The big missing link in a lot of this is the purchasing decisions of government both at a State and local level who should be encouraged more to buy the product back that they are generating through the kerbside system.

**The CHAIR:** We should be leading by example?

**Mr KHOURY:** Yes.

**The Hon. PENNY SHARPE:** I have been told that Roads and Maritime Services [RMS] has taken glass off the acceptable materials list for road base. Is that true? Are you aware of that?

**Mr KHOURY:** I would have to take that question on notice. I cannot be sure that is the case but what we do know is that a large facility that was run by one of our members, Benedict Recycling, which was acting to receive large volumes of crushed glass and mixing it in with its road making materials, closed a couple of years ago. That is part of the study we have just done and it is part of what the Centre for International Economics is currently looking at.

**The Hon. PENNY SHARPE:** But it is the case that government through its procurement process has the power to suggest that we build sustainability into these kinds of materials. My understanding about the glass is if it is not fine enough or clean enough it is a danger, particularly for the workers, and that is why it has been taken off the list. Is that right?

**Mr KHOURY:** As Mr Wilson said, if we are given a bit of a subsidy back through this ring fenced, quarantined waste levy fund, say a couple of dollars per tonne, then that can be used to produce a cleaner product. We need incentives back to the recyclers. We have discussed this with government and the EPA for some time now: Recyclers need incentives. The cost on recyclers is almost the same as on any waste disposal facility in terms of record keeping, managing stockpiles, compliance with authorised amounts, financial securities, bank guarantees and the cost of compliance. The cost of recycling to a certain level is almost the same as the cost of a waste management facility and they need some help, because recyclers are competing with the producers of virgin quarry products.

**The CHAIR:** It was nice to hear you say in your opening statement that you support the EPA in its initiatives. But from what I hear, the EPA also can be a hindrance and good people are being caught up in the aggression to deal with the bad people. The net has been set but we are capturing people who are doing right as well as the rogues. Do you have a comment about your industry's experience with the EPA? Is the net too tight or too loose?

**Mr KHOURY:** The EPA or the laws that the EPA administer?

**The CHAIR:** The laws. Obviously, they are the agency that has to enforce compliance.

**Mr KHOURY:** Our view is that the agenda for the EPA is set by the Government and the EPA does what the Government dictates and what the laws of the State are and what the regulations of the State are. The EPA follow the laws and the regulations that are in place for this State.

**The Hon. PENNY SHARPE:** Thank you for your submission. I know you have been talking about these matters for quite a long time. My first question is around interstate transport. In your submission you suggest there is around 65,000 to 70,000 tonnes per month of waste going up to south-east Queensland. We recently got figures from the EPA that suggested that in 2015-16 that amount was around 240,000 tonnes to Queensland in a year and it grew by another 50 per cent to around 380,000 tonnes in the last year. That is a substantial gap compared with what you are suggesting. Can you explain where the discrepancy is? Is it the case that the EPA is able to measure some that is being diverted but there is lot more that we do not know about and is not being tracked?

**Mr KHOURY:** Good question. I am not sure that everybody uses the interstate waste tracking system that the EPA has put in place where it places an obligation on every transporter who is sending more than 10 tonnes of general waste to an interstate facility. I am not confident that transporters are using that system. The reason I am not confident of that is because if they used that system and they reported each and every transaction that they were transporting interstate they would be dobbing themselves in in contravention of the proximity principle.

**The Hon. PENNY SHARPE:** So the issue is the tracking system is not working and, essentially, the EPA is either not forcing people to use that or they do not have the resources to ensure that everyone is using it?

**Mr KHOURY:** I think it is a bit more fundamental than that. I am going to go back a step further to something that has not been mentioned in any of the submissions we have done so far. We have had a longstanding discussion or, I suppose, point of difference with the EPA about the need for general waste transporting licences. That is probably something that this Committee should look at. It is like asking someone to build a new parliament house and you tell them, "I want the roof made to this standard, I want the walls made to this standard, I want the slab made of this standard, but you can do whatever you like with the foundations." That is what this waste industry is built upon. It is built upon a system where waste transporters are not licensed. To transport general waste, you do not need a licence in this State.

**The Hon. PENNY SHARPE:** Are there other places that do it?

**Mr KHOURY:** You need to follow the regulations and the laws, but it is up to you to work out what those laws and regulations are. The barriers to entry into waste transport are very low.

**The Hon. SHAYNE MALLARD:** Who else is licensed? What other industries are licensed?

**The CHAIR:** What States?

**The Hon. SHAYNE MALLARD:** No, I mean other transporters.

**Mr KHOURY:** I do not want to compare us to other transporters because we are in an industry where the value of the product is very high. I have just finished telling you what the rates are to go to Queensland and the like. But the value of a load of waste is quite high. We need a system in place that actually regulates waste transporters.

**Mr JEREMY BUCKINGHAM:** What do you mean by "the value of a load of waste is very high"? If you are avoiding a levy of \$135 a tonne and there are 25 tonnes on a truck, that is not a lot of money.

**Mr KHOURY:** I am not good at maths on the run, but take 25 tonnes times, say, a couple of hundred dollars and that is about \$5,000. That is on the back of a truck. A truck could do three or four loads a day—there is \$20,000.

**The CHAIR:** What sort of tonnage would the truck be pulling?

**Mr KHOURY:** It depends on the type of truck.

**The CHAIR:** A B-double.

**Mr KHOURY:** A B-double to Queensland, 38 tonnes.

**The CHAIR:** Thank you.

**The Hon. PENNY SHARPE:** On this issue, your evidence around rogue operators and unlicensed facilities that have never been approved is pretty extraordinary. Most people in New South Wales would like to think that we have a fairly well regulated planning system and that unapproved landfill and illegal landfill sites

should not be able to operate. How do rogue operators establish themselves? How are they slipping through the system that we have currently got?

**Mr KHOURY:** Great question. Let me start off by telling you what a decent operator does.

**The Hon. PENNY SHARPE:** Yes. That will work.

**Mr KHOURY:** A decent operator finds a site. A decent operator goes to the council and talks to the council about their intentions. They go through the process of filling in a development consent and applying for consent through a development application. Through that process it is identified that they might need a Environment Protection Authority [EPA] licence. The council and the proponent go to the EPA and they work out the conditions of that licence together. That is what a good, decent operator does. What does a rogue operator do, in contrast? Probably identifies a site and may or may not go to council.

**The Hon. PENNY SHARPE:** But they are required to go to council.

**Mr KHOURY:** Absolutely.

**The Hon. PENNY SHARPE:** But they just do not. It is then an issue of monitoring and compliance. How do we expose these rogue operators?

**Mr JEREMY BUCKINGHAM:** The question is: How do you run a materials recycling or a waste depot without an approval?

**Mr KHOURY:** Just by having a block of land or having a shed.

**Mr WILSON:** Just start up.

**The Hon. PENNY SHARPE:** You just start doing it.

**Mr WILSON:** Put a sign out.

**Mr KHOURY:** Put a sign out. Our laws are structured in such a way that the really good people comply. The really good people are then penalised when they do something wrong. But the rogue operators just go about their business. They will set a site up somewhere—it could be a block of land, it could be a shed, it could be anywhere—and they will just go about their business.

**The Hon. JOHN GRAHAM:** How widespread do you think that problem is? What is your assessment of the scale?

**Mr KHOURY:** That has got to be a question for the regulator of local government.

**The Hon. JOHN GRAHAM:** But you have pretty remarkable networks across the industry.

**Mr KHOURY:** I can only give you what the talk on the street is.

**The Hon. JOHN GRAHAM:** I think that would be helpful just to give us some sense, particularly so we can put those views to the regulator.

**Mr KHOURY:** It undermines the businesses of good operators. The fact that you have got 60,000 tonnes a month heading north to south-east Queensland is undermining the businesses of good, legitimate operators.

**Mr JEREMY BUCKINGHAM:** Would you say that there would be five or six, a dozen, scores?

**Mr KHOURY:** I do not know that I would actually be prepared to put a number on it, because I am not the regulator, I am not the police, I am not the tax office, I am not SafeWork NSW and I am not the Roads and Maritime Services [RMS]. I run an industry association. These are questions for other regulators.

**The Hon. SHAYNE MALLARD:** It is usually the case though when councils find out about a rogue operator they have moved on or a phoenix company has emerged, as we have read about in the media. I had some experience in this regard at Liverpool council. By the time the council found out that hundreds of tonnes of waste were dumped on a block of land, the operator had disappeared.

**Mr KHOURY:** That can happen, and that is an unintended consequence of a high waste levy. Having a high waste levy will encourage avoidance, stockpiling and illegal activities. That is an unintended consequence of having a high waste levy.

**The Hon. SHAYNE MALLARD:** But the immoral behaviour of these operators would be there anyway, surely, because the reward is—

**Mr KHOURY:** You call it "immoral"; I call it "unlawful".

**The Hon. SHAYNE MALLARD:** It is unethical.

**The Hon. LOU AMATO:** Since that levy has been introduced, what increase has there been in illegal dumping, particularly of asbestos and building-related waste?

**Mr KHOURY:** Again, they are great questions for the regulator. We do not keep records, I am sorry, on those matters.

**The Hon. LOU AMATO:** But in your industry you should still have a street sense of what it is.

**Mr KHOURY:** The talk on the street is that there is more illegal activity now than ever.

**The CHAIR:** If the waste levy is too high, what would you say would be a reasonable waste levy?

**Mr KHOURY:** I am not saying that the levy is too high. I am saying—

**The CHAIR:** You just did, and I agree.

**Mr KHOURY:** No. I said that we have a high waste levy for a reason. If I could talk—

**The CHAIR:** But you said that encourages unlawful activities.

**Mr KHOURY:** So what I am saying is we need a better regulatory system to support that high waste levy. I want to be very clear about that.

**The CHAIR:** Okay.

**The Hon. PENNY SHARPE:** I want to go to this issue a bit beyond rogue operators. My office is contacted by people. As you know, there is a lot of word on the street and a lot of rumour around the industry. Are you able to comment to the Committee around the links between rogue operators and organised crime in the State?

**Mr KHOURY:** Again I do not have anything specific I can refer to there. I can only refer to the fact that there is talk about these things. Some of the events that were exposed on *Four Corners* were just as much a surprise to us as to anybody.

**The Hon. PENNY SHARPE:** I am very concerned about the number of truck movements going up the Pacific Highway to Queensland. In your submission you talk about the issues in relation to the semi-trailer accident on the Hexham Bridge in March. You indicate that you would be happy to appear before the inquiry and detail aspects of this incident. I am happy for you to do that now, if you would like to provide us something in writing about this. That is a lot of truck movements that are unnecessary. Given that you raised it in your submission, I am very interested if you want to expand on that.

**Mr KHOURY:** I am pleased that you have asked me this question. I have often thought and contemplated about this matter over the years. What drives me to keep raising this matter and to see a resolution to this matter is that I do not want to wake up to the headline one day that a family has been wiped out by one of these unnecessary truck movements heading north. There are way too many truck movements heading north. The Hexham Bridge truck accident is regrettable and but for the grace of God we are lucky that we did not wake up to a headline that someone had been wiped out by that truck.

That truck had a number of defects on it. The operator was flagged to attend the Mount White weigh station and chose to keep driving on. That is just not on. The Queenslanders have in the last couple of days jumped on the bandwagon. They are now stopping all trucks that are entering Queensland with waste out of New South Wales. I say those trucks by that stage have probably travelled 700 or 800 kilometres too many. Why are we not doing the same at an earlier point? Why is our RMS not jumping in earlier?

**The Hon. PENNY SHARPE:** I am particularly concerned that, if they are operating illegally and trying to stay under the radar, they are obviously pushing those drivers as well and not following the normal fatigue management rules. Is it the case there is no chain of responsibility in what is happening in the trucks to Queensland?

**Mr KHOURY:** The type of equipment that is used to go to Queensland is probably not the ideal type of equipment that I would be advocating that would provide the best safety outcomes. Years ago within the Sydney metropolitan area we had a number of semi-tipper vehicles that tipped over at landfills. We went from semi-tippers to walking floor trailers so that the rubbish could be walked out of the truck without the vehicle tipping up on its triaxle and running the risk of tipping over. That has now gone out the door because, to go long distance, they are now using semi-tippers again. From the Queensland end, they have a serious safety issue with respect to this that is being caused by trucks coming out of New South Wales.

In terms of chain of responsibility, again this is a very serious question and it is one that you should probably have the Roads and Maritime Services [RMS] seek to provide evidence on. It is certainly a matter that our association takes very seriously. All our members, who are good operators, certainly ask for and have delivered training in those areas, which includes fatigue management.

**The Hon. SHAYNE MALLARD:** Because I did not quite understand what you meant, could you just clarify "China has banned the importation of recycled plastics". Can you expand on that and the impact of that of—

**Mr KHOURY:** Okay. China has not yet banned it. They have flagged they are going to ban it in December.

**The Hon. SHAYNE MALLARD:** This is recycled plastic material?

**Mr KHOURY:** Correct.

**The Hon. SHAYNE MALLARD:** From our consumers.

**Mr KHOURY:** In your bin with the yellow lid—we all have one of those—we put lots of different mixed plastics into that bin and a lot of those plastics find their way into the Asian market. They are exported there because there is no manufacturing input—

**The Hon. SHAYNE MALLARD:** They are compressed into blocks or something to go over there?

**Mr KHOURY:** They are baled—baled up—and exported to China.

**The Hon. SHAYNE MALLARD:** And then they make something out of that, like dinner plates or something?

**Mr KHOURY:** Correct.

**Mr WILSON:** Could I just add that one of the issues with that product over the years going to China is that there has been waste in the bales. There is a high percentage of waste. The international standard stands at about 2 per cent of contaminants and there has been as high as 10-15 per cent of waste in the bales. Waste has been going to China with the recycled plastics.

**The Hon. SHAYNE MALLARD:** We have a pre-sorting problem? Is that the consumers?

**Mr WILSON:** Yes. It is a problem with the marketplace and what the marketplace can get away with, and it is not just Australia, by the way. That was happening from America as well and the Chinese have finally got fed up with it and called a stop.

**The Hon. SHAYNE MALLARD:** Could you project what the impact of that potential ban will be upon recycling in Australia?

**Mr WILSON:** We are going to have to identify new markets. I know a lot of the wholesalers are looking to other Asian markets and possibly setting up recycling plants in those as well, but it is going to be a reshuffle of what happened with our recycled plastics in Australia.

**Mr KHOURY:** You need to understand that we are competing on a world stage with this stuff. Everyone in the world was relying on the Chinese to accept this material, and they have flagged that it is going to stop. Not only does Australia need to find a home for this product; so does just about everybody else.

**The CHAIR:** Yes, that is right.

**Mr WILSON:** Can I just make one comment there too? One of the reasons this has been shipped over to China in the past is that it has been hard to create markets in Australia for products made out of recycled plastics. I can give a good example again of public use facilities, furniture, outdoor equipment that councils are the main buyers of. They have not been buying.

**Mr JEREMY BUCKINGHAM:** Just on that, do you think that a government procurement initiative and those types of things would be an incentive?

**Mr WILSON:** I believe so, yes.

**Mr KHOURY:** And I think the other thing that the Government should think about is some financial incentives back through the levy to encourage those that are producing plastic recyclables to find markets.

**Mr JEREMY BUCKINGHAM:** Great. I appreciate your submission. It is excellent. In terms of penalties to create a disincentive for dumping, do you think that the penalties regime, as it is for illegal dumping and stepping outside the regulatory regime, is adequate?

**Mr KHOURY:** I do not believe so. The penalty regime that we currently have in place acts only as a method of deterring good, decent operators. Good, decent operators are almost penalised in the same way as rogue operators. The penalty regime is structured towards ensuring that the really, really good, decent operators follow the rules and regulations. Rogue operators do not care very much for the small penalties that are being given.

**Mr JEREMY BUCKINGHAM:** It is just a cost of doing business.

**Mr KHOURY:** They have basically built the cost of the penalty into the cost of doing business. Could I please elaborate on that a little bit?

**Mr JEREMY BUCKINGHAM:** Yes, sure. Please do.

**Mr KHOURY:** In 2013 we were advised by the then Minister for the Environment that if the Protection of the Environment Operations Amendment (Illegal Waste Disposal) Act 2013 was not passed, that would be the end of our recycling industry. Under that Act there is a two-year jail sentence for repeat offenders. There is an 18-months jail sentence for those who produce false or misleading information. The Environment Protection Authority [EPA] has the powers to take and seize the trucks and the equipment of rogue operators. The EPA has the power to go to the courts and obtain the financial benefit from the bank accounts of rogue operators. I would like a question put to the EPA: How many organisations or individuals have been prosecuted under that Act since 2013?

**The Hon. JOHN GRAHAM:** Are you aware of any enforcement using those powers?

**Mr KHOURY:** No, I am not.

**The CHAIR:** I think Ms Sharpe will be asking that—won't you?

**The Hon. PENNY SHARPE:** I am pre-set at zero.

**Mr JEREMY BUCKINGHAM:** Thank you very much. That is excellent testimony, Mr Khoury.

**Mr KHOURY:** If I could please say just one more bit?

**Mr JEREMY BUCKINGHAM:** Yes. Please do.

**Mr KHOURY:** A rogue operator who sets up a site—we started to talk about this earlier—who will set up a site and who will not really bother with planning approvals or with the appropriate EPA approvals and is then identified by council or the EPA, it seems to me that they just continue trading while the court system determines what to do with them.

**The Hon. PENNY SHARPE:** That is Spencer. That is exactly the case for Spencer—3,000 tonnes into the wetland.

**Mr KHOURY:** There are sites in Western Sydney that are still like that, currently operating, who are before the courts, who do not have a development application [DA], who do not have a licence, and they are before the courts. They are competing with good, decent operators. Can I also tell you that some of the material that goes onto those sites comes off government contracts?

**The Hon. PENNY SHARPE:** On notice, perhaps, could you provide that if you can point to a couple of those that we could chase? You can provide it in camera.

**Mr JEREMY BUCKINGHAM:** Confidentially.

**The Hon. PENNY SHARPE:** You can provide it confidentially.

**Mr KHOURY:** This is all word on the street stuff.

**The Hon. PENNY SHARPE:** Sure.

**Mr KHOURY:** But it is strong word on the street stuff.

**The Hon. PENNY SHARPE:** Are you willing to provide it to the Committee? We can look at it confidentially.

**Mr KHOURY:** Sure.

**The Hon. PENNY SHARPE:** We would be very interested in pursuing and tracking down all of those.

**Mr KHOURY:** Okay.

**Mr JEREMY BUCKINGHAM:** Another element of your submission that I thought was very interesting was the part in your general views on energy to waste. You state:

NSW has failed to provide, plan & designate dedicated areas for waste infrastructure that will house facilities such as waste-to-energy ... etc. Consequently, it is a difficult & challenging process to plan, submit, gain approval ...

Is that a major failing, this ad hoc approach? We have gone from local governments to regional organisations of councils [ROCs] to proponent-driven facilities and really it is just chaos.

**Mr KHOURY:** Yes, it is chaos.

**Mr JEREMY BUCKINGHAM:** It is absolute chaos?

**Mr KHOURY:** It is chaos.

**Mr JEREMY BUCKINGHAM:** It is hard to regulate.

**Mr KHOURY:** Yes.

**Mr JEREMY BUCKINGHAM:** You have all these different regimes. Do we really need the State to get involved with all the various industries and councils to plan and designate these facilities and to co-locate them and make sure that we are maximising efficiencies?

**Mr KHOURY:** Yes. We most certainly need and would welcome the opportunity of dialogue with Government to have designated industrial precincts to be able to house these activities. We generate lots and lots of waste and recyclables. We need a home for them. There are plenty of other industrial activities that need a house or a home. We need designated areas where we can conduct our activities.

**The CHAIR:** That is my point about the section 88 waste levy. I will talk about the Shoalhaven where \$33 million went into Government coffers when that money could have been part of a regional network of that type to deal with waste from landfill.

**Mr KHOURY:** Yes.

**The CHAIR:** But now that \$33 million has gone. There is no established opportunity to remove waste from landfill on their own merits; nor does any other council have an opportunity that is paying the section 88 waste levy. Surely the sort of network that you talk about could have been built with that waste levy if it had been truly used for the purpose for which it was collected.

**Mr KHOURY:** Yes.

**The CHAIR:** Now the poor old taxpayer will cop double-dipping because, if the councils do create something like that by their own initiative, the ratepayer will pay twice. They have already paid the waste levy and they are not getting anything back for that.

**Mr KHOURY:** Yes.

**The CHAIR:** Then they build the facility and the ratepayer still has to pay again. Sorry, Mr Buckingham.

**Mr JEREMY BUCKINGHAM:** I have one more question, if I may, Chair?

**The CHAIR:** By all means.

**Mr JEREMY BUCKINGHAM:** Mr Khoury, in regard to your specific views on the energy for waste facility at Eastern Creek, I understand that the proponent is a member of your organisation.

**Mr KHOURY:** That is correct.

**Mr JEREMY BUCKINGHAM:** In your submission, you say that the information on C and D waste suitable for feedstock is not available. You also say that the amount of residual C and I waste is not available. There is some uncertainty from you about that.

**The Hon. JOHN GRAHAM:** It is not uncertainty. It is a certain view in the submission.

**Mr JEREMY BUCKINGHAM:** That is right; you do not know. In respect of the uncertainty about the types of feedstock going into a facility like this one, what is your view about its potential emissions and its impacts on recycling and the economies of scale in recycling if we are not sorting those waste streams, if they are going directly from source into the energy for waste facility?

**Mr KHOURY:** They are two great questions. First, as I sit before you today, I do not sit here alone. I sit here with 195 members standing behind me who own and operate 95 per cent of the infrastructure that is

privately owned across New South Wales and the Australian Capital Territory. I formed this view based on the input that we have received from our members in respect of the feedstock question. That is how I formed that view. Sorry, the second question was?

**Mr JEREMY BUCKINGHAM:** What do you think the impact of this sort of facility would be on recycling generally, and what if this facility was taking waste directly from source without it being sorted and going through some sort of processing?

**Mr KHOURY:** I have a background in incineration. For five years I worked as the general manager of the only medical waste incinerator that is still in this State. I know that once you start up an incinerator and you build it based on a certain amount of volume, you have to keep the volume up to it. If you do not keep the volume up to it, you have to find other ways to keep the temperature up. The other way is through gas. Gas is costly. The way to keep the temperature up is to keep the volumes up. Whatever volumes and whatever predictions this plant is based upon—whatever they may be—that throughput needs to be divided by 365 and it needs to be divided by 24. That is the rate that that incinerator will be fed at on an hourly rate. That volume has to come from somewhere.

**Mr JEREMY BUCKINGHAM:** If the C and D waste and C and I waste is not there, there is potential that it could start using waste streams that contain recyclables?

**Mr KHOURY:** The controls need to be in place to ensure that good recyclable material does not end up in waste for energy. That is the EPA's policy and that is the policy we support. The EPA's policy is that only the suitable residues with good calorific value that do not contain contaminants that are harmful to the environment should be the inputs to waste to energy, and we support the EPA's policy.

**The Hon. JOHN GRAHAM:** Even if that is the case, one of your key points is if this feedstock is under contract and locked up, it may well act as a barrier to future technologies?

**Mr KHOURY:** Could do. If I had a crystal ball and I knew what was going to happen in the future, I would be a very rich man. I want to make sure we leave the door open for future and emerging technologies, because there will be future and emerging technologies. We want to ensure that there are opportunities for those technologies in the future.

**The Hon. JOHN GRAHAM:** I want to ask a specific question relating to your question about the EPA resourcing. You have asked sensible questions about the EPA's ability to police this area, given the incentives now in place. Can you point us to any particular resourcing gaps or any particular pressures that you see with the EPA that would be useful for us to bear in mind?

**Mr KHOURY:** One of the frustrations that we have, and the president and I were discussing this in the foyer, we refer matters to the EPA. We are often frustrated that time lines are not met; they do not get back to us.

**The Hon. JOHN GRAHAM:** What sort of time lines are we talking about? How long might it be when you are referring some of these matters, bearing in mind there is a phoenixing problem; you have to move quickly to catch some of these incidents?

**Mr KHOURY:** I am talking about general operational issues. Generally when we refer something to the EPA it does not come back in a time frame that is consistent with the way business operates. It could take many months. In some cases it could take many years. Chair, I would like to make another comment about a matter that has not been raised to date. Would that be possible?

**The CHAIR:** Yes.

**Mr KHOURY:** It will only take a short time. It is the uneven playing field, which is very close to the association's heart. This is all our members want. We want a level playing field for us and our members to run our businesses. I will give you an example of the uneven playing field. Rail operators who are currently loading containers of waste and sending them north dispute the fact that they need to be licensed by the EPA. On one hand, the EPA say that those waste rail facilities need to be licensed by the EPA. The EPA maintain that those facilities require a waste facility licence. In respect of a level playing field, other legitimate waste operators operating from Clyde and Banksmeadow are expected to hold an EPA facility licence to comply with their operating conditions to transfer waste by rail. The industry simply does not understand why the regulator has not moved to swiftly enforce the law that requires a rail operator to hold a waste facility licence. It allows waste movements by rail to go north without a waste facility licence.

**The Hon. PENNY SHARPE:** This was talked about on *Four Corners*, that there are people loading waste and the law says they are supposed to have a licence. Are you saying to us that this is happening unlicensed?

**Mr KHOURY:** The EPA by their own admissions have said that the rail operators need to have a waste facility licence to go north.

**The Hon. PENNY SHARPE:** You are saying they do not?

**Mr KHOURY:** And they do not, and the EPA have said that they do not. What I do not understand and what industry does not understand is why the EPA, as the regulator, does not simply enforce the law?

**Mr JEREMY BUCKINGHAM:** This is outrageous.

**The Hon. PENNY SHARPE:** This is Dial a Dump.

**Mr KHOURY:** It is not Dial a Dump.

**The Hon. PENNY SHARPE:** On *Four Corners* it was.

**Mr KHOURY:** No.

**Mr WILSON:** They are by road.

**Mr KHOURY:** They are by road.

**The Hon. PENNY SHARPE:** *Four Corners* suggested they are going by rail.

**Mr KHOURY:** I am talking by rail. I am talking about the rail operator, whoever operates the rail head.

**The Hon. PENNY SHARPE:** Thank you for coming along today. I know that your organisation has been talking about these issues for a long time. My question is how many times have you raised this with the environment Minister and what further action do you believe needs to be taken at a ministerial level to deal with these matters?

**Mr KHOURY:** We have raised this issue with a succession of environment Ministers—Minister Parker, Minister Speakman and Minister Stokes. We have not yet met Minister Upton.

**The CHAIR:** We are out of time. Thank you once again. Your submission was comprehensive, which one would expect considering the level you work at. It has been helpful to this inquiry. You may have taken questions on notice. If not, we may put some on notice given our short time with you. You will be given 21 days to answer those questions and the secretariat will assist you.

**Mr JEREMY BUCKINGHAM:** We welcome any further submission in camera, in confidence on any of these issues.

**Mr KHOURY:** If you want us to come back here for some further discussions, I am happy and I am sure the president is happy to do so.

**The CHAIR:** Thank you for your evidence.

**(The witnesses withdrew)**

**STEPHEN SASSE**, Chief Executive Officer, Nectar Farms, affirmed and examined

**MARC STAMMBACH**, Managing Director, Hitachi Zosen Inova, affirmed and examined

**The CHAIR:** Would either of you like to make an opening statement?

**Dr STAMMBACH:** Yes, I do. I represent Hitachi Zosen Inova [HZI] from Switzerland. We are the world leader in energy from waste [EfW] solutions. We have delivered more than 80 anaerobic digestion plants and more than 500 thermal energy from waste plants worldwide. Our technologies operate every day—safe, reliably, environmentally compliant and energy efficient. Hitachi is currently developing a 300,000 tonne per year EfW project in Rockingham, Perth, together with the New Energy Corporation. Other projects in other Australian capitals are in various stages of development. HZI is the technology partner for Eastern Creek, which will feature world-class technology. Behind us the Committee will see a poster of our Ferrybridge plant. Eastern Creek is based on this design, which operates in full compliance with the very stringent standards in the United Kingdom. A second plant is currently being built behind the one on the poster and will operate in about one year's time.

The two Ferrybridge plants will not be the world's largest EfW complex for long. We shall soon start a project in Mexico city for Veolia and their local partner, which will treat 1.6 million tonnes of residual waste per year. Yes, those plants are big and I understand that such plants can be frightening. My barber, who lives near Blacktown, told me again yesterday that he and his neighbours are worried about the project. What frightens me is not the EfW plants—I have lived for 40 years in Switzerland on an average of about five kilometres from the nearest EfW facility, and sometimes much closer—but what frightens me is that the very agencies that should be leading the drive and thinking to improve our environment, and reduce our CO<sub>2</sub> footprint, are obsessed with the molehill and not the mountain. The European track record represents a formidable achievement of zero waste to landfill, dramatic reductions in carbon pollution and the sustainable generation of electricity. It would be a great pleasure to show the Committee these technologies first hand.

The real issues for comment, at least in my opinion, are: Why did New South Wales introduce an EfW policy but no landfill policy? There is no restriction on putting anything and everything into landfill. Why is it that nobody can interpret the EfW policy? Why does New South Wales pursue an EfW policy piecemeal, and try to go beyond what is considered "best in class" in Western Europe instead of just adopting it? We believe that the waste strategy framework in New South Wales can be improved. The EfW project at Eastern Creek is a safe project. The authorities struggle to guide and judge the project on its environmental outcomes and the overall improvement of treating residual waste, instead of disposing of it in landfills either in New South Wales or in Queensland for that matter. If human health is of concern, we would immediately assess emissions from landfills, transport, air stacks from motorways, tunnels, residential wood fires, crematoria, rotting compost mountain without a home, coal-fired power stations, metal smelters, cruise ships and, to top it off, fireworks at New Year and Australia Day. All those are environmentally more questionable than energy from waste.

Together with Nectar Farms and its chief executive officer, Mr Stephen Sasse, we are driving the circular economy—recycling carbon dioxide, heat and electricity into high-tech protective glasshouses. The first phase of Eastern Creek could support a surface area of 100 hectares or one square kilometre of glasshouses, which would fit nicely under the proposed runways of the new airport at Badgerys Creek. It would be an investment of \$700 million and 800 permanent full-time jobs. However, the New South Wales Renewable Energy Advocate and the New South Wales Department of Industry fail to engage with us. Are they all afraid of the New South Wales Environment Protection Authority [EPA]? We urge the Committee to travel to Europe and engage with the authorities and non-government organisations [NGOs] to better understand the issues. NGOs in Switzerland are only concerned about increasing the energy efficiency of EfW. Zero waste goes untreated to landfills. Ninety-nine per cent landfill diversion is achievable. I have some documentation for the perusal of the Committee. Mr Sasse and I are ready to answer questions.

#### **Documents tabled.**

**The CHAIR:** Can you tell the Committee what is happening across the world with waste as a circular economy?

**Mr SASSE:** In the protected cropping space the ideal closed economy situation for us is to co-locate with an EfW facility, and there are numerous examples of this happening right through Western Europe. To give the Committee some background, the high -cropping industry needs heat to manage temperature, it needs energy

for pumps rotating equipment and artificial lighting. We supplement the environment within our glasshouses with CO<sub>2</sub> by a factor of about four or five, depending on the crop. So thermal energy from waste produces all of the inputs that we need to produce sustainable, pesticide-free fruits and vegetables. We have been working assiduously in trying to get some traction in New South Wales to look at a co-location opportunity. I can contrast our experience with New South Wales in Victoria where we presented to the State of Victoria in February of this year our concerns about energy. Within three months the problem had been solved. We have committed to putting an additional 40 hectares high-tech glass into western Victoria. The Committee can go online and see the announcement that was made by the Premier and the Minister for Industry and Agriculture down there in June of this year. One of the key points from our perspective is that we are not getting traction in New South Wales. We need to build capacity in New South Wales. We are what modern agriculture ag-tech looks like but the energy component of what we need is a key part of solving the problem and enabling us to invest, and therefore employ.

**The CHAIR:** At Manildra, which is down my way, they are using CO<sub>2</sub> to feed seaweed growth—a symbiotic relationship.

**The Hon. PENNY SHARPE:** Mr Stambach, in your opening comments you spoke about the EfW policy in New South Wales being difficult to interpret. Can you expand on the issues that you are facing in relation to that?

**Dr STAMMBACH:** The simplest one is if you have a green waste bin, recycle bin, when you have food waste in residual waste, then you are supposed to go for an AWT and nobody can—

**The Hon. PENNY SHARPE:** AWT stands for?

**Dr STAMMBACH:** An AWT is a so-called alternative waste treatment. It could be a recycling facility, mechanical, biological treatment. Does that mean that I can shred it, take out metals and throw the rest into energy from waste? It is not clear. Does it mean I have to recycle at least 50 per cent before I can even put anything into energy from waste? Nobody can tell you.

**The Hon. PENNY SHARPE:** We took evidence this morning about the absolute need to extract everything we can from the waste being prepared to go into the waste facilities. You operate in a lot of different countries with different operating requirements. How do you manage that process at your overseas operations? Please take us through the gradations of what you are required to sort before feeding your overseas plants.

**Dr STAMMBACH:** We typically only treat residual waste, where separation has happened.

**The Hon. PENNY SHARPE:** Is separation mandated?

**Dr STAMMBACH:** Typically it is mandated. We promote what we believe is world's best practice, and that is separation at home or at source in industry and commerce—paper, cardboard, metals, glass, the whole caboodle, green waste, food waste. Green and food waste are great for anaerobic digestion, compost and all that. We do not believe that residual waste should be tried to be further recycled—we are talking about residual waste from your households, to be very clear. You have already tried to recycle it and have taken out what is meaningful, and the current projects in Australia as well as overseas have only shown that at best they can take out a very small percentage of metal. They produce compost and most of it goes to landfill. It adds cost and environmental emissions with no added benefit. Although 20 years ago in Europe there was a phase to go to so-called mechanical biological treatment plants, that has all stopped. Some of these facilities have been closed at a loss of \$1 billion, just for one case in the UK.

**The Hon. PENNY SHARPE:** That is for municipal waste, but what we are talking about for the facility in Eastern Creek, as an example, is construction waste. Can you talk us through how that occurs? Do not forget that not all of that is separated at the source necessarily, but it is all piled together.

**Dr STAMMBACH:** Correct, although I can assure you at some construction and demolition places you already start sorting there. Nonetheless—

**The Hon. PENNY SHARPE:** At the reputable ones, I would hope so, but as we have heard this morning we have some serious problems with rogue operators here.

**Dr STAMMBACH:** It makes a lot of commercial sense to recycle steel, stones, aluminium, gravel and so on, in particularly for C and D, where about 80 to 85 per cent of it is such material. This material is not suitable for an energy from waste plant, which does not mean we cannot handle such parts. But it does not make economic sense to put them through a thermal process, because a stone goes in as a stone and comes out as a stone. There is no point in doing it. You see worldwide that nobody puts raw construction and demolition waste through any energy from waste plant, because it does not make sense.

**The Hon. PENNY SHARPE:** In your submission you discuss the dangers to recycling in New South Wales not being a giant facility, as proposed here, that will need to be fed. Please talk us through the issues that you raised in relation to the dangers to recycling that are not related to the energy from waste proposal.

**Dr STAMMBACH:** The dangers I see today for recycling in New South Wales include glass, which has already been brought up. The next one will be plastics. China is the main processor of our plastics, which we collect, and it has announced it will stop importing such plastics by the end of the year. It is also not inside the sustainability principle to move waste over such distances; sustainability is to treat it here and today, not over there or tomorrow or to landfill it. The only question is: Who will pay for digging out the landfills? In Europe at this stage all of their old landfills have to be dug out at some stage, because they continue to pollute groundwater. On the question of who is going to pay for it, the obvious answer is the public at large.

**Mr JEREMY BUCKINGHAM:** At first blush, I am a big supporter of co-location of anaerobic digestion with agriculture and high-tech horticulture. I think that is a really great idea, and I have seen a lot of what is going on in places like The Netherlands. The proposal at Eastern Creek is very different, and you say that it makes no economic sense to put C and D waste through an energy from waste facility. Why not, if you can avoid the waste levy and probably avoid the processing costs of the thousands of tonnes of material? Can you provide us with economic modelling that shows that there is no net benefit in separating, processing and avoiding inputting waste streams into an energy from waste facility?

**Dr STAMMBACH:** Sure, roughly 80 per cent of C and D waste is stones and metals. They do not burn. You can recycle stones and metals at a large scale for around \$35 to \$50 a tonne. If you want to burn waste, we are talking about \$150, \$200 or more a tonne. It makes no sense to burn it. In addition, stones and metal come out unburnt, which means that we can recover the metal at the end but the stones today would again go to landfill, because as of today there is no regulatory outlet for bottom ash to go back into the circular economy. Also one of my bugbears is that New South Wales refuses to engage in any discussion about a regulatory exemption to recycle bottom ash into the economy, as is done today overseas, including in the UK, day by day for millions of tonnes per year.

**Mr JEREMY BUCKINGHAM:** I do not understand why you would take any C and D waste for an energy from waste facility if 80 per cent of it is useless.

**Dr STAMMBACH:** Only 20 per cent goes through the energy from waste facility, with 80 per cent recycled beforehand.

**Mr JEREMY BUCKINGHAM:** Will the energy from waste facility at Eastern Creek separate items such as stones and metal before the waste goes into the dumping bays?

**Dr STAMMBACH:** No, it is not the energy from waste facility that sorts it; it is the adjacent recycling site, Genesis, that will sort it. Only then does it go into the energy from waste facility.

**Mr JEREMY BUCKINGHAM:** So all the C and D waste under the proposal will go through the material recovery centre, whatever it is called?

**Dr STAMMBACH:** That is my understanding, yes.

**The Hon. JOHN GRAHAM:** That is the evidence we have been given.

**Dr STAMMBACH:** That is what the project description says.

**The Hon. JOHN GRAHAM:** How will they meet the feedstock requirements if 80 per cent is going to be diverted at Genesis?

**Dr STAMMBACH:** That means that they have achieved what is required from C and D waste.

**Mr JEREMY BUCKINGHAM:** But C and D waste is only a fraction of the total volume going through the facility.

**Dr STAMMBACH:** My understanding is it is the major fraction and it will have some commercial industrial waste as well, which is also getting recycled.

**Mr JEREMY BUCKINGHAM:** What is that fraction?

**Dr STAMMBACH:** I cannot comment on that but I know Mr Biggs is here this afternoon, so you can ask him.

**Mr JEREMY BUCKINGHAM:** Is it more than 50 per cent?

**Dr STAMMBACH:** My understanding is that the bigger quantity is actually construction and demolition waste going through the facility, but I am not privy to those numbers.

**Mr JEREMY BUCKINGHAM:** I am and I do not think it is. What facility in the world uses a similar feedstock to what is proposed? Can you point us to an operational facility that we can have a look at to see these feedstocks in these volumes being converted from waste to energy?

**Dr STAMMBACH:** I would recommend to you to go to the following sites. Number one is Eastern Creek, where you see the same size of an operation under a development application [DA]. Some of the feedstock is refuse-derived fuel after recycling. I recommend that you go to Majorca.

**Mr JEREMY BUCKINGHAM:** That sounds good.

**Dr STAMMBACH:** I knew you would like that. Due to its island situation it has expressly included some construction and demolition waste.

**Mr JEREMY BUCKINGHAM:** What is the scale of the facility in Majorca?

**Dr STAMMBACH:** It is in the reference list. I can take that question on notice and come back with an answer.

**The Hon. SHAYNE MALLARD:** Thank you for your opening statement. It was very informative. I am interested in the future of landfill. You said that we do not have a landfill policy. What should the policy be? Representatives from the City of Sydney said that zero landfill is its objective and that it supports energy from waste. How would you design a landfill policy?

**Dr STAMMBACH:** I would request that no untreated waste go to landfill. That waste has to be in such a form that you can leave and forget it. That is the concept of a final sink. That is part of the circular economy, which recognises that there is always waste. Nature does not know the concept of waste because it does not think in terms of waste. It is not because it does not produce waste in our sense; nature is concerned only about driving forces—temperature and chemical gradients—that make our world function. As part of that, it always has by-products. It is an illusion to think we can manufacture, recycle and compost without generating residual waste. It is pure thermodynamics and we have to live with it. However, that residual waste should be treated so that it will not be a burden to future generations. The French are nice and call landfill a storage site, recognising that it is not a solution.

**The Hon. LOU AMATO:** How do you deal with asbestos?

**Dr STAMMBACH:** Asbestos should be locked up and be put in a final sink. If you put it in a hole and it is not physically disturbed, you can leave it there. I am obviously a big fan of locking it up.

**The Hon. SHAYNE MALLARD:** There will be a role for landfill?

**Dr STAMMBACH:** There is a role for landfill. Denmark, Switzerland and Holland treat everything—nothing goes untreated to landfill—but they still need landfill. This is the 1 per cent, or whatever it is, that is still required. The idea is that that 1 per cent should be treated in such a way that it is safe, we can forget it, and it is in a so-called final sink. This is where we should be heading.

**The CHAIR:** Has it been measured? Is there leachate or implications with that 1 per cent?

**Dr STAMMBACH:** Like most landfills in develop countries, it is monitored. Yes, it is confirmed. However, it is definitely a very different category in terms of leachate or gas emissions—but there are no gas emissions. As a scientist, I must say that I cannot give any guarantee because I would have to look thousands of years into the future. However, what we know from leaching rates and so on is that it seems to be safe to the best of our knowledge.

**The Hon. LOU AMATO:** You would have to put it somewhere that has no water table or environmental issues.

**Dr STAMMBACH:** It does not necessarily have to be a long way away. We have clay holes, which typically still have clay. Clay is a wonderful absorbent. If you have asbestos on site, it will not go through because it is a physical thing and it will not dissolve. For that matter, bottom ash is locked up or it leaches so slowly that even if over years it goes through the clay, it will be at a rate and dilution that it will be safe, at least to the best of our knowledge today.

**The Hon. SHAYNE MALLARD:** With your global knowledge, are New South Wales and other Australian jurisdictions significantly behind? It appears to me that we are behind in our approach to dealing with recycling waste and landfill.

**Dr STAMMBACH:** I will differentiate that. In terms of recycling, we are pretty good, but we should be doing more here instead of shipping it overseas. In terms of residual waste, I thought we were 20 years behind, but I have had to reassess my opinion and I now believe we are at least 30 years behind.

**The Hon. SHAYNE MALLARD:** With residual waste.

**Dr STAMMBACH:** Yes. We simply do not recognise it as a problem. The problem today is not energy from waste versus recycling; it is energy from waste versus landfill and pushing the burden of those issues to future generations.

**Mr JEREMY BUCKINGHAM:** Is the facility in Majorca ES Majorca?

**Dr STAMMBACH:** That must be it.

**Mr JEREMY BUCKINGHAM:** It says that it is a municipal solid waste plant, like most of the plants.

**Dr STAMMBACH:** Yes, most of the quantities go through as municipal solid waste. There will also be commercial waste going through. They also have some construction and demolition waste going through. To be honest, I do not know to what extent that waste has been recycled. It is stated in a project description that some construction and demolition waste goes through.

**The Hon. SHAYNE MALLARD:** The City of Sydney gave evidence about red bins. I was a City of Sydney councillor and I know it goes to Eastern Creek. I thought it was all sorted and that a very small amount was not recycled, but in fact only 30 per cent is recovered from red bins.

**Dr STAMMBACH:** That is probably the number. That is one of the examples I mentioned that would not be repeated. That technology was used in Lancashire and the \$1 billion facility was shut down.

**The Hon. JOHN GRAHAM:** Your submission deals with market gate fees, particularly using examples from Great Britain. You have set out market gate fee and the scale of plants that drives. That is the case you are making in that submission.

**Dr STAMMBACH:** Yes.

**The Hon. JOHN GRAHAM:** That is particularly interesting. Are you saying that the level of the New South Wales levy will drive only large plants?

**Dr STAMMBACH:** That is correct. People constantly ask whether the plant at Eastern Creek is too large. As has been confirmed several times, the project is about 500,000 tonnes, and it may be doubled up later, such as happened at Ferrybridge. Sydney has nearly six million people producing about 1,000 kilograms of residual waste each year—that is after residual waste produced at home. I am talking about residual waste from commercial and industrial, from recycling, and from composting. The rough number is 1,000 kilograms a year. That would make it six million tonnes. Even if we talk about half of that, we still need three million tonnes of capacity in Sydney. Therefore, a 500,000 tonne facility is too small for Sydney if you want an overall solution. Obviously it has not been proposed as an overall solution; it will deal only with waste from Genesis. Again, it will not endanger recycling.

**The Hon. JOHN GRAHAM:** Thank you for that evidence. You are saying that the scale of that project is driven in part by the quantum of the waste levy. It will not be until the levy or the gate fee increases that the European-style smaller plants will be economic in the New South Wales context. Do I understand your submission correctly?

**Dr STAMMBACH:** That is correct. However, the waste levy would still not be sufficient with a 100,000 tonne plant. It has also been said that everyone in Europe builds only small plants and that this proposal is outrageous. That is why I brought this poster. It is 600,000 tonnes in the first phase with another 600,000 tonnes to come. Our project in Mexico is 1.6 million tonnes. A competitor I think has a project in China at 1.8 million tonnes. What happens is, like in every industry, you try to drive down unit cost by improving technology but also by going to scale. Today the economics are in particular that obviously if you have big cities you have large amounts of waste and it makes sense to go to scale. If I may add, another reason why traditionally plants have been smaller in Europe is also because they were proposed by the communities or several communities and actually everybody was very proud to have their own energy from waste facility and did not want it shipped maybe 50 kilometres away. Today actually we have some facilities which might not get renewed in Europe after 30 years or whatever.

**The Hon. JOHN GRAHAM:** To those people who are saying this is just too big and we should be looking at those small-scale facilities are you saying that is now just not economic and not where the industry is heading in general? Is that the view you are putting?

**Dr STAMMBACH:** That is always the decision of the customer. If they want a smaller plant and they can afford it we will build it and it will be as safe as a big one. But as a trend in general in urban settings such as Sydney, which today has nothing, you would immediately think about a larger plant.

**The Hon. JOHN GRAHAM:** But what you are saying is in our current market small plants will not happen. As we are considering this larger scale plant, the small-scale plants will not happen in the current economic setting.

**Dr STAMMBACH:** Correct. And this is the same as for landfill. There is no small landfill in Sydney, there is no small recycling centre left in Sydney and there is no small composting operation left in Sydney.

**The Hon. LOU AMATO:** In your submission HZI Australia declares its interest as a chosen technology supplier to Dial A Dump. Could you give us a bit more of an idea of what you supply them and what guarantees there are for the community of south-west Sydney as to health impacts?

**Dr STAMMBACH:** What it means is that most likely HZI will build the total plant inclusive of buildings, civil works, everything, and we will guarantee the operation, the good functioning and the emissions. Typically that means we put our balance sheet as a company out to the customer. This is hundreds of millions of dollars and this is what we typically do for every project. The customer Dial A Dump, and indirectly the greater population of Blacktown, has therefore the assurance from us as a company that we will make this happen, we will make it happen like everywhere else and, if not, we would rectify it and even if that would fail we would have to build it back at our own cost.

**The Hon. LOU AMATO:** You can guarantee there will be no health impacts on the residents of south-west Sydney. Is that what you are saying?

**Dr STAMMBACH:** Yes, I can guarantee that with good conscience.

**The Hon. LOU AMATO:** We will put that on the record.

**Dr STAMMBACH:** Yes.

**The CHAIR:** How many of these facilities have you built?

**Dr STAMMBACH:** More than 500 worldwide, thermal facilities.

**The CHAIR:** Have you had at any one of those facilities any actions that have had a detrimental effect on community health?

**Dr STAMMBACH:** Yes, we had.

**The CHAIR:** How many?

**Dr STAMMBACH:** I can give you the example of Sydney at the Woollahra plant or at Waverley. It was actually built by our company decades ago. At that stage it was typical state of the art; we burn it, we do not have to bring it to landfill. Nobody was concerned about energy. Nobody was concerned about flue gas treatment. The plant did deliver what we were asked to deliver at the time and it was regarded as best in class. However, over decades it became obvious to everybody that this is causing concerns in terms of flue gas emissions and it is causing concerns because all the energy is lost, but it was not rectified. As a technology supplier we can only help, we can improve if so wanted, but obviously we cannot force a customer 20 years later to upgrade his facility. If anything it was a shortcoming of local regulations not to enforce an upgrading even earlier.

**The Hon. SHAYNE MALLARD:** That was decommissioned in the 1990s, was it not?

**Dr STAMMBACH:** It was decommissioned I think in the early 2000s. I could be wrong but I think it was operating until 1999 and the final killer was 2002.

**The CHAIR:** That is the concern of the Blacktown people. With all good intentions you go and build a best practice model but you do not know what you will know in 20 years time.

**Dr STAMMBACH:** That is correct and that is also the case for all other hundreds of facilities which are operating today and even the new ones which get built today. Our understanding is—in terms of material flow as we have—that energy from waste is very likely still to be one of the best solutions we can think of today and actually industrially implement. We can always have fancy ideas, but in terms of industrial best practice that

is probably it. Concerns would actually come in terms of nanoparticles and all that but our understanding is—and so far the science is as well—that they either get burned or they get captured in flue gas treatment but it does not go out of the stack. Yes, before you ask the question, nanoparticles are obviously much smaller than most other stuff, but we build up a layer in the flue gas treatment and that layer actually captures nanoparticles as well. That is why we can remove them although they are smaller than other typical particles in the dust.

**The CHAIR:** One of the concerns is that some of the pollutants attach themselves to dust particles that are far smaller and escape. Are you saying you capture that?

**Dr STAMMBACH:** We capture these dust particles.

**The CHAIR:** What is your pollutant level outside? What is the final breakdown of your emissions?

**Dr STAMMBACH:** We clean up to the European limits, which are also proposed for the project here. That is guaranteed. Typically operating it is always lower because otherwise you would be in breach. If you want particular breakdowns of small particulate matter like PM2.5, PM10 or stuff like that I would have to refer you to the actual submission of Eastern Creek.

**The Hon. LOU AMATO:** Is there a time when the plant is shut down for cleaning?

**Dr STAMMBACH:** Such a plant has regular shutdowns, once a year, and it can also have unplanned shutdowns if a motor fails or anything fails.

**The Hon. LOU AMATO:** How are the pollutants captured at those times?

**Dr STAMMBACH:** If anything happens during operation there are quite a few systems which will assure that nothing goes out. Even in the worst case where we have blackouts, electrical shutdowns, an uncontrolled going down and the diesel generator fails as well, even then the actual emission would be very low. And that is documented.

**The CHAIR:** What happens to the feedstock?

**Dr STAMMBACH:** The feedstock immediately gets stopped if there is anything wrong. It gets stopped feeding.

**The CHAIR:** But where does it go? Do they store it on site or something?

**Dr STAMMBACH:** Obviously what is in a bunker typically stays in a bunker. If it would be a longer shut down then it would go to a landfill.

**The CHAIR:** The default is landfill?

**Dr STAMMBACH:** The default is landfill. The way it is handled in Europe, where you want zero waste to landfill, because you have so many facilities you have cooperation agreements that for planned or even unplanned shutdowns you shift waste around. It is actually an illusion to say a society can live with 100 per cent and not 1 per cent more. It is like a hospital. You want capacity at the top end. You do not want to stay at the door. So if your policy is zero waste to landfill, you need capacity up top. But today, for this very first project, as explained, they are very far away from that point.

**The Hon. MATTHEW MASON-COX:** There is a lot of concern, as you would know, from residents in Western Sydney, particularly Blacktown in the local areas. What would be your message to them today, in a few sentences, about the risk associated with this plant?

**Dr STAMMBACH:** I can understand their concerns. Our client could have maybe done a better community engagement right in the beginning. The best thing would be to go and visit Europe.

**The CHAIR:** We would love to.

**Dr STAMMBACH:** We are happy to accommodate you and some community people in Europe. To be quite honest, that would be money better spent than continuing to sit here talking about theory and communicating with people who actually have no clue, because they have not been in Europe. They have not lived it. They are running off Google and the first things which pop up.

**The Hon. MATTHEW MASON-COX:** So is your message that success in Europe will be replicated here in Sydney?

**Dr STAMMBACH:** Correct. Yes.

**The CHAIR:** Thank you very much to you both for presenting today. In light of your evidence there may be some questions put on notice. You will have 21 days to respond to those. The secretariat will be able to assist you with that. I thank you for your evidence today. It will be very helpful.

**Dr STAMMBACH:** Thank you for your interest.

**(The witnesses withdrew)**

**(Short adjournment)**

**JAMES WHELAN**, Researcher and Community Organiser, Environmental Justice Australia, affirmed and examined

**The CHAIR:** Welcome. Would you like to make an opening statement?

**Dr WHELAN:** Thank you, Chair. Thank you to the Committee for the opportunity to address you. I would like to open by acknowledging the traditional owners of the country we meet on and pay my respects to their elders past and present. I have been a researcher working on air pollution policies and matters for more than 20 years. Most recently during the last few years I have worked with Environmental Justice Australia, which is a national organisation that is described at the foot of the second page. It is primarily a legal organisation. I am not appearing as a legal expert. I am not a lawyer; I am a researcher.

I was asked by the Committee to come along, having not made a submission. I am happy to be here. The focus of my work most recently has been around coal-fired power stations, but as a New South Wales-based researcher I have been looking very closely at the regulation of air pollution for the last five or six years. It is my considered opinion that the State of New South Wales has an inadequate regulatory framework to responsibly manage air pollution. In this brief note that has been tabled I have outlined nine preconditions for responsible management. I tried to put myself into the Committee's seat to ask what would be the preconditions under which I would feel satisfied to sign on and support the waste from energy policy as it stands currently or the Eastern Creek facility that is proposed. The nine conditions are spelt out in the tabled document.

**The CHAIR:** I will just note for the record that you have formally presented a document today. We did not have a previous document. That is the one before us now, is it?

**Dr WHELAN:** Absolutely. Thank you. I should say that of the nine preconditions outlined in this document that I consider would be essential to responsibly endorse the energy from waste policy or the Eastern Creek facility, none are satisfied currently. I draw the Committee's attention briefly to just one of the nine. Hopefully in question and discussion time we can dig further into others. The second precondition, which appears on the first page of the document is the question of existing pollution levels. In Sydney there are 14 Office of Environment and Heritage air pollution monitoring locations. The three closest to Eastern Creek are Prospect, St Marys and Richmond. There is a fourth but it is inoperative at the moment.

At those three locations where particle pollution is monitored, the existing levels of particle pollution exceed the standard that is set nationally and to which New South Wales is a signatory for the 24-hour average and the annual average. There is no safe level of exposure to particle pollution. The incinerators are a known and established source. There is no way you can operate a waste incinerator without contributing to particle pollution. In fact, it is acknowledged in the environmental impact statement [EIS] that particle pollution will increase. Of course it will increase. I am here to point out that we already have harmful levels of particle pollution in this part of Sydney.

**The Hon. LOU AMATO:** I am going to interrupt you for a moment. You are talking about the air pollution and the Australian national standards. Is that comparable to the European Union [EU] standards? Is that where we draw our standards from?

**Dr WHELAN:** There are two sets of standards. The previous witness who appeared referred to some EU standards. A facility like an incinerator has licence limits imposed on it for the concentration of pollutants that go out of the stacks. That is one set of standards. Separately there are ambient air standards which are, if you monitor air pollution in the receiving community or environment, what is the concentration of air pollution from all sources? Our standards for ambient air are the standards that I am referring to—in the community, in the neighbourhood. I can comment separately on the stack emission limits, but just for the moment suffice it to say in New South Wales major polluters such as coal-fired power stations, on which I can comment, are never licensed to EU standards. They are licensed to old, outmoded standards that are very far behind the European standards.

The final point I want to note if I could, before we shift to questions and discussion, is that I make two recommendations. The first recommendation I have outlined already. I do not believe that it would be responsible to endorse the policy as it stands or the proposal for the Eastern Creek facility. The second recommendation I want to underline is that there already have been inquiries into what it would take to strengthen the performance of the New South Wales Environment Protection Authority [EPA]. Parliamentary committee No. 5, I think it was, completed their inquiry into that matter in February 2015 and made several

recommendations, six of which are tabled today, that that committee felt would go a long way to strengthen the New South Wales EPA, and most of which have not been implemented to date.

**The CHAIR:** Good pickup.

**The Hon. LOU AMATO:** You mention that the Vineyard monitoring station is inoperative. Do you know why it is inoperative at the moment?

**Dr WHELAN:** I do not know. I could comment a little further on the matter of standards, though, if it is relevant.

**The Hon. LOU AMATO:** Yes, that is fine. Thank you.

**Dr WHELAN:** I was interested when I heard the previous witness say that the incinerator that is proposed would operate to European Union [EU] standards or world's best standards. I have just completed eight months of research into New South Wales' five large coal-fired power stations and I can assure the Committee that the licence limits that were set for those five major power stations are in some cases hundreds of times less strict than EU, or US, or even Chinese standards for stack emission concentrations. In the case of mercury emissions, for instance, the Bayswater coal-fired power station has a licence limit that is 666 times less strict for mercury emissions out of the stack than would be adopted in China. That is the case for most facilities.

**The Hon. MATTHEW MASON-COX:** Are you pleased to hear that this proposed facility actually will comply with EU standards? Is that the point you are making?

**Dr WHELAN:** It is pleasing to hear a commitment to that. I guess what I am concerned about, and what I feel the Committee should be concerned about, is that with the track record of the EPA in New South Wales and the Department of Planning and Environment when consent conditions are granted—not by this parliamentary committee, but by the department—those licence limits are unlikely to require the highest standards that the proponent is able to commit to.

**The Hon. JOHN GRAHAM:** But if the proponent is coming to us and saying they can meet the EU standards, those licence limits should be set at the EU standards. That is a reasonable expectation from the community, is it not?

**Dr WHELAN:** It is a completely reasonable expectation. Unfortunately, there is no evidence to support that happening. In fact, where coal-fired power stations, which I can comment more on, are able to demonstrate that they can emit much less than their licence requires them to, you can see that there would be a case to tighten their licence. Let us say that they are licensed to emit 100 micrograms per cubic metre of particle pollution but they rarely go above 20, the EPA could provide some incentive and a stricter limit so that we can drive down toxic emissions, particularly for particle pollution where there is no safe level of exposure for particle pollution. That is not the case.

In my notes I point to a statement made by the regional director of the EPA for the northern region of New South Wales very recently that the EPA's licensing philosophy is to license according to reasonably available technology, not best available technology, at the time that the plant is new. If we fast forward 10 years and if there are significant improvements in technology for energy from waste, the EPA's current licensing philosophy would see them continuing to license as they licensed when this plant was new.

**The Hon. SHAYNE MALLARD:** Is that the case with coal-fired power plants that you are talking about? Were their licensing conditions set when each one was developed?

**Dr WHELAN:** That is right.

**The Hon. SHAYNE MALLARD:** Our knowledge of pollutants has advanced and our ability to measure pollutants has advanced in time, but it is not retrospective on the old power plants? What I am getting at here is that you would want to have the latest standards of requirements imposed on the energy from waste type of facility by continually updating, not being frozen in time. That is what you are getting at there?

**Dr WHELAN:** That is right. The technology increases over time or shifts over time. Community expectations, due to their awareness of health impacts, shifts over time and the matter of social licence, I guess, requires that a polluter adopts those new technologies. In the case of sulphur dioxide, oxides of sulphur from coal-fired power stations is the country's biggest source of oxide salts. A lot of sulphates, which express themselves as fine particles in Sydney, come from the five power stations that are way beyond Sydney. Those emissions could be reduced by 90 per cent. Health outcomes in Sydney could be improved overnight very, very dramatically with readily available technology that is in place in power stations right around the world. But why would an owner-operator of a power station, whether it is from waste or coal in New South Wales, adopt those best practices without either an incentive or a disincentive to do so?

**The Hon. MATTHEW MASON-COX:** Would your issues not be resolved by the development consent, should it be forthcoming, actually making it clear that those guidelines that apply in Europe will apply to this incinerator here in Western Sydney?

**Dr WHELAN:** If air quality in Sydney were significantly better than it is today, that may well be the case.

**The Hon. MATTHEW MASON-COX:** Let us deal with the incinerator as the incinerator. That is really what we are talking about—this project. I am just asking the question: Would your concerns be dealt with if the actual standards were European standards as part of the development consent, should it be given with this project?

**Dr WHELAN:** The short answer is no. The graph on the front page is the explanation for that. If you could perhaps look to the graph just quickly: The two bars on the left are the national environment protection measure, or the national standard, for fine particle pollution. I should emphasise that fine particle pollution is the killer in air pollution. It is responsible for more than 3,000 premature deaths each year, many of them in Sydney. There is no safe level of exposure to fine particle pollution PM2.5. Let me explain the second bar. The first bar, the dark one with No. 8, is 8 micrograms per cubic metre for an annual average concentration of fine particle pollution. The second bar is the standard to which the New South Wales Government has committed achieving by 2015, 10 years from the time they made the commitment in 2015.

**The Hon. PENNY SHARPE:** Which is still a lower commitment than other States have committed to?

**Dr WHELAN:** Conversely, two States committed to more strict standards.

**The Hon. PENNY SHARPE:** Yes, correct.

**Dr WHELAN:** They committed to 6 micrograms per cubic metre; that is right. But what you see in the following four bars is that at Prospect the current standard has been exceeded in the last two years for which data is available, and at Richmond the 10-year objective of 7 has been very dramatically exceeded and we are almost at 8 micrograms per cubic metre which, averaged over a year, is not a healthy level of exposure to fine particle pollution. That is a politically acceptable level of exposure to fine particle pollution. A healthy level is zero. But to come back to your question—

**The Hon. MATTHEW MASON-COX:** So let us just not drive cars or trucks and let us just shut down industry: That would be your preferred sort of outcome on that analysis?

**Dr WHELAN:** No, but thank you for the question. Power generation is the single greatest source of fine particle emissions in Australia. The New South Wales Government, in a bipartisan measure, supported the standards that appear on the left-hand side of the graph, but they are not met. It is current Government policy to reduce fine particle pollution in Sydney.

**The Hon. LOU AMATO:** Dr Whelan, you believe that if an incinerator is built at Eastern Creek, it would have an impact on the health of people in south-west Sydney?

**Dr WHELAN:** Yes, that is right. To add to that, health of residents in Western Sydney is currently compromised by their exposure to fine particle pollution. Their health would be further compromised if the State Government adopts a policy and subsequently endorses a facility that increases exposure to fine particle pollution. There is an acknowledgement in the EIS, on the second page under the second point, "Minimise air pollution to levels well below the limit". The Eastern Creek EIS acknowledges that ultra-fine particle pollution will increase. Of course it will; incinerators are a major source of fine particle pollution.

**The CHAIR:** Over time hospitals would have to go for accreditation. Surely it would be encouraging if there was a five-yearly accreditation to ensure that the latest technology and pollutants were being tracked in a new establishment. As you say, some pollutants from coalmines have been on the initial development application [DA] and that is what it is.

**Dr WHELAN:** If I understand the question, or perhaps to extrapolate from the question, the proponents of the Eastern Creek facility have an initial challenge to satisfy a new State Government policy. We subsequently need to go through a Planning Assessment Commission process. Clearly, with 1,000 submissions that will happen. The Planning Assessment Commission in New South Wales has only ever rejected a handful of projects and normally for extraordinary political reasons, not on their merits. Then they are approved based on modelling. I make this point on the second page about modelling and monitoring. The reality for the folks not only in Western Sydney but all of Sydney is that because of the recirculation of air pollution across the city it will not be what is modelled; it never is. Modelling is, at best, a good guess based on some numbers, but the modelling is conducted by consultants who are hired by a proponent to give an answer that will get an approval

for a project. In reality, the impacts of this very big facility that is being considered currently may well be significantly more serious than outlined in the EIS.

**The Hon. LOU AMATO:** With regard to your modelling, have you got statistics of the levels on still days in the Sydney Basin?

**Dr WHELAN:** The figures we are looking at is an annual average. That is over 365 days for each of the past two years. I would be happy to go back previous years. I think two years is sufficient.

**The Hon. LOU AMATO:** As you know, on days when it is still the pollution increases in the Sydney Basin and obviously it has an increased impact on human health.

**Dr WHELAN:** Exposure to particle pollution has two standards. One is an annual average that is looked at in this table. Another is the 24-hour average. There is a short-term response to exposure to particle pollution. If you look to the text under the second bullet point on the first page, the 24-hour average at those monitoring stations has gone well over the standard. The standard for a 24-hour average is 25 micrograms per cubic metre. In recent years at Richmond, we have had 24-hour levels up to 83.4, which is more than three times the national standard for exposure to particulate matter [PM] of 25 micrograms over a day. At Saint Marys it is up to 93.2; that is almost four times the standard. These are extraordinarily high concentrations of fine particles. This part of Sydney is known to be a sink for air pollution and tends to get higher concentrations of all the air pollutants than other parts of Sydney, whether it is the source of them or not.

**The Hon. LOU AMATO:** There is no consideration given to bushfires, particularly from the Blue Mountains, when they encroach on the Sydney Basin.

**Dr WHELAN:** They no doubt contribute to these concentrations.

**The Hon. PENNY SHARPE:** These figures are very important. You have given us the high point of the 24 hour average at those sites. I do not expect you to do it now—take it on notice—but are you able to give us the number of days in that period when they were exceeding the standard at Saint Marys, Richmond and Prospect if this is the average? Obviously they are high numbers. Are you able to do that? I know you have the data.

**Dr WHELAN:** Yes, I am happy to take that on notice.

**The Hon. PENNY SHARPE:** That would be fantastic. Given these figures and the evidence you have given, we are well aware of the geography of the Sydney Basin, the way in which air moves around the city and the way it sits over the basin. We have seen that this week with the bushfire burn-offs. Given these levels, are you able to give us some evidence of the latest research on cumulative impact generally? We know the incinerator is going to increase emissions, but also, are there any regulatory regimes that are taking into account cumulative impacts? It is my understanding that in New South Wales we do not do that well, if at all.

**Dr WHELAN:** That is true, the New South Wales Government does not take cumulative impact into account to the extent that the Planning Assessment Commission and the Department of Planning and Environment will assess the Eastern Creek project on the basis of its EIS, which will look at the contribution by that one project to background concentrations. On the other hand, at the same time, the ambient air monitoring is picking up all sources. That is not one source; that is all of those sources across the city. It would be good to think that a State Government would look to data of the receiving air environment, the ambient air in the community—it is OEH data; it is not my data—and say that in this part of the city we cannot, in conscience, responsibly approve another facility; we need to reject it. I need to tell the Committee very clearly that that is not the approach of the New South Wales Government. In the Hunter Valley where I live, the concentration of coarse particles, larger particles than these ones—PM 10—exceeds the standard regularly and every year. But when a coalmine expansion or any other new significant source of PM 10 has been assessed by the Government in the past seven years, they have all been approved bar a couple of quite extraordinary situations. In that sense, the cumulative impact is a factor, but it is not a red light, green light, as I believe it should be.

**The Hon. PENNY SHARPE:** Are there any regulatory regimes in other jurisdictions that you are aware of that do cumulative impact well?

**Dr WHELAN:** If I could go to the United States [US], for example.

**The Hon. PENNY SHARPE:** Yes, we are looking at international data.

**Dr WHELAN:** We believe the State governments of Australia have failed to regulate for clean air and we advocate for a national air pollution Act and regulator. Based on the US EPA as a model, it has powers under the Clean Air Act that when a State is failing to achieve or comply with agreed national standards, initially the US EPA has the capacity to withhold revenue, which is an incentive for that State to act to bring air pollutions

down. It might be in a particular place. The Commonwealth EPA, if there was such a thing, might look to this part of Sydney and say, "There is a problem with Prospect. We would like the New South Wales Government, over two or three years, to bring those levels underneath the agreed standard." If over that period of time the State continued not to, the US EPA has the power to manage air pollution in that non-compliant State.

**The Hon. PENNY SHARPE:** Step in powers, essentially.

**Dr WHELAN:** That is right.

**The Hon. PENNY SHARPE:** When you talk in your submission about reviewing licence limits to minimise toxic pollution, you mention that you are aware of facilities that have been unable to comply with their licence and essentially point the finger at the EPA for failure to prosecute, which is a common theme, and, instead, have it relax less strict licensing conditions. Are you able to give us a couple of examples?

**Dr WHELAN:** I can point to one in my neighbourhood. I live at Newcastle and not far from my home Port Waratah Coal Services operates the T1—the oldest coal export terminal. Part of their licence is to discharge polluted water into the Hunter. The Hunter is an important estuary; part of it being listed under the RAMSAR Convention for internally significant wetlands. That is an important licence condition to limit the discharge of water that is full of sediment or nutrients. My research, using the Government Information (Public Access) Act [GIPAA], showed that the company was non-compliant with their discharge limits—they were exceeding the concentration and the volume of their polluted water discharge into the Hunter by a factor of 10 or more regularly. Then their licence was reviewed. Rather than putting in place, as you might, stricter penalties for non-compliance, an increased regulatory regime or frequent audits and inspections, those kinds of mechanisms, or withdrawing a licence until the company could demonstrate they were able to comply with it, the response was to relax that particular condition of the licence by adding a zero. The company is now largely in compliance.

**The Hon. PENNY SHARPE:** Mangrove Mountain is next. I think we will be talking about that as well. My final question is around a fit and proper test in relation to competence and relevant experience. We are talking about the biggest incinerator in Australia, and mostly throughout the world, despite the protestations of some. Can you speak to the issue of a fit and proper person test as to competence and experience in relation to breaches? Also, are you aware of how many times the fit and proper person test has been used to knock back any proposals—if you are aware of any?

**Dr WHELAN:** We are not aware of any. It is something that we are quite interested in. It is a good idea. Towards the bottom of page 3 of my notes I make reference to section 83 of the Protection of the Environment Operations Act that you are referring to. It is important to note that the proponent, Dial a Dump, has not built or operated plants of this nature previously. The company has been fined for non-compliance. In fact, from reading the transcript it appeared that was at first denied and subsequently confirmed when Committee members asked about it. I also noted that you personally asked for details of the compliance history of the company. It seems like a good test. It is also the reference to social licence in the energy to waste State policy—it talks about good neighbour. I note that the Committee has heard evidence previously about the 990 submissions, which is quite extraordinary, only two of which supported the project. As I make it, that is 0.2 per cent support—99.8 either opposed or were ambivalent. It is also worth noting that the Department of Planning and Environment has a bit of a tendency to consider submissions not to be opposed if they are not so clearly that way. Many of the submissions that are not marked as opposing may well have been intended as opposition.

**The Hon. PENNY SHARPE:** Or raising concerns but not necessarily—

**Dr WHELAN:** There are also very specific concerns about the community engagement approach that the company has taken in the eastern suburbs. For several years my research around environmental policy was on the question of engagement. Best practice community engagement is not within a bull's roar of what has been going on, either around the State policy or around the specific project; it is pretty close to worse practice really. There has been no meaningful engagement.

**The Hon. JOHN GRAHAM:** I am interested in your recommendations relating to non-compliance and the approach of the EPA. Often non-compliance is kept confidential. You have said that non-compliance is generally treated by the EPA as a confidential or trivial matter and you recommend it be made more public. That seems to make sense to me. These are community issues, particularly when it comes to fine particle pollution. They should be of real concern to the community, as you have pointed out, because they impact cumulatively. Is there any reason why we cannot be more public about these things?

**Dr WHELAN:** The main reason is just that we are not in this State. If I could give an example?

**The Hon. JOHN GRAHAM:** Yes.

**Dr WHELAN:** We were asked by community groups in the Namoi region of north-western New South Wales to look into Whitehaven's history of compliance or non-compliance with licence conditions for four large open-cut coalmines. We approached the company in the first instance. Every major polluter holding an environmental protection licence under the EPA has to submit an annual return, which is the track record of their compliance or non-compliance against their licence conditions. Whitehaven would not cooperate; the other coal mining company in the region voluntarily provided us with that documentation. We pursued Whitehaven and those documents for nine months before we finally got them. The EPA's freedom of information officer had made a ruling that it was overwhelmingly in the public interest for us to have those documents, and even still it took months after that before we finally got access to them. I personally went through them and I found more than 50 instances of non-compliance. In some instances they were fairly minor—they did not do some monitoring, they did not provide a report, et cetera—but in other instances the non-compliance was stark; it was very significant and had a material impact on quality of life and the environment in that region.

For those 50 instances of non-compliance, the EPA had issued seven penalty infringement notices [PINs], seven of 50. Only generally after many complaints—there were more than 400 complaints recorded during that period for those four mines—the penalties were \$1,500 in six instances and \$15,000 in one instance. That non-compliance for that company—I am not here to speak about that company but this is regulatory framework into which a million tonne per annum waste incinerator would enter—was that Whitehaven had extracted from one coalmine 2.136 million tonnes of coal. They are only licensed to extract up to 2 million, so they had extracted an extra 136 thousand tonnes of coal and sold it at about \$100 per tonne. The penalty was \$15,000.

**The Hon. JOHN GRAHAM:** Which is ridiculous when you compare that to the money they would have made.

**Dr WHELAN:** To the incentive of non-compliance.

**The Hon. JOHN GRAHAM:** It is almost asking some companies to break the licence conditions for that to happen.

**Dr WHELAN:** To return to your question, if it was within the Committee's power as part of the energy from waste policy or subsequent parliamentary assessment and consideration of this particular facility to ensure the level of transparency that we are discussing, that would be a welcome measure in communities.

**The Hon. JOHN GRAHAM:** Those licence limits will be publicly available and subject to community views before they are set. That will all happen in public but your point is what happens after that—

**Dr WHELAN:** Compliance.

**The Hon. JOHN GRAHAM:** —is almost secret business between the company and the EPA.

**Dr WHELAN:** Black box. Absolutely.

**The Hon. JOHN GRAHAM:** If this is brought out into the public it will provide a gentle but real incentive for companies to comply. Some of this might be explicable, but they should explain. Some of it might not be and there may well be a community reaction.

**Dr WHELAN:** All of this would change the social and political environment within which the company operated. To return to another member's questioning, that would not satisfy the test to lead an organisation like ours to endorse the waste facility.

**The Hon. JOHN GRAHAM:** As you have pointed out, the stakes are high—fine particle pollution and 3,000 premature deaths. You gave evidence that many of those might be in Sydney. Given your evidence today, many of them might be in Western Sydney?

**Dr WHELAN:** There have been studies that have assessed premature deaths per annum in Sydney and it would be fair to say that the distribution of those health impacts—whether it is premature deaths, respiratory ailments, cardiovascular problems—will reflect the distribution of air pollution across the city. The west, south-west and north-west tend to get more elevated concentrations of air pollution than the Eastern Suburbs because of the prevailing winds.

**The Hon. JOHN GRAHAM:** You commented about the licensing philosophy leading towards lowest common denominator requirements. What legislation or policy drives the licensing philosophy, or are you pointing to the culture of the EPA, the regulator?

**Dr WHELAN:** The latter; it is an organisational culture. I note that the chief executive and chair of the EPA will appear before the Committee this afternoon. It would be a terrific question to ask Mr Buffier. What

we have been told is that the EPA has a regulatory toolbox, which begins following a couple of hundred pollution complaints, let us say, with a cup of tea or a telephone call with an operator and runs through to criminal prosecution, in theory. Our very, very close observation—and I do not know anyone who has observed the consequences of non-compliance more closely than our organisation in New South Wales, including the EPA—has been the EPA has kept its responses to the very lowest end of that spectrum, witness the \$15,000 fine for Whitehaven. Prosecution, including criminal prosecution, of chairs, CEOs, board members, is an option. But in the last decade the coal-fired power stations of New South Wales have failed to comply with conditions of their licences many, many times and not one of the companies has ever been prosecuted. The most serious consequence has been a penalty infringement notice, a PIN, of \$15,000. That is pretty much the ceiling.

**The CHAIR:** Not all businesses do the wrong thing. Quite often they incur a PIN from the EPA because something has happened. Surely, we should have a carrot approach rather than a stick approach, because we do not want good businesses going down the drain. We want to hold them accountable but edge them towards doing what is right environmentally, not punish them so their businesses end up sinking. I am not talking about rogue companies; there is no excuse for them and they should be held to account. I am talking about most businesses that are generally doing the right thing when they have a slip-up that they need to fix. We do not want them to receive a PIN as a consequence and so go out of business with many job losses.

**Dr WHELAN:** No, I am not here to argue for that. I am here to say that the evidence is very clear that within the toolbox, the very lowest end of the toolbox is favoured. On the contrary, what you will hear from Mr Buffier is that the EPA provides support, given time, for those responses

**The CHAIR:** And so they should.

**Dr WHELAN:** The EPA goes well beyond what is useful, in my opinion.

**Mr JEREMY BUCKINGHAM:** A lot of issues you raised in your submission have been explored. I am particularly interested in the first part of your submission where you talk about monitoring. It all comes down to data—if we do not gather the data, we do not know what is happening. Please walk us through the issue of air monitoring in the Hunter Valley, where there is the worst air pollution in the State, and the history of gathering data for particulate pollution. Please also walk us through the adequacy of the current air pollution monitoring regime in Western Sydney, noting that according to your submission there are only two operational air pollution monitoring stations. Is that right?

**Dr WHELAN:** There are three or four.

**Mr JEREMY BUCKINGHAM:** Do you think that is adequate, and are they of a reliable standard?

**Dr WHELAN:** I do not think anybody has cause for concern about the monitoring equipment, the technology that is used or the veracity of the results. The New South Wales Government has a better system of air pollution monitoring than any other Australian State, and better arrangements for access to that data than any other State. We hold it up as best practice constantly in other States. To have 14 air pollution monitors around the Hunter Valley and constant, immediate, online access to data for a day, a month, a year, five years, is extraordinary. In Western Sydney there are 14 monitoring sites across the city, and that is about the number that has been agreed by the nine Australian governments.

Our concern is not really about ambient air, the neighbourhood or background air pollution, monitoring. There is a problem with background air in that part of the city, but we know that because of monitoring. Our concern is more about hotspot air pollution monitoring, if you put in place a facility—whether it is a large polluting facility in a neighbourhood—and what additional monitoring should be put in place and what additional monitoring the community expects to be put in place. The status quo in New South Wales—and Whitehaven's coalmines illustrate this—is that companies do their own additional monitoring for performance management. They therefore know if they have had a breakdown whether they need to shut down because of extraordinary exceedance. That monitoring is not conducted by the OEH—it is not done by government, it is not audited by government and it is not made available by government, except in unusual situations. Foreshadow a million-tonne per annum waste incinerator in Western Sydney, the EPA's licence conditions for that are likely to be to put in place a handful, maybe half a dozen, of air pollution monitors somewhere close to the incinerator in the directions that the wind is likely to take the plume to find out what happens—and the EPA might clarify the licence conditions this afternoon. That will be at the company's own—

**Mr JEREMY BUCKINGHAM:** That would be proponent driven due to consultations they have undertaken, but would not be OEH monitoring.

**Dr WHELAN:** That is right.

**Mr JEREMY BUCKINGHAM:** The OEH monitoring is establishing the ambient or background air pollution, but if you have a potential point source of pollution, would your view be that the community should take it upon itself to do the monitoring?

**Dr WHELAN:** Especially if it is a very large facility and it is in an environment that is characterised by already elevated concentrations of pollution, that would be appropriate.

**Mr JEREMY BUCKINGHAM:** What is your view on the fact that, according to your submission, there are no legally enforceable standards for ambient air toxics? Should the State seek to redress that?

**Dr WHELAN:** I should add to the comment that it was a direct response to something I read in the transcripts of this Committee. There are also no enforceable national standards for what we call the criteria pollutants, which include fine particle pollution PM2.5 or coarse particles PM10. The graph in our submission shows that if there were legally enforceable standards, the buck would stop with somebody to remedy those annual concentrations that have been recorded at Prospect in those two years. Somebody would be compelled, the State Government presumably, as in the United States in the model that I outlined previously. They are called limits, national standards, but the enabling legislation in each State and Territory to give effect to those standards does not make them enforceable. Muswellbrook fine particle pollution is anything up to 10 each year as a consequence of wood heaters and power stations. What is the consequence? Who is responsible? That is not much comfort for the community. This is why our organisation feels that the standards by themselves are an inadequate arrangement to protect human health and drive air pollution downwards.

**Mr JEREMY BUCKINGHAM:** To give an analogy, we have a speed limit on our highways of 110 kilometres an hour. Is that right?

**The Hon. SHAYNE MALLARD:** On freeways.

**Mr JEREMY BUCKINGHAM:** It is about that, 115 or thereabouts, but if you exceed that speed limit there is a penalty. In terms of this regime, there is no legally enforceable penalty or action by government to put in place a strategy to lower air pollution exceedance.

**Dr WHELAN:** That is right, and across New South Wales communities living in the most air polluted environments that we are connected with have little faith in either the system or the environmental watchdog, the EPA, to improve air quality currently.

**Mr JEREMY BUCKINGHAM:** Do you think the EPA is too close to the industry? Does it err on the side of deferring to industry to self-regulate, to monitor and to outsource to consultants? Do you think it is too close to the people it is supposed to be overseeing?

**Dr WHELAN:** We have no evidence to support that. It is a cultural problem. The Environment Protection Authority is averse to regulation and anticipates pushback before ever receiving any. In this case, I confidently predict that the EPA will lean towards very relaxed licensing conditions despite currently being opposed to the project. That is extraordinary. The level of EPA opposition and the concerns it has raised about this project are unprecedented. Its submission runs to 60 pages or more. It is dead against this Eastern Creek facility. However, if it goes ahead, the licensing conditions will err on the side of reasonably available technology, not because it has been lobbied by industry but because that is its culture.

**The CHAIR:** The Committee took evidence at Blacktown that the proponent is resubmitting its EIS because of the Environment Protection Authority's concerns. Are you aware of that?

**Dr WHELAN:** I was not.

**The CHAIR:** It will obviously take that on board. Thank you for appearing before the Committee today. Your evidence has been very helpful and your knowledge is extensive. The Committee might have further questions to ask. If it does, they will be forwarded to you by the secretariat and you will have 21 days in which to answer them.

**(The witness withdrew)**

**STEPHEN GOODWIN**, President, Mountain Districts Association, affirmed and examined

**MARILYN STEINER**, Member, Mountain Districts Association, affirmed and examined

**The CHAIR:** Do you have an opening statement?

**Dr GOODWIN:** The Mountain Districts Association [MDA] firmly believes that the environmental regulatory system that underpins the waste industry is flawed. We offer Mangrove Mountain landfill as an example of this claim. The Committee has been provided with comprehensive evidence and an explanation that does not need to be repeated here. It raises the glaring juxtaposition between the Government's efforts to divert waste from landfill and the refusal, so far, to act to remove the public health risk that is Mangrove Mountain landfill. It specifically mentions the regulatory failings that have been allowed to occur there.

MDA presented a substantial submission to the New South Wales Premier on 4 August 2017. A copy of that submission has been provided to the Committee. The submission contains information that documents beyond any doubt that both the New South Wales Environment Protection Authority [EPA] and the former Gosford City Council failed to exercise their respective statutory duties on many occasions. MDA calls on the Premier to authorise a special commission of inquiry. Neither the EPA nor the Central Coast Council will take direct action either by cancelling the licence or by using the authority provided under section 5 of the Environment Protection Authority Act to remove this ongoing source of pollution from the Central Coast drinking water catchment area and the pristine groundwater aquifer of the Hawkesbury sandstone.

What outcomes do we want? MDA seeks to have this landfill site closed and fully remediated. Given that the responsibility for this disastrous development outcome lies solely with the Central Coast Council and the EPA, the liability for its restoration should be shared by them. While many facts have been unearthed, there is other information pertaining to the Land and Environment Court case that remains confidential. The only way for all the facts about Mangrove Mountain landfill to become known and the reasons for the regulatory failure to be fully understood is for a special commission of inquiry to be held. In this way, the EPA's failings can be addressed and recommendations made to rectify them in legislation and/or regulation.

In conclusion, I urge the Committee to use whatever power it has to deliver a special commission of inquiry into Mangrove Mountain landfill. If granted, the MDA will be able to present its extensive information on this issue. The hearings will also have the power to ask for all other relevant sources of information—some of which are presently hidden by court privilege. I conclude by emphasising the difficulty we have with two startling facts: First—this came out of the Land and Environment Court hearing—without any public consultation and as a result simply of mediation between Gosford City Council and the operator, the excavation of that site was increased from the original approval of 20,000 cubic metres to just short of one million cubic metres. Secondly, the amount of material approved to be taken onto that site as approved in the original consent increased from 240,000 cubic metres to nearly 3.5 million cubic metres. This is in the catchment of the Central Coast water supply.

**The CHAIR:** You are tabling documentary evidence of statutory failures by the Environment Protection Authority and the former Gosford City Council in the remodelling of Mangrove Mountain Memorial Golf Course.

**Dr GOODWIN:** Yes.

**The CHAIR:** You have also provided a couple of other documents. One is your opening statement.

**Dr GOODWIN:** Yes, and the other documents are supplementary information.

**The Hon. PENNY SHARPE:** I am a little familiar with this issue. Is this the document provided to the Premier?

**Dr GOODWIN:** It is.

**The Hon. PENNY SHARPE:** It is the same document?

**Dr GOODWIN:** It is.

**The Hon. PENNY SHARPE:** I am not sure whether all members are familiar with what happened. The original approval was for 80,000 tonnes of clean fill to be deposited, ostensibly for a golf course. Can you take the Committee through what happened? Some submissions refer to a number of changes to the licence and the volume.

**Dr GOODWIN:** In 1998, the then Gosford City Council issued a development consent, which included the consent conditions, an environmental impact statement and the original landfill environmental management plan. That was for a modest extension of the Mangrove Mountain Memorial Golf Course. It was simply that, and we have no objection to that. If that had been completed, it would have been fine. However, the consent allowed for a small amount of fill. As I said, the total was 240,000 cubic metres, and 80,000 cubic metres of that was for the area that is covered by the environment protection licence [EPL]. The EPA issued that licence—EPL11395—in 2001. There have been 13 variations to that licence since then.

The Protection of the Environment Act 1997 [POEO Act] was amended in 2006, and included variations to the licence—not only the issue of a new licence. There has been one licence and 13 variations. After 2006, all the variations had to meet the requirements of an issue, but they did not. There are nine variations of the licence that render it invalid, but business continued over that time. In 2005 we know from filling plan details that the approved consent limit was exceeded. We know also through information obtained through a Government Information (Public Access) Act or GIPAA request that Gosford council itself was singularly responsible for exceeding its own development consent. This is the consent authority that had responsibility for monitoring compliance. They not only did not do that but they broke it themselves.

The information that we received through GIPAA shows clearly that they transferred waste from their Kincumber and Woy Woy facilities up to Mangrove Mountain landfill in excess of 121,000 tonnes of waste. Now, we get confused between tonnes and cubic metres. The approval was for 80,000 cubic metres. Depending on the compaction rate, that is about 50,000 tonnes. So 120,000 tonnes is more than double. It is 2.5 times their own consent that they parked up there. We know from photographic evidence that there is illegal fill there. It was meant to be simply inert fill. When the changes of waste classifications came on board it then became general solid waste non-putrescible. We know there is putrescible waste deposited there because we know of the existence of an affidavit that was in the hands of a solicitor that was representing Gosford in the Land and Environment Court. That never got tabled because the court case was set aside.

Just to give you some idea of that, Gosford council took the operator to court in 2012 on a breach of consent. That was set aside because the parties agreed to mediate. They mediated. That led to a settlement offer and heads of agreement and then the Land and Environment Court simply approved the terms of the heads of agreement. They did not judge the adequacy or otherwise of the development consent and they did not get to consider the breach of the development consent. All of that was set aside. They just simply rubberstamped what was put before them in good faith. We know that that good faith was false and we know that Gosford council knew that it was false but they did not make that known to the court.

This is why it is a mess metaphorically and literally. It is very complex but we would allege—I am glad I am under privilege—that there was a code of conduct issue here in terms of the members of the former Gosford council and they were the then CEO, Paul Anderson, and the Director of Governance and Planning, Danielle Dickson. Those two solely represented the interests of council through that mediation and came out the other end with a settlement which exceeded what the operator of the landfill took to the mediation. They took three offers to the mediation and none of those was equal to the amount that finally came out the other end. As I said in my address, that was conducted in secret.

There is no blame on the court. The court was just there to consider what was presented in a heads of agreement, but that was what was delivered in the heads of the agreement. You have got to ask the question: Why would council end up agreeing to more than what the operator requested? We have great concerns about the former senior members of Gosford council. But throughout this whole process clearly, as I mentioned, Gosford council was responsible for delivering more waste than they had approved themselves. They did not in any way, shape or form monitor compliance. There are written concerns which we have information about through GIPAA from the Office of Water and from Gosford council, now Central Coast Council, of staff raising concerns about what was happening and the potential impact on the water supply.

In 2012, I believe it was, there was a member of Gosford council who was asked to look at the matter and came back and wrote—and the correspondence is in the files and it is mentioned in the submission—that as far as he could see it was generally in accordance with the consent. At that time the amount of waste there was 9.4 times the approved limit. I mean, did this guy ever go out to the landfill? Did he look at anything? Did he look at the development consent? There are potential issues in relation to the activities and involvement of other staff as well. But certainly the EPA have delivered licence variations which have no validity. We have raised their role in all of this throughout.

I heard the comments of the former witness, which we would agree with in general. I have to say I am a bit humbled by the depth of his knowledge across the board, and I am not an environmental scientist. But certainly in terms of the EPA's responsibility for monitoring compliance and taking action, for us it is zero at the

Mangrove Mountain landfill. Even since we have taken close interest in what is going on we are less than satisfied. We cannot get to the site. It is a privately owned site. It is locked gate and you cannot get near it.

**The Hon. PENNY SHARPE:** I wanted to go to the point that a site that was originally supposed to have 80,000 tonnes is estimated to potentially have one million tonnes with another 1.3 million to come. Could you take me through what you understand to be the EPA's policy in relation to landfill sites? Surely, if you were starting from scratch now this would not be built this close to the water catchment to take two million tonnes of rubbish?

**Dr GOODWIN:** Exactly that. It is in direct conflict with the EPA's own environmental guidelines for solid waste landfills, and it was in 1998. But as much as we would like to be heavily critical back then, it was never intended to be a landfill. It was just meant to be a golf course reconstruction and the inert fill was simply to fill a couple of depressions and to smooth it out. If you know Mangrove Mountain golf course, it needs a bit of smoothing out. But that is what it was meant to be about and it was not meant to be a solid waste landfill.

We do meet with senior management of the EPA Waste and Resource Recovery section pretty much on a monthly or six-weekly basis. We raised this so many months ago about these guidelines and we were told by one of the two people present that they are only guidelines, we really do not have to follow them. What on earth is the point of the EPA having a set of documents that they do not feel obliged to take notice of? It beggared belief when we heard that. But at this point in time, and it is specifically identified there, one of the sites identified as unsuitable for solid waste landfills are sites within 40 metres of watercourses and over groundwater aquifers. This is it and it sits indisputably in the catchment of the Central Coast regional water supply.

There is the Jilliby conservation reserve right adjacent to it. The creek system starts there and it flows into Stringybark Creek and Hallards Creek which flow into Ourimbah Creek. The former Wyong council pumps directly out of there into its drinking water storage dam at Mardi and they pump from that into the Mangrove Creek Dam, which is the water storage for Gosford. So the whole of the region is subject to—I can keep going.

**The Hon. PENNY SHARPE:** That is all right, because I want to ask about the Office of Water. It is your understanding that groundwater courses run through the site. That is another reason why it would not be built today. If you were going to build a landfill this size you would not be building it there because of the watercourse. Is that correct?

**Dr GOODWIN:** That is correct. We know society produces waste and we know it has got to go somewhere and we are told by the EPA that there are problems with most landfills, but this one deserves special attention because it impacts the watercourse and it impacts the groundwater aquifer. Our GIPAA output from the Office of Water shows clearly their concerns in an internal report. There are pictures identifying the excavations. It looks more like a quarry than a golf course reconstruction, but they have clearly breached the aquifers. You can see it and you can see pooled pristine groundwater within the basin of that excavation. It is not run-off. The overland water that accumulates around there—and I have got to tell you it really accumulates around there, that is another point altogether—is sediment laden. It is like chalk and cheese.

**The Hon. PENNY SHARPE:** This issue has been raised with the EPA on numerous occasions. In fact, many occasions. Every time I have asked questions it comes back that there is no issue with the groundwater, leachate is all fine and there is no problem. Yet through GIPAA you have found that the Office of Water has been watching this for a very long time and has concerns. I have recent data that suggests there are diametrically opposed answers. What is your interaction with the Office of Water and why it is so different from the EPA?

**Dr GOODWIN:** I guess we do not have a direct interaction with the Office of Water. The local officer certainly deals through his management. We just have to deal through the Government Information (Public Access) [GIPA] Act to obtain any information, and we have done. The problem we have got with the Environment Protection Authority's [EPA's] attitude to Mangrove Mountain landfill is that for us it just seems like they want to have this landfill reopen and continue with business. I hate to say it, but there is a conflict of interest in that that landfill, as small as it is, generates huge amounts of money for the operator and for the EPA. The exposure of the groundwater aquifer is undeniable.

We have just had completed—and we were grateful for this—an independent environmental review by a consultant. We had inputs into the terms of reference. We were grateful. In fact we had inputs more than that. We selected the consultant. The EPA gave us five choices with curriculum vitae [CVs]. Originally they said, "We could offer you an ex-EPA engineer." We said, "Thanks but no thanks. Have you got anyone else?" So they gave us five. The person that we ended up with was great. We had every confidence in him, but he maintained his independence throughout the process and we respected that.

Just recently the EPA released the report publicly and in the statement by Steven Beaman, he misrepresented the findings of that report. In fact, we publicly disassociate ourselves with that statement. He used the words "good news" and said this report shows no evidence of negative impact on ground or surface water. Well, it actually did not start out to look at that. That independent environmental review simply looked at the management plans. There are nine of them in total that they got to see—management plans about the proposed expansion. The 1.3 million cubic metres that the Land and Environment Court [LEC] approved is going to go into a new area with new leachate holding facilities. It was all about that. It was not about reopening business at all.

To state that ground and surface water showed no evidence, well, let me just tell you: There was no surface water data submitted. I checked with the consultant after I read that and he confirmed that. As far as groundwater is concerned, we are talking about data supplied by the operator. You have to worry about that as a practice, to be honest. We have raised that with the EPA. That really should not be in the hands of an operator. But we obtained through an informal GIPAA application the full set of groundwater monitoring data that comes with the annual returns. I went through those.

As I said earlier, I am not an environmental scientist, but I went through those particularly because I was concerned about the presence of chemically treated timber. So I looked for arsenic and hexavalent chromium in there as chemicals that might be produced by the breakdown of those treated timbers. I came up with an assessment and I presented it to the EPA and said, "We have some serious concerns about this data." Next meeting we had a month later, they came back and just shot the lot down: "Transcript error." There is a little sign that scientists will know. It is the sideways arrow that means less than—not to them. To them it means lowest detectable level. Well, was there an explanation of that? No, there was not.

There are mixtures of units—of micrograms per litre and milligrams per litre—"Oh, that is transcript error." You cannot be holding that up as a statement of evidence that this site has no adverse impact on the groundwater in one breath and previously you are saying that the data you are looking at is discredited—really, you cannot take it seriously. It is one or the other, not both. For us that data had no credibility. In fact, in the report the consultant did not say, "There is no evidence." He said, "There does not appear to be any evidence." That is to say, "The information I was provided is inconclusive for me to draw a firm conclusion."

**The Hon. PENNY SHARPE:** So you would argue the EPA are probably over-rigging the outcomes of that report; is that right?

**Dr GOODWIN:** It is called "spin", I think.

**The Hon. PENNY SHARPE:** Yes, that is right.

**Dr MEHREEN FARUQI:** Thank you, Dr Goodwin and Ms Steiner, for coming in to provide evidence today. Mr Steven Beaman, the director of waste and resource recovery for the EPA recently said on *Four Corners*:

I think we're recognised by the other jurisdictions, the EPAs around Australia, of having some of the tightest, toughest, and more innovative regulatory approaches across Australia.

I know that you have had long experience with the EPA on Mangrove Mountain. What is your response to this particular statement from Mr Beaman? What have the experiences of the Mountain Districts Association and the Central Coast community been?

**Dr GOODWIN:** Experiences? Nil and zero. That claim has no credibility with us at all. In terms of a direct experience and taking action, in mid-2015 there was what was described as an uncontrolled discharge. That is, in Ourimbah Creek the residents woke up and found discoloured water flowing past their front doors. The water catchment officer for Wyong Shire Council investigated it. He tracked it all the way back. He took photographs and samples. He was in no two minds that it originated from the landfill. You could see it. Subsequently we were able to visit that area because we had access through the Jiliby conservation reserve to that point at which it was released from the landfill. Immediately into the conservation reserve, a wide swathe of the native vegetation died.

There was clear evidence of sediment that had flowed through. You could see where it got picked up in the early stages of the catchment and then into Hallards Creek and into Ourimbah Creek. The thing about this is the natural catchment off the site is into Stringybark Creek. There is a ridge there. I am saying under privilege these guys pumped it out on the offside, believing, "Out of sight, out of mind. No-one would see it." Well, they put out so much it found its way into Ourimbah Creek. This was reported to the EPA. The first instance was mid-July and at the end of July the EPA turned up.

**The Hon. LOU AMATO:** What year was that?

**Dr GOODWIN:** It was 2015. It took until 30 September for the scientific staff of the Office of Environment and Heritage [OEH] to turn up and take samples. So that is months later. And, lo and behold, the samples were clean. Well, who is surprised? This is a moving system. A dynamic creek system does not sit around waiting for the EPA to get out there. They were down in the Ourimbah Creek end and they took water samples from the creek systems. They came up to the landfill and we asked them to take samples of the sediment, both within that band of escape and dying foliage from that same area and outside of that as a comparison. We still have not seen any results. We kept saying, "Are you sure you can see that?" But, no, we did not.

We have recently obtained information through a GIPAA application on water sampling analyses and there is no reference to that. The thing about that complaint was the EPA had it under criminal investigation. It was a tier 1 offence, and we all know there have been no tier 1 prosecutions for four years. At the end of the 12 months, they ran the clock down and then declared that they were not proceeding with the criminal investigation. When we asked Steven Beaman, he said, "We really wanted to but there were no eyewitness accounts of it." For goodness' sake. I do not know that it requires an eyewitness account to prove beyond any reasonable doubt what happened there.

This is just symptomatic of the lack of confidence we have about the EPA prosecuting complaints. In general terms and certainly it is shown in the annual returns that we have with the water monitoring data. There are scores of noncompliances raised year in and year out, and there has never been any action taken on anything to do with Mangrove Mountain landfill. As a comparison, it is slightly off the subject but it is worth noting, at Peats Ridge, which is not that far from this site, there was a farmer who had a similar transgression. He allowed sediment laden water to escape his farm. He was one of those landholders bringing fill onto his site. He is a chicken farmer. He is creating a new pad. But he allowed sediment laden water to escape. Straight away he was hit with a \$7,500 fine.

You talk about disincentive to business—blimey! This is just a family trying to earn a living. Yes, they have stepped over the line. We do not support what they did. But immediately and without warning there was a \$7,500 fine, whereas this lot is the top end of town. It operates under a range of names. Verda Terra owns the licence. Mangrove Mountain landfill we presume is the operator/owner. Mangrove Properties NSW bought the whole site less than a month after the Land and Environment Court case for an absolute steal—and why would they not? They have been gifted a whole heap of waste. And then you have Bingo. Bingo claims, as you saw on *Four Corners*, "We are not associated with that." The funny thing about that is Bingo, their environmental manager, a staffer and their in-house legal representation turn up to meetings with the EPA and with Central Coast Council whenever the operator is involved. So we are firmly of the belief that Bingo is actively involved with that site. Daniel Tartak said the family owns the site but it has nothing to do with Bingo. I do not believe that at all.

**Dr MEHREEN FARUQI:** The evidence that has been given in the Mountain District Association submission points to a long period of regulatory failure under governments of both stripes. In your opinion, what is at the core of this incompetence, if I could say that, in dealing with this very serious issue?

**Dr GOODWIN:** I would love to be able to answer the question. It is the whole point of our call for a special commission of inquiry. It is in the submission. You know the facts. This Government is committing a lot of money and resources into dealing with waste—it is a huge problem: Eight hundred and two million dollars over nine years to convert waste from landfill to recycling, yet here we are a continuation of a rotten and stinking landfill in operation that no-one seems to want to address. I do not know what the cause is. There is, I think, a systemic failure. The only way to find out—Mangrove Mountain landfill could be a very good case study to get to the bottom of why the Environment Protection Authority [EPA] is failing in its statutory responsibilities.

There are more facts than I can recall. You have got the submission. Best of luck reading it. It is not nice reading. It is fairly heavy duty but there is also confidential information too, which we are not aware of. The only way to lay it all out and find out where the failures are occurring within that organisation and with the consent authority as well is to have a special commission of inquiry specifically tasked with looking at Mangrove Mountain landfill.

**Dr MEHREEN FARUQI:** We have also seen four environmental Ministers since 2011, since the Liberal-Nationals Government came in. Do you think that is part of the problem in exacerbating this issue? What have your experiences been with environment Ministers in the last seven years?

**Dr GOODWIN:** It should not be the problem. I am looking at the shadow Minister for the Environment over there. I know this lady as an outstanding person, but I am sure everyone that gets into a

ministerial position—gosh, can I say Ian Macdonald here? Probably not—most everyone who gets into ministerial positions does so with good intent to discharge their duties to the best of their ability.

**Dr MEHREEN FARUQI:** Did you contact any of the environment Ministers in the last few years? What were the responses?

**Dr GOODWIN:** Yes. Our experiences: The submission that you have got is actually version two. Version one was submitted in early February last year. It was almost exactly the same. In the 12 months since we have gathered new information through the Government Information (Public Access) [GIPA] Act and it is beefed up. It is rewritten. But version one was sent to the then Premier, Mike Baird. He flicked it sideways, because it was a portfolio matter, to the Minister for the Environment. Guess what they did? They took advice from the EPA.

We subsequently got a letter—months later—and at one of our meetings I asked Steve Beaman, "Gosh, Steve. How long did it take you to write that letter?" He said, "Which letter?" I said, "The Minister's letter. I recognised the statements you are using in the press. It's not even clever." He said, "Oh, I write lots of letters." He did not say, "No, I didn't." He said, "I write lots of letters." This is the crux: In the letter you get a lot of the preamble and explanation—stuff you already know—but the Minister said, "Given the Land and Environment Court determined in 2014 to allow the Mangrove Mountain landfill to remain and expand over the next decade"—the implication or the inference there is that they found nothing wrong, which is not the case because they were not asked to check on that—and, secondly, "that water sampling in the catchment has not shown any evidence of impact from the landfill ...". That is a red herring and he keeps doing that all the time. He did that with the recent media release on the environmental report.

Why is it a red herring? Because it has nothing to do with risk. It is simply about a statement of fact—that I took a water sample here and I tested it and there was nothing wrong. I said to him, "We have an existing mound there of nearly a million tonnes of waste and it is unlined. Where do you think the leachate is going?" We know where it is not going because the new proposal is for an additional million tonnes of waste and the engineer-designed leachate holding pond is almost seven million litres. What is present on that site now, servicing the existing mound of almost a million tonnes of waste, is a 100,000-litre leachate pond. The reason for that is that the mound is in two parts: 85 per cent is called cell 1A, not lined; then in 2009 they created a new cell, which is called IB, and it was lined and it feeds into the small pond. That has 15 per cent of the total, so 85 per cent of the existing mound is unlined.

When we get severe rainfall events, like March this year and like January last year, all hell breaks loose on there. You could not believe it if you saw it. Water just runs everywhere. They cannot deal with it at the moment. What we end up with is contamination between stormwater, overland water and leachate. They try to deal with it. At the moment you have got the existing mound and then there is an excavation. This is for the proposed new waste. It is called cell W. That is meant to be lined to receive the waste. They cannot get close to lining it because it is always full of water. The stormwater runs into it and they pump into it because their stormwater retention ponds are just incapable of dealing with the run-off. This is a landfill site. Apart from being unlined, for many years it was not compacted. For many years, there was no daily cover. These are requirements of the licensing and none of that was attended to. You are going to have a whopping big mound, which is gradually decomposing, producing leachate and the risk for us—because of that we requested a further study into a risk assessment of site stability—is that that could slump into the Jilliby conservation area.

**Dr MEHREEN FARUQI:** Dr Goodwin, may I confirm that you did not get a response from the Minister? It came through the EPA. Is that right?

**Dr GOODWIN:** That is correct.

**Dr MEHREEN FARUQI:** In one of your recommendations that you make in your submission you are calling for an independence and integrity charter for the EPA.

**The Hon. MATTHEW MASON-COX:** Just wait up. You have got a letter from the Minister that you think was drafted by the EPA.

**Dr GOODWIN:** Yeah.

**The Hon. PENNY SHARPE:** Well, it would have been.

**The Hon. MATTHEW MASON-COX:** Right. I am just clarifying the response.

**Dr MEHREEN FARUQI:** But that was not a satisfactory response for your purposes?

**Dr GOODWIN:** It was a terribly unsatisfactory response because it did not address the grounds of the submission that was put to them. It just ignored the basis for the request.

**Dr MEHREEN FARUQI:** You recommended an independence and integrity charter for the EPA, which is kind of the same recommendation that I made to the EPA inquiry in 2015. What difference do you think such a charter could make?

**Dr GOODWIN:** Well, I guess in short, we would hope that it would raise the bar. It would deliver some independence and hopefully some serious delivery of responsibility.

**Dr MEHREEN FARUQI:** Do you think that is lacking at the moment?

**Dr GOODWIN:** I do. I seriously do. Look, as I said, we deal with two people. I will not name the other person; it is just an officer of the EPA, a really nice guy. We feel sorry for him working in that environment because you have got people like ourselves, who are heavily critical of what is going on there and heavily critical of his organisation, and he has to defend them. I just think for the staff it is a challenge; but, even so, we still are given reassurances that are just not being met and not been kept at all. That is what really is irritating. We have no way of checking what is going on or not because we cannot get to the site.

**Dr MEHREEN FARUQI:** Earlier you mentioned how the Gosford City Council was breaching its own compliance rules in transporting waste to the landfill. Did you have any discussions with council about this issue? What were their responses?

**Dr GOODWIN:** We have not had an opportunity to meet with them on that issue because that is a more recent uncovering, or discovery if you like, through GIPAA. In August last year we started a dialogue with the senior management of the then new Central Coast Council, Ian Reynolds is the administrator, Rob Noble the chief executive officer [CEO], and two senior-level staff with them. We had a meeting with them. Since then it has just been with the senior staff and we have had access to Rob Noble, the CEO. We stopped. It was just a waste of our time, to be honest. We have just stopped doing that. You just get rebuffed and treated like a mushroom, to be honest. It is really hands off.

What is really irritating is that the written replies to material we sent to them is consistently that, "We can't do anything. We do not have the statutory powers to do anything." Well, we believe they do. As I said in my opening address, we believe that the Act gives them both responsibility and the authority to take proactive action because there is an ongoing pollution event going on there and they cannot sit and wait for the operator, which is what they have said, to decide whether they are going to do anything or not.

**The Hon. MATTHEW MASON-COX:** I just wanted to clarify something, Dr Goodwin. You mentioned in your evidence that you believe there is a conflict of interest in relation to the EPA so far as varying that licence over time at Mangrove Mountain. You are wondering whether that is—I think did you say—related to the waste levy that they actually collect?

**Dr GOODWIN:** Yes.

**The Hon. MATTHEW MASON-COX:** Subsequent to that you said you do not know why the EPA has behaved in the manner it has. Can you clarify your evidence in that regard?

**Dr GOODWIN:** The conflict of interest is pretty obvious. Their charter is to protect the environment and I do not believe they are taking that seriously enough, as opposed to obtaining the financial rewards through the environmental waste levy. Through the Government Information (Public Access) Act [GIPAA], we recently obtained site inspection reports from the EPA. There was one in 2011, and we did not know until we got this, that Steve Beaman turned up and the sole topic of interest for him was making sure that trucks crossed the weighbridge. This was when Bingo had bought into the Verde Terra licence, so they became the licence holder on the basis that maybe they did not fully understand the procedures, but he was up there solely to talk to them to make sure that the waste levy was paid and that trucks crossed the weighbridge. Subsequently, I think it was three or four—

**Ms STEINER:** Three subsequent visits.

**Dr GOODWIN:** —subsequent visits by officers, not by Steve, were about that fact. Yes, it is circumstantial; there is no evidence. But when their number one man and subsequent operational staff are preoccupied with making sure they get their waste levy rather than looking at the compliance with their licence conditions and the condition of the site, then we would claim that it is a reasonable conclusion that they are more preoccupied—and there is a conflict of interest—with the financial side of things rather than protecting the environment. That did not seem to register with them.

**The Hon. MATTHEW MASON-COX:** That is information from a GIPAA?

**Dr GOODWIN:** Yes.

**The Hon. MATTHEW MASON-COX:** Are you aware of the EPA officers being on site for reasons relating to enforcement compliance so far as the licence conditions are concerned?

**Dr GOODWIN:** In all fairness, yes, absolutely. Operational staff turn up there, mostly because we draw their attention to things. In the past 12 months we were visited by the newly appointed head of the waste unit in Newcastle and the local staff member who handles Mangrove Mountain. They were there because they travel in pairs, for the obvious reason. For us, we raised concerns and issues with them. We were told at that meeting that, in fact, the operational guy is saying, "I am almost full time on Mangrove Mountain." That is not true. You only have to have a look. We undertook a GIPAA search into water sampling records. He takes the water samples. There is nothing for 2017—not one. That is hardly a full-time concern about Mangrove Mountain landfill, given all the publicity; it has been going on for years. The community and the community environment network have been complaining about it. The EPA regularly fielded complaints and concerns from them and then over the past few years from us. Still, that goes on. We have no way of knowing, without doing regular GIPAA searches, what they are doing to monitor compliance and to take samples to make sure that the accumulated water there is within standards.

**The Hon. JOHN GRAHAM:** Thank you for your evidence. You put quite a powerful case today about some of the issues you have been dealing with for a long time. I have two questions on the details. One is about your request for a risk assessment of site stability. Have you had a response from the EPA to that request?

**Dr GOODWIN:** Is my phone tapped? Sorry, I was totally unaware of that question before it came. We met with the EPA in mid-July and we discussed it then. It was generally agreed to then by the EPA officer. We asked that we have the same access to the process that we had with the independent environmental review. It had been agreed that the same consultant would do it because he had familiarity with the site.

**The Hon. JOHN GRAHAM:** That makes sense.

**Dr GOODWIN:** We asked that we have input to the terms of reference, we asked that we have access to the consultant through the course of the process. Last time we started off, introduction, mid-term progress, this is how I am going, got a draft report, run it through you, any comments on that, and then it gets finalised. We asked for that. There was one concern raised by the EPA officer about the material that might be used in that study because of the confidential nature of it. We said surely he has already seen all of the information that he is going to access for this—it is in the public domain—because we got it after a long period of time. That was mid-July. We had a meeting set down for Wednesday this week. All of a sudden they are not returning calls. You can probably understand why.

**The Hon. JOHN GRAHAM:** That is useful. Secondly, you refer to the Independent Commission Against Corruption [ICAC] inquiry report of June 2017, and its recommendations to the EPA about managing the regional illegal dumping [RID] squads and asbestos disposal. Are you aware if the EPA has accepted those recommendations?

**Ms STEINER:** I have been the one who has been digging up the dirt on that recently and that is because of the *Four Corners* program and that was in connection with the Gosford City Council that appeared in that ICAC report. But asking me about the EPA, I do not know the recommendations. Ten of the 14 recommendations had to do with the EPA and their management of the RID squads and asbestos. I do not think they had much choice about responding to that. I think they were given a year to come up with how they were going to go about changing.

**The Hon. JOHN GRAHAM:** My question is have they indicated they will be able to agree to those recommendations already?

**Ms STEINER:** I do not know that. I am just reading the ICAC report that came out in June this year.

**The CHAIR:** I like your pun, Ms Steiner, that you are digging up the dirt.

**Ms STEINER:** Yes, getting deeper and deeper.

**The CHAIR:** Dr Goodwin, it will be a dream if they flatten all golf courses in the future, considering how I play golf. Certainly the evidence you have given is comprehensive, but it is quite damning in a lot of ways.

**Dr GOODWIN:** Is that a pun? Can I make one last comment in the absence of a question? This is human nature. That golf course which includes the landfill site is 40 hectares. That was bequeathed to the community by a returned serviceman to provide a permanent home for the RSL sub branch. That was taken off them as a result of the court case and it was sold for a peppercorn to the operator. Apart from the environmental

and public health issues around that site, we would like that returned to the community. It is an absolute travesty what happened. We are a small community and that is valuable.

**The CHAIR:** We have the EPA this afternoon and we are getting loaded up with questions concerning its credibility. These are serious questions to be asked. You have 21 days to answer questions on notice. We may put questions on notice in light of your evidence. The secretariat will help you with that. We thank you for presenting today.

**Dr GOODWIN:** Can I ask a question of you? I notice there are extended terms of reference. They impact on us, but we have had this opportunity today. Is there a need for us to submit an addendum in relation to that, or have you heard more than enough?

**The CHAIR:** It is up to you. You are welcome to put in a supplementary submission. We offer that opportunity when we take new submissions, which we are. You may want to listen to the evidence from the EPA today and put in a supplementary submission. Thank you for your time.

**(The witnesses withdrew)**

**(Luncheon adjournment)**

**GARBIS SIMONIAN**, Chairman, Australian Industrial Ecology Network, sworn and examined:

**MARK RICHARD GLOVER**, Director, Australian Industrial Ecology Network, affirmed and examined:

**The Hon. LOU AMATO:** Welcome to this inquiry. Would either of you like to make a brief opening statement?

**Mr GLOVER:** Committee members have a copy of the opening in front of them.

**Document tabled.**

**Mr SIMONIAN:** Thank you for the invitation to appear before the Committee. The Australian Industrial Ecology Network [AIEN] is a vibrant network of like-minded individuals, companies and institutions with a common interest in sustainable development through the study and practice of industrial ecology. We advocate the principles and concepts of industrial ecology in policy formation and business practice. The AIEN actively engages with organisations to facilitate improved performance and environmental benefits. We appear before the Committee today primarily to discuss issues canvassed in our written submission that are of particular interest to Committee members. We are ready to answer any questions Committee members may have about our submission. If relevant, and time permits, we would like to comment further on several issues that particularly relate to best practice in the context of industrial ecology.

Before addressing questions, we feel it useful to reflect on the content and structure of our submission; to reflect on a few of the key issues that we see in the *Hansard* have been raised in previous hearings; and briefly address the three new terms of reference. As to our submission we have provided two key documents. The first, which has previously addressed the "social licence to operate energy from waste issues", was written with a view to achieving a national consensus and was funded by the Australian Greenhouse Office and sundry industry contributors. The second is a technical paper prepared for, and currently published by, the Western Sydney Regional Organisation of Councils [WSROC]. It essentially sets out a logical and cost-effective strategy to realise the full, inherent value from urban waste, especially in a situation where mass burn energy from waste has been discounted as an end-of-pipe option. Both documents demonstrate the application of industrial ecology to resolving the issues they address and we look forward to answering the Committee's questions in due course.

In relation to the *Hansard* from the first hearing, we note how each presentation strongly advocated for their particular positions in the current waste sector—whether it be regulators, specialist trade associations, specific technology advocates or as contractors. In accordance with this charter to further the principles and practice of industrial ecology, we at AIEN aim to develop logical, well-informed positions on issues independent of vested commercial interests. We are of the view that the political and commercial forces are poised to drive the transition of this waste sector from its position of merely protecting human health and the environment, to which the conversation of materials and other resources become the primary focus of the sector, with protection simply being delivered as an essential by-product as in any other branch of industry. We are of the view, as an organisation committed to furthering best practice generally, that the AIEN can make thoughtful, well-informed and disinterested contributions to this trend and we will be glad to do so as the opportunity arises. Finally, the AIEN would like to put the following comments on the record for discussion if time permits. At this point I invite my co-director to discuss three very relevant points that we see as deficiencies in the current waste industry.

**Mr GLOVER:** The background to this is, as the author of both these documents I have been around an awful long time. This document for energy from waste cost about \$500,000. It involved a complete national survey and consultation in every capital city and major regional town to ask the questions that are at the top of this Committee's brief—to understand, by talking to real people in real suburbs in real circumstances, how you get a community licence to operate these sorts of facilities. It was important to the Federal Government at the time and it was a very topical issue at the time around all States. This document ostensibly went through the process that the Committee is going through now and came to a conclusion which explains where getting a community licence to operate has to originate from.

**The Hon. LOU AMATO:** In what year did that come out?

**Mr GLOVER:** We drafted this—it was published eventually in February 2004. There is nothing new under the sun, unfortunately, but it was built as a very comprehensive document to address these issues. I have the original with me. I am very happy to try and answer questions, although in the time available we would probably take it on notice. It is a very authoritative document, with about \$500,000 worth of Federal funding and took an awful long time to be signed off by the relevant parties. It has got most of what I think is relevant

today and still very relevant from then. The second document, which I authored some time ago for WSROC, was done in 2014 specifically for the five WSROC councils—about half a million people in Sydney. Through that process was put together a resource recovery strategy for the region at a time when they were trying to grow past simply being a waste management approach to handling these issues—in other words, using these resources to feed them back into a circular economy systematically and cost effectively within the framework of current pricing, levy structures, market prices, available technologies. Again, far too much to talk about today but it is there and we would be happy to answer questions or provide supplementary answers afterwards if necessary.

After all that research, three things emerge which we see in the transition from simple waste management—keep the place tidy, put it into a hole in the ground—through to actually recovering resources, which is Industrial Ecology's main focus, has led us to these three conclusions. One is at the moment the EPA, however well the individual people are trying to do the work, is hopelessly conflicted as it tries to handle three primary roles: One, as a regulator and enforcer; two, as a developer of policy—you would develop that policy, would you not, if you were the regulator, then you would not have to regulate approach—is a conflict; and three, as a sponsor and provider of significant amounts of grant funding, usually as injections into established marketplaces, is very disruptive for the existing market and is an area, in our view, that would be better handled by departments which do that sort of thing for a day job—Infrastructure NSW, Department of Industry, Regional Development Australia [RDA]. People who can understand inserting chunks of public funds into marketplaces can be very disruptive.

From a local government point of view, we think there is a lot of help to assist councils transition from waste management to resource recovery. In the old days—they have grown up and the situation still is—they used to be entirely responsible for the process of picking it up, transporting it and dumping it, all completely self-controlled. In the area of turning these same materials into resources, they have got to be helped into the process of becoming an important stakeholder in a much longer value chain to understand some of the decisions they have to make, or need to be empowered to make, have enormous ramifications for a lot of other people around that value chain circle.

The last thing, which is important, is that it is very difficult to find any group of people who come together to discuss this issue who could, under any circumstances, describe success if they saw it, if it popped up in their soup. What would a circular economy, sustainable resource use, look like if someone was asked to understand it and to recognise it? The issue is that it is really important. It is something that we can develop and have been developing in AIEN from first principles. But it is an area where if you do not know what you are trying to achieve, it is very hard to know how to allocate grant funding, how to develop policy, how to develop legislation, because you are doing so in a vacuum. If we have time, apart from talking about anything else on the agenda, we would be happy to talk about these things in a bit more depth.

**The CHAIR:** What happens when the recycling market stops being economically viable? We have seen this with the international glass recycling market, resulting in large warehouses full of glass. How do you suggest we handle that?

**Mr GLOVER:** I would be delighted to answer that question in as much detail as we have time for. We would take the issue from an industrial ecology perspective, which is to look at the core principle first. That core principle is to understand the inherent value of the material. Glass, if you take it as an example and it would be true for energy from waste and in many other areas, is made of fairly cheap raw material fused together with a staggering amount of energy. The product has certain properties, which could be measured by chemical engineers who could decide what it is best used for. Another process we would use is a concept called highest net resource value. The concept of grinding glass back to sand wastes all the energy put into making it in the first place. The third concept we would apply is a streaming or cascading approach to developing the solution.

If someone asked me to help to solve the glass problem, the first thing I would do would be to use the Federal legislation for product stewardship. I would use it to gather together the manufacturers of the glass, the users and the deliverers. On one side of the table would be the glass manufacturers—if they are going to produce it as a consumer product, they have to be at the table to help to develop the solution. It is not the community's job to sort in isolation with product stewardship; it is an idea of finding those who make it and asking them what they expected would happen to it at the end of its life. Having done that and having had the engineers tell us what its properties are, we would start looking at the best and highest use for this material, which may not be putting it back into bottles. It may be that it could be used in some very clever new insulation products. There are lots of applications for it with sufficient capital expended on it to go back into lightweight masonry products and building construction materials, recovering a significant proportion, if not all, of the inherent value of the basic product before they start.

In a streaming or cascading approach, because the product itself is only available to an end user if it is still being made by the original manufacturers, you can get yourself in a terrible mess when setting up a plant to process glass and they all move to carbon fibre or something else, and you have a stranded asset. Under those circumstances you want a trickle-down. If it is not going to its highest use, which might be for quite a small volume of it, then it is going to its next best use and then its next best use. From an industrial ecology perspective, we would sit down with the stakeholders most involved in the process and design a system, then come back to look at what would have to be done to try to make it happen.

**The CHAIR:** When the market falls through the floor, as has happened with the glass recycling market, if recyclers are not going to get a dollar back to cover their costs, it is not unusual to store the product. We have seen it with coal and other commodities, where producers slow down production and stockpile it until the market comes back up and they resume production. That is not unusual, is it?

**Mr GLOVER:** No, but the existing market basically is for people who want to put it back into bottles and jars. They have their own constraints. More of it is coming from overseas, so maybe the best thing is to use this stuff as a secondary resource into the manufacture of other materials. It needs thinking about. There is obviously a market failure that needs to be addressed. The market on its own is not going to come up with a solution, other than to waste the resource.

**Mr SIMONIAN:** In the area of glass, there are currently some what I call barriers that prevent the market from expanding and that limit the market. One of them is that one of the biggest users of waste glass overseas is in road base. I was involved in this area a few years ago, and the problem in New South Wales is that when you want to use a particular waste stream in road making, you need to get an exemption. There are two issues. One is the exemption process is very slow, because of limited resources at the EPA. They do not have enough people. Secondly, you need to get an exemption for every road. Every time you want to use a waste product in a road, you have to get a new approval, whereas in Europe you get a generic approval for a product and it can be used in every road and you do not have to go back. There needs to be some reform in the way the EPA approves waste to be used as a resource. This has to be streamlined and perhaps money from the waste levy could be used to put more technical people into the EPA to fast-track approvals. In Europe there are a lot of uses for glass, which we do not have in New South Wales because it is too difficult. That is where I see a solution.

**The Hon. JOHN GRAHAM:** Concerning your views on the EPA, you have set out three roles that the EPA is trying to play. I understand the theoretical point you are making, but it would help us if you have some practical examples of where these three roles have come into conflict.

**Mr GLOVER:** As regulator, they are particularly and rightfully concerned—it is simply how it comes together. This is not a criticism in that sense, but it is what happens when you put these three together. One would be a classic case. There is a huge enthusiasm in the industry for making compost from material that comes out of waste streams. The problem with that is that the market for compost, as shown in the diagram we looked at before, is dominated by what people want to buy. The difference between what people want to buy and what the waste industry would deem to be compost is huge. A lot of the compost is good enough to meet a licence requirement to be allowed to leave site and not go to landfill. That is 100 miles away from being in a bag in Bunnings or your local garden centre as something that you would choose for your garden. That industry has got itself absolutely bogged down with vast amounts of low-grade material in a market that was being run perfectly nicely by local specialties.

The issue is that compost is basically made if you have a block of land and a front-end loader, and so we start to get an oversupply. The next thing is, because the organics in the waste streams are something that the EPA are quite rightly trying to get out of landfill, they make a leap of logic saying let us promote an awful lot of tunnel composting facilities all over the countryside to render this stuff into something more valuable. Practically, nearly all of that stuff is given away at the gate at landfills. It has been stabilised to be safe and not to be a problem, but it has not been turned into something that has made its way into the marketplace. There have been huge injections of capital into what was a perfectly ordinary balanced, functioning market for the supply of garden products to the community, which certainly has had a great dollop of low-value material dumped on it.

It becomes an imbalance and a tremendous expense, from the point of view of the levy payer, which is probably where the money comes from. The combination is a policy to do that, rather than to allow alternative uses of the material, versus the injection of cash into a functioning private market that already exists so that the regulatory role can be run more efficiently, because no-one is doing anything that really needs regulating and it is all quite safe. This is a classic case. In most other States that does not happen. Policy in other States comes from other States' versions of OEHL that have developed the policy. We were in Adelaide last week where Green

Industries SA develops the policy and EPA is then obliged to consider that policy position when developing regulations. EPA does not develop the policy, although it may have inputs into it. That leaves a separation of powers. It is difficult to be judge and jury on some of these things, without the capacity to be the expert in the three different cases.

**Mr SIMONIAN:** I would like to give an example of where the EPA has acted on the granting of levy money. Some of the grants are given to develop infrastructure for the waste industry—that is, capital grants. My company applied for a grant and it was awarded one, but we never took it up because the conditions attached to it were not commercial. The reporting was so onerous and the amount so small that in the end we said we did not want the money. The people managing the grants are not commercial and business minded; they are not practical. As we said, it would be better if grants were taken over by the Department of Industry or someone involved in innovation. There is a lot of innovation involved and technical knowledge is very important. They would be much better equipped to handle that role.

**The CHAIR:** That is a good point.

**Mr GLOVER:** When the EPA makes an intrusion into a marketplace by making a decision that they want people to use tunnel composting or community recycling centres [CRC], it does not have an exit strategy. Are they designed to be there forever as the funders of these exercises? Or are they there to provide initial stimulation to show that it can work? At no point is there an exit strategy for when they decide that enough is enough, it has been proved to work or not, and now we want to find a way to interface with private enterprise to deliver this in the long term. That is missing, and those sorts of areas need more effort.

**The CHAIR:** Do you believe that the section 88 waste levy should be hypothecated back to local councils so that they can build the infrastructure to get a network to reduce and to recover waste?

**Mr SIMONIAN:** We believe that a substantial amount of it should be hypothecated. However, first, it has to be targeted and directed effectively. Secondly, it should not be politicised. At the moment in the EPA there is a very strong bias towards giving this money to local government for infrastructure. That is fine; we do not have a problem with that. However, one of the issues we mentioned is that local government is not equipped to handle it. They do not have the skills to be able to judge and manage this infrastructure.

**The CHAIR:** Not all local governments. Some are very good at it, but they do not have the dollars because the levy has been collected and shifted into the State's coffers.

**Mr SIMONIAN:** That is correct. We do believe in hypothecation. We think it is very important because, like all manufacturing in New South Wales, recycling is struggling because of high energy costs and other general operating costs. Hypothecation is a great help in developing infrastructure. We need the infrastructure to divert from landfill. There is no point diverting from landfill and storing the waste. That is why we say that success has to be defined properly. It is not simply diverting from landfill. If that is defined as success, a lot of the waste is being stored, illegally dumped or sent interstate. We should define success as a circular economy, with recycling at the highest order. That should be the measure of success. A large part of the waste levy should be used to make it easier to recycle. It could cover part of the capital cost for recyclers to be competitive and profitable and so that they can expand.

**The CHAIR:** And certainly for jobs growth in regional and rural areas.

**Mr SIMONIAN:** Absolutely.

**The CHAIR:** It is a no-brainer. It should be hypothecated and local government or whoever could build it and employ local youths, thereby providing opportunities.

**Mr GLOVER:** The only reservation we would have as AIEN versus your expertise as politicians is understanding that tax policy is beyond our pay grade. The concept of raising money where you can as a government elected to then spend it where appropriate and where the mandate says it should be spent, are two completely separate areas. The simple notion of hypothecation gets caught up in that argument. As Mr Simonian correctly pointed out, the allocation of the funds for the development of infrastructure is fine as long as there is a clear criterion for success, and that what is being built is not just what can be afforded or what a particular waste manager loves. It must be part of a structure of linked and networked facilities that are moving towards a much broader goal. That criterion of success is what we must rethink. Then, whoever does the implementation—whether it is the local council or contractors—is operating within a framework that works. There are some assumptions about what is a good thing to do with waste at the moment. There is a bit of work to do before agreeing that is a good way to go.

**The CHAIR:** It is not any particular council all the time. It could be a regional organisation of councils or a pilot joint organisation.

**Mr GLOVER:** They have done the work with regional organisations of councils—

**The CHAIR:** They have exhausted their ability to research it, but they still do not have the money to deal with diverting waste from landfill because the money is taken from them and put into the general coffers. It would be interesting to see how much has been collected, but it would be well into the billions.

**The Hon. MATTHEW MASON-COX:** Thank you for appearing before the Committee today. I am interested in your submission with regard to what success might look like as far as the waste management recycling industry is concerned. What do you see as success? Can you provide some practical ideas of what it would look like and what role government should take in ensuring that it is driven from a regulatory point of view? How would we go about doing that practically?

**Mr GLOVER:** We anticipated a question about what industrial ecology might do to help achieve that. I am happy to provide this document to the Committee.

**Mr SIMONIAN:** It is the definition of "industrial ecology".

**Mr GLOVER:** And how you approach these issues. From the ecology point of view, obviously you are trying to remove the waste and to keep the materials in a circular process where someone's by-product is going into someone else's as a broad concept. I circulated a pile of notes in case this came up. I will go through a high-level version.

**The Hon. MATTHEW MASON-COX:** I am interested in understanding what you call the "shandy zone".

**Mr GLOVER:** It is an immutable law of resource recovery.

**Mr JEREMY BUCKINGHAM:** You would know all about the shandy zone, mate. You live in the shandy zone.

**The Hon. MATTHEW MASON-COX:** Mr Buckingham is speaking from his own experience.

**Mr GLOVER:** I will provide one example that members will understand without getting into the theory. I will use the example of paper and cardboard, and you will understand that as a concept it works in all other forms of systematic resource recovery from waste streams. There are primary manufacturers whose job it is to chop down trees and to make cardboard boxes and other packaging. Over time, they have learnt that it is much cheaper to take in bales of recovered paper and cardboard and to shandy it into the production of the primary material.

A couple of things are really important. The first is that they never put a product into the market that has to apologise for its origins. It probably does not even have anything on it saying that it is recycled; it does not with metals, paper, cardboard or glass bottles. The idea is that they have found a way to access cheaper raw materials by training the waste industry—the people who collect and sort material—to produce it to a standard that the parties understand. There are always the two parts; you never find success with product manufacturers reaching into the waste industry or the waste industry trying to make products on their own.

The waste industry makes its money picking up bins, and it costs it money to empty trucks. That is where illegal tipping comes into the equation. On the other hand, they might turn it into something as a secondary resource that is recognisable and tradeable sight unseen as a finished material. The people making the finished consumer-facing materials and whose business survives entirely on making products that you and I buy on a regular basis now want to lower their raw material costs by recovering material that will do the job. In that case, they shandy it in. Sometimes it is 10 per cent, 20 per cent or even 100 per cent.

**The Hon. MATTHEW MASON-COX:** Clearly it is not working. We have witnessed the glass mountains in parts of Australia. What do we do practically to change government policy to ensure that the drivers deliver the outcomes we want to see? There is the German experience of ensuring that nothing goes to landfill. Where does government put its regulatory markers to drive desired outcomes?

**Mr SIMONIAN:** I mentioned removing barriers to recycling. That is the regulatory area. Government should put more resources there. Secondly, to make the recyclers competitive, meaning to reduce their costs so that they can recycle the product. At the moment, metals and papers are all fine but there are some streams like glass that are struggling. Perhaps some of the waste levy can be used to pay for the capital costs of glass recycling plants or look at other products that are made from glass like Insulwool and insulation, et cetera. To look and encourage companies to use glass another option would be, like Mr Glover said earlier, about product stewardship, because some wastes would really struggle to recycle. Therefore, the people generating them should pay part of the environmental cost of recycling that product. I think televisions were one and smaller batteries are another.

**Mr GLOVER:** I only mentioned the paper and cardboard in the short amount of time that suggests those principles can be applied to glass to get a result. I have done it back in the 1990s with a plasterboard manufacturer and we did produce a product that came out of glass being turned into a very high value material. One of the things that slowed it down was the building material manufacturer pointed out quite eruditely that the raw material was finite and if this product took off he would be in the ridiculous position of making glass to crush it to keep his product going. That is why you need streaming and cascading. But if you sat down with the industry and worked out from first principles what it should be made into—obviously not bottles and jars because we are not making enough in this country any more. But that does not mean it is frightening to send it to someone who will overseas. That is not the vital thing.

But there are principles which work beautifully in metals and cardboard. Given half a chance, using AIEN principles we could sit down with the right people and come up with a solution, but they are not in the room at the moment. Those are the areas where governments can struggle because they simply do not have the tools to be able to deliver it. Really it is just AIEN's approach to this, how we would go about it, would produce a result as it would if we were doing energy from waste discussions and so on, because you get this issue then if you overspend public funds what you are actually doing is subsidising a product back into the market at the expense of the ratepayers, which is not necessarily where you started off. It becomes a sort of perverse outcome.

**The Hon. MATTHEW MASON-COX:** In your cascading approach presumably the end point is that when there is no better alternative use we should perhaps look at a waste to energy facility for incineration to provide a useful outcome for waste that otherwise would be put into landfill?

**Mr SIMONIAN:** Yes, just before landfilling. That would be the last resort. But, of course, it does not apply to glass because glass has no energy.

**The Hon. MATTHEW MASON-COX:** But what you are suggesting is we need a much more proactive and industry-led approach to ensure that we can drive better outcomes for our recycled waste so we do not end up with it in a stream that might be a waste to energy sort of solution.

**Mr SIMONIAN:** Yes, industry led. Definitely not the EPA.

**Mr GLOVER:** And it is very important to get the original manufacturers or the brands that put this stuff in the market to be at the table to understand the complexities and help come up with solutions. They are very often just let completely off the hook and allowed to produce wine bottles because we love the product but at the end of the day they are not there to help us solve the other problem. That is where you do have Federal legislation which can start to bring this together if we get a bit of national cohesion.

**Mr SIMONIAN:** I would take what we call the power of defining materials as waste or non-waste, the exemption department, out of the EPA because the department that classes a product as a waste or a product in New South Wales is under-resourced, as I said, but also they are very, very tough compared to other States. The problem is that department should sit separately from the regulator because by making it very tough it makes the regulator's job easy. You have a conflict there. It should not make the job easy or difficult. It should be based on scientific principles and the regulator should do its job of enforcing whatever the regulations are. It should be an objective thing and politics should not come into it.

**The CHAIR:** Thank you for your submission and your evidence this afternoon. In light of your evidence we might have some further questions. You will have 21 days to answer them. The secretariat will assist you with that.

(The witnesses withdrew)

**IAN MALOUF**, Managing Director, Dial A Dump Industries, sworn and examined

**CHRISTOPHER BIGGS**, Chief Executive Officer, Dial A Dump Industries, affirmed and examined

**DAMON RODDIS**, National Practice Leader–Air Quality and Noise, Pacific Environment, affirmed and examined

**CLARE BROWN**, Director Planning, Urbis, sworn and examined

**The CHAIR:** Welcome to the inquiry. Would anyone like to present an opening statement?

**Mr MALOUF:** I would. Thank you for the opportunity to appear before the Committee today. I am the managing director of Dial A Dump Industries [DADI]. I am accompanied by Christopher Biggs, chief executive officer of the group, Damon Roddis from Pacific Environmental, and Clare Brown from Urbis, who have previously appeared on 27 June. Unfortunately, I was not able to be here on the earlier occasion as I was overseas on business. I am happy to be here now with an opportunity to put on record Dial A Dump Industries' position and in particular provide the Committee with some facts about our proposed energy from waste project. In prefacing my evidence today I will refer the Committee back to our detailed submission numbered 164, which was provided to the Committee on 26 May, and the subsequent answers to questions on notice.

Dial A Dump Industries has been in business since 1984. Since that time we have grown to become one of the largest construction recycling and waste disposal businesses in the country. I am incredibly proud of the business, of our team, of what we do and the facilities that we have established. In our recycling facility we recycle a greater percentage of mixed construction waste that we receive than is achieved anywhere else in Australia. We have 200 direct employees and every year we process, recycle, deal with or landfill over one million tonnes of waste material. In connection with our energy from waste proposal some people have queried our reputation, alleging a range of environmental offences. I presume that the Environment Protection Authority [EPA] have provided the relevant information to the inquiry on matters which are on the public record. I am not prepared to discuss the specifics here but I am happy to take on notice any questions which you have in relation to that record.

I am happy also to elaborate on any of the detail of those issues which may not have been provided to the inquiry. We operate in a highly regulated environment with difficult issues of waste, in which asbestos has been a historic endemic part. Now that it is compounded by importation from China of new asbestos-containing materials which are not labelled as such. This is a new danger with which we have to contend. In an increasingly demanding environment, we run a transparent operation. We are proud of our record and there are no deliberate or intended environmental breaches. I again invite you to attend our site and see for yourselves.

The next generation energy from waste [EfW] project is the next phase in the evolution of waste disposal in this country and it is the next step in the evolution of Dial A Dump Industries and our resource focus. It is a substantial investment for us and will bring jobs to Western Sydney. This is world-leading technology and I want to put some facts on the record. Firstly, this is not new, untried technology. It is proven and it works. There are more than 2,200 operating EfW facilities worldwide. In excess of 400 of these plants have been constructed by the same technology provider as we have proposed for TNG. Across the United Kingdom and Europe energy from waste plants using the same technology that we are proposing to use are operating safely and sustainably in cities and urban areas.

The benefits of EfW technology are why I am confident of the technology and I rely on the science as proof. It provides cheaper electricity prices, it provides additional base load power from a 60 per cent renewable source, it offers a safe alternative to landfilling, it is "best-available" technology, it reduces greenhouse gas generation, it creates jobs and it is safe. There has not been a private infrastructure proposal which has had such extensive community consultation.

There have been significant misrepresentations about the size of the plant that we are proposing. Mr Biggs made it clear in a statement at the last hearing, so let me take this opportunity to emphasise this again. The modelling we have used assumes a plant size with an engineering capacity of 1.35 million tonnes of throughput per annum. The facility for which approval is currently being sought is to use 550,000 tonnes of residual waste per annum as fuel with ash residual to be landfilled. The current proposal for which we seek initial approval relates only to this stage 1. If, and I stress only when, stage 1 proves to be a commercial, technical and operational success will we seek approval to proceed with stage 2. The comparable facility in size, fuel waste and emissions is the Ferrybridge plant near Leeds in England. I trust that clarifies our intention and puts to rest once and for all some of the mistruths that are being spread about the proposal.

I turn next to the issue of fuel for the plant. Some fairly ridiculous claims have been made about what goes into energy from waste plants, seemingly being made to whip up fear in the community. Claims that asbestos and concrete will go into the plant are just plain wrong. Putting aside the obvious fact that those two materials do not burn, the bottom line is that those materials would not make it through the extensive separation and sorting process that will take place. Fuel for the plant will be the residual combustible waste that is left over after materials have been separated and sorted for recycling or for disposal in licensed landfill facilities. Fuel waste quality control systems are detailed in documentation which was supplied to the department.

Finally I would like to quickly address some wider industry issues that have been raised in the last couple of weeks. The issue of moving waste from New South Wales to Queensland is a contentious one. We informed *Four Corners* of this and were happy to do so to shine light on the issue. It is one which we dealt with in our original submission. We see this issue as one that can be easily and quickly resolved in one of two ways: Queensland introducing a modest levy which would make it uneconomical to transport waste to Queensland; or some relatively minor regulatory changes in New South Wales applying a chain of responsibility for waste. This is outlined in more detail in section 1.9 of our submission to this inquiry.

We are opposed to the principle of transporting waste around the countryside and we are opposed to those who pretend that they are recycling but are actually landfilling it interstate and then in mockery are reporting it as having been recycled. Those are the ones that are answerable for falsification. We have not done that. We have been seriously commercially disadvantaged by this practice. Our prices have been consistently undercut and our business damaged. For four years we did not do it. In order to increase the pressure for change and to demonstrate that this was really the last straw, this year we sent a quantity of residual waste left over after recycling for landfilling by rail to preserve our own air space.

Regardless of the misleading impression given by *Four Corners*, we have not hidden it, it is not under cover of darkness, and we have not breached any regulations. We raised this issue in our submission to this inquiry as one requiring urgent attention. We have spoken at industry conferences against it and we have written to both State and Federal governments alerting them to it and offering our assistance to fix it. Alone we have proposed a solution which is legally and constitutionally sound, which is easy to implement and which restores credibility to the New South Wales recycling policy.

Now that this inquiry has had its terms of reference widened, we look forward to a solution being implemented. On Thursday 10 August, after strong statements from the respective State governments' premiers, we feel there is now light on the issue. As such, we immediately ceased the practice and we called upon the waste industry to voluntarily boycott the practice of sending waste interstate until the NSW Environment Protection Authority [EPA] addresses the issue. We repeat that same call in this forum. I simultaneously call for a national policy prohibiting combustible waste going to landfill by 2027. Energy from waste makes this achievable. At this point, I welcome your questions.

**The CHAIR:** Thank you. We welcome the Queensland Premier's investigation and inquiry into the transferrable waste going across the border. It will be very helpful, no doubt.

**The Hon. PENNY SHARPE:** Thank you very much for coming in. You have been very confident that you will get the required approval for this proposal. Given the lack of support from the EPA, from Health, from the council and from the local community, what brings you such confidence in relation to your proposal?

**Mr MALOUF:** The science behind the technology. There are 2,200 plants operating around the world. This is not new technology. It has been around for decades. It has been on very strict and stringent rules overseas for the last two decades. It is tried; it is proven. We rely on the science and my background of knowing the sites well also gives me the confidence that this is a great technology.

**The Hon. PENNY SHARPE:** The technology is there, but in relation to the actual approvals, do you not have some hurdles to overcome? The EPA has given evidence to this inquiry that it does not support the proposal in its current form. NSW Health has done the same. How are you addressing those issues?

**Mr MALOUF:** We have responded substantially to all submissions. That is part of the process that takes place. We have been on exhibition twice. Questions come back from relevant departments and we answer them. This is the democratic process and the planning process which we are going through. I think it is actually going very well.

**The Hon. PENNY SHARPE:** There have been significant concerns about community consultation. I think the initial consultation was that there was a DVD mailbox drop in 2013 and there was an open day that had 30 people. Since then we have obviously had the second environmental impact statement [EIS] and over 1,000 community members and others have demonstrated their concern. Do you accept that your community consultation process has been inadequate?

**Mr MALOUF:** I think the proof that 990 submissions were received shows that there was a widespread acknowledgement of the facility. I can give you a little bit more detail. There have been three community forums, as you point out, three presentations to councils and officers, two public exhibitions, 8,000 DVDs delivered door-to-door to houses in the area, website videos which are updated regularly, and information pamphlets delivered door-to-door. The NSW Department of Planning have their own press and media advertising, online advertising and also personal community consultation offerings. There have been plenty of radio, news and television programs about this facility. This parliamentary inquiry itself brings to the fore that this is well known now throughout the community. Social media is advertising in whatever fashion it may be about this facility. The extensive submissions are testament to that.

**The Hon. PENNY SHARPE:** Even though there has been significant criticism of it, you are still arguing that it is within the energy from waste policy?

**Mr MALOUF:** There has been significant criticism, if that is the way you want to put it, from a small minority of people. The greater community, I believe, is definitely in favour of this project.

**The Hon. PENNY SHARPE:** I think that is yet to be tested. The energy from waste policy states that there should be no increase in the risk of harm to human health. NSW Health has flagged significant concerns with your proposal. How is your proposal going to fit with the New South Wales energy from waste policy?

**Mr MALOUF:** Ms Sharpe, you have probably said that on more than one occasion publicly. I say this: You have been implying that there is a toxic nature to our waste. So, Chairman, false information from public officials is not in the public interest. Ms Sharpe never bothered to visit our Genesis facility to see what we do, nor witness our recycling efforts, nor to see firsthand the waste that we handle, which she claims is toxic.

**The Hon. PENNY SHARPE:** Are you denying that there are any toxic emissions that come from energy from waste proposals?

**Mr MALOUF:** Instead you choose on occasion to stand on a concrete block out the front of the Genesis facility and make a statement to the cameras, and then quickly disappear. The proposed facility is located in an industrial estate. We do not handle toxic waste. We are not permitted to do so.

**The Hon. PENNY SHARPE:** My question is about the emissions.

**Mr MALOUF:** We have not applied for any such thing in our The Next Generation [TNG] proposal.

**The Hon. PENNY SHARPE:** That is fine. My question is about—

**Mr MALOUF:** I will be 30 seconds to finish.

**The Hon. PENNY SHARPE:** Well, you are not answering the question that I have asked you.

**Mr MALOUF:** Ms Sharpe, I am coming to it now. Ms Sharpe, you refer to public health. Is that correct?

**The Hon. PENNY SHARPE:** New South Wales Health, who do not support your proposal.

**Mr MALOUF:** Yes, yet you omit to recognise one of the conclusions of New South Wales Health in their submission, which reads as follows: "The conclusion from this review is that the proposal would have limited impact on Western Sydney Local Health District facilities and has the potential to make a positive contribution to a number of priorities and actions outlined in the Greater Sydney Commission draft." Mr Chairman, false information from public officials is not in the public interest.

**The Hon. PENNY SHARPE:** Thanks for that. I will go back to some of the evidence we have from a previous time your officers were before us. There was quite a lot of discussion about the number of breaches that you previously had in relation to your operations over time. In fact, there was denial there had even been prosecution. Do you accept that there have been 18 breaches with your previous properties since 2005?

**Mr MALOUF:** All that information has been supplied to you.

**The Hon. PENNY SHARPE:** No. What I am asking you is this: Given that your officers at the previous inquiry wanted to argue with members of the Committee in relation to breaches, will you confirm there have been 18 breaches of your compliance since 2005 at your various sites?

**Mr BIGGS:** Can I just say, in response to that, that if it is on the public record, then we agree with the public record.

**The Hon. JOHN GRAHAM:** That is different from the evidence you gave to the Committee, Mr Biggs.

**Mr BIGGS:** No.

**The Hon. JOHN GRAHAM:** It was, in answer to a question from Penny Sharpe, "There were not breaches? You were not fined by the EPA?"

**Mr BIGGS:** No, that was in relation—

**The Hon. JOHN GRAHAM:** You said, "No."

**Mr BIGGS:** Can I just say that that was in relation to a specific issue I was asked in relation to asbestos.

**The Hon. JOHN GRAHAM:** I just want to give you the opportunity to withdraw that answer, though—

**Mr BIGGS:** Okay.

**The Hon. JOHN GRAHAM:** If you would like to take that chance today.

**Mr BIGGS:** Well, could you read it in context, the question that was asked of me?

**The Hon. JOHN GRAHAM:** "There were not breaches? You were not fined by the EPA?"

**Mr BIGGS:** You did not ask me the question. You did not repeat the question.

**The Hon. JOHN GRAHAM:** The question was: "There were not breaches." Question mark.

**Mr BIGGS:** No.

**The Hon. JOHN GRAHAM:** "You were not fined by the EPA?"

**Mr BIGGS:** Prior to that, please. What was question Ms Sharpe put to me?

**The Hon. JOHN GRAHAM:** "But it was a case that you were prosecuted for asbestos mishandling at that time?"

**Mr BIGGS:** Thank you. That was the question.

**The Hon. JOHN GRAHAM:** "No, that is not the case."

**Mr BIGGS:** That was not the case, yes.

**The Hon. JOHN GRAHAM:** Yes. "There were not breaches? You were not fined by the EPA?" "No." Do you want to withdraw? I am giving you the opportunity to withdraw.

**Mr BIGGS:** No, I do not withdraw that. I do not withdraw that at all. In response to that question, that answer is correct and accurate.

**The Hon. PENNY SHARPE:** But you do confirm that since 2005 you have had three written warnings, nine penalty notices, five official cautions and one prosecution.

**Mr BIGGS:** Well, if that is what the public record says, then we agree with that.

**The Hon. PENNY SHARPE:** Are you also able to confirm to the Committee that you have had 581 community complaints against you since 2001?

**Mr BIGGS:** No, I cannot confirm that. I do not know that to be the case.

**The Hon. PENNY SHARPE:** We asked the EPA to provide information to this Committee in relation to community complaints in relation to your businesses, and this is the figure that they have given us.

**Mr BIGGS:** Well, I will take that on notice and I will be happy to supply you with the detail.

**Mr MALOUF:** I will add something to that. You go right back to 2001 when we took over the Alexandria landfill site, which was an absolute disgrace. We transformed that into something far from that. I would not be surprised back then, when there was a massive odour issue created in the area for many, many weeks, that the substantial amount of those was caused then. And if that is the case and that is on public record, then we are happy to agree.

**The Hon. PENNY SHARPE:** Now I go to the issue of interstate transfer. You made some comments in relation to this in your opening statement. Why did you, having made a big noise about interstate transfers, decide that you should be shipping your waste to Queensland by rail?

**Mr MALOUF:** I did explain that in the opening statement—that our business was just getting, for want of a better word, smashed by this practice. So to protect our business—really to protect the airspace of our own landfill—we took that option on what I would call a relatively small scale, and we have been doing it for in the order of six months.

**The Hon. PENNY SHARPE:** Is it correct that it was worth around \$17 million?

**Mr MALOUF:** It is not correct.

**The Hon. PENNY SHARPE:** What was it worth?

**Mr MALOUF:** Really, on a commercial basis—and I am not sure this is a commercial courtroom or whatever it may be that you are referring to—but all we really saved out of that whole process was the airspace of our landfill. There is no massive saving in that for us with the facilities and that that we have. The residual waste that we would have landfilled in our own landfill is the waste that went to Queensland.

**The Hon. PENNY SHARPE:** We heard some evidence this morning that the waste that is being tracked by rail is not properly licensed. Can you confirm that you have the proper licences to be doing that?

**Mr BIGGS:** I can confirm that we do and all waste consignments are tracked with the New South Wales EPA online waste tracking system. I show you a sample of the document. It is sent out to all relevant parties when any consignment of waste travels from our facility.

**The Hon. PENNY SHARPE:** You can guarantee that none of your rail waste was done without licence.

**Mr BIGGS:** Correct.

**The Hon. PENNY SHARPE:** Okay. Thank you very much. Given the history of breaches and the issues in relation to this technology, while not being new, being new to Australia, relatively, are you confident that you will be able to meet the fit and proper person test under section 83 of the Protection of the Environment Operations Act?

**Mr BIGGS:** Yes.

**Mr MALOUF:** Yes.

**The Hon. PENNY SHARPE:** On what basis?

**Mr MALOUF:** On the basis of 33 years in business and a very, very good track record.

**The Hon. PENNY SHARPE:** The fit and proper person test asks people to look into breaches or consider breaches over time. You do not believe you will fall foul of that?

**Mr BIGGS:** No. Section 225 of the Protection of the Environment Operations Act indicates that payment of a penalty infringement notice is not an admission of the facts upon which the notice is based. So you will find that, on that record that you are referring to, most of the breaches are penalty infringement notices.

**The Hon. PENNY SHARPE:** You say that is right. Are you also confident you will have the people with the requisite experience to operate the proposed incinerator?

**Mr MALOUF:** We will most certainly have the right experience operating it. As I said in my opening statement—sorry, no, I did not. We see Dial A Dump as a firm of waste experts and we sit here as waste experts. When it comes to energy from waste and new technology such as that for this country, we do not pretend to be experts in that. We are bringing in, to operate that facility if the proposal is approved, the overseas expertise to do it.

**The Hon. PENNY SHARPE:** How many times have you met with Mr Roberts in relation to this proposal?

**Mr MALOUF:** In which capacity?

**The Hon. PENNY SHARPE:** In any capacity.

**Mr MALOUF:** I have not met with Minister Roberts in his capacity as planning Minister. I have met with him twice to keep him up to date, which is on the public record, and when he was in the capacity of energy Minister.

**The Hon. SHAYNE MALLARD:** You can check his diaries. It is published and reported, unlike yours, Penny.

**Mr MALOUF:** We have responded.

**The Hon. PENNY SHARPE:** Well, I find that the diaries are inaccurate and I have found them to be inaccurate.

**The Hon. SHAYNE MALLARD:** Unlike yours.

**The Hon. PENNY SHARPE:** The Hon. Shayne Mallard is trying to cover for his Ministers, but I do not find them to be accurate.

**The Hon. SHAYNE MALLARD:** The Minister will publish; not the Opposition though.

**The Hon. PENNY SHARPE:** That is why I am asking Mr Malouf directly.

**Mr MALOUF:** Well, I hope that solves your inaccuracy and it is all logged.

**Mr BIGGS:** Can I say also that that was a supplementary question put to us, and I responded to that after examining the diary.

**The Hon. PENNY SHARPE:** That is fine because in your response you say you have met once. Now Mr Malouf said it has been at least twice, so I am just being clear about that.

**Mr MALOUF:** I did not say "at least twice".

**The Hon. PENNY SHARPE:** Well, you said twice.

**Mr MALOUF:** I said twice.

**The Hon. SHAYNE MALLARD:** Ask the Minister in estimates.

**The Hon. PENNY SHARPE:** I might very well do that.

**The Hon. SHAYNE MALLARD:** They will be there with him.

**The Hon. PENNY SHARPE:** That is fine. Thank you. Is that my time?

**The CHAIR:** You have four minutes.

**The Hon. PENNY SHARPE:** I have four minutes—okay.

**The CHAIR:** We can move on, if you wish.

**The Hon. PENNY SHARPE:** No, no, no. Do not worry: We have plenty.

**The Hon. JOHN GRAHAM:** You said in giving evidence this afternoon two things: People are definitely in favour, and this is going very well. Based on what we have heard, that is just a nonsense view. You have got two submissions in favour out of 990 for this proposal. How can you possibly say that things are going well?

**Mr MALOUF:** People responding in favour of a proposal is probably quite rare in any development application [DA]. The amount of responses is quite normal for a new technology, or new to the country anyway. That was stated by the Department of Planning.

**The Hon. JOHN GRAHAM:** It is a pretty clear message from the community, though, is it not?

**Mr MALOUF:** No, not—

**The Hon. JOHN GRAHAM:** Two out of 990 in support.

**Mr MALOUF:** Look, I think what I would like to bring to your attention is something far more compelling than a swinging statement, sir.

**The Hon. JOHN GRAHAM:** Let us come to the experts. The EPA has sat in front of the Committee and said that they cannot support your proposal. They are the experts.

**Mr MALOUF:** In its current form.

**The Hon. JOHN GRAHAM:** They are the experts. How are you going to deal with that? Why are you so confident that this will be approved?

**Mr MALOUF:** Would you like me to answer the first question or that one?

**The Hon. JOHN GRAHAM:** I am happy for you to answer.

**Mr MALOUF:** Ask me the question again because you threw two at me.

**The Hon. JOHN GRAHAM:** Why are you so confident? This is opposed by the experts, opposed by the EPA, opposed by Health, opposed by the councils, opposed by the community.

**Mr MALOUF:** Mr Chairman, I went into great detail to answer that only 10 minutes ago.

**The CHAIR:** Witnesses are advised to answer a question or reject a question. It is up to you.

**Mr MALOUF:** I am happy to answer it.

**The CHAIR:** A member can ask a question several times. If you are of the view that you have completed your answer, I would encourage the member to move on.

**The Hon. JOHN GRAHAM:** If the witness is happy with his previous answer, I am happy to leave it there.

**Mr MALOUF:** I think 2,200 plants running successfully worldwide is substantial proof that this is great technology.

**The Hon. JOHN GRAHAM:** There would not be too many operators with 581 complaints and 17 or 18 enforcement actions against them. These are not small things.

**Mr MALOUF:** I totally reject that statement from you.

**The Hon. PENNY SHARPE:** You have just agreed that is what it is. You agreed that those breaches exist.

**Mr MALOUF:** Excuse me, let us be clear. You are trying to mix up a couple of things. You are trying to say that we have had 581 complaints and have mixed them up with 580 breaches. Please be clear and please do not mislead this room.

**The Hon. PENNY SHARPE:** No, 18 breaches, 581 complaints.

**Mr MALOUF:** Yes, 581 complaints, of which, I would dare say, a substantial amount, as I explained, when we took over that atrocity at Alexandria and rectified it, took place. We took it off the back of council.

**The Hon. JOHN GRAHAM:** These are some of the breaches that have been publicly reported: A pipe was connected to infested leachate, which was pumping it out into a stormwater drain. Is that correct?

**Mr MALOUF:** Which caused no environmental damage whatsoever. Excuse me, that was the one prosecution—let us be clear. That is the one prosecution that we did receive, which received a \$700 fine.

**Mr JEREMY BUCKINGHAM:** And no environmental degradation?

**Mr MALOUF:** The courts decided there was no environmental damage whatsoever. A \$700 fine makes it—

**The Hon. JOHN GRAHAM:** I will go to the next one.

**Mr MALOUF:** Look, no point cutting me off when I answer your question.

**The Hon. JOHN GRAHAM:** Your wife's company had stockpiled 170,000 cubic metres of waste contaminated with asbestos. Any response?

**Mr MALOUF:** Incorrect.

**The Hon. JOHN GRAHAM:** Incorrect. Thank you. Other pollution breaches date back to 2002. One is when Alexandria Landfill was ordered to clean up leachates after residents complained about a stench.

**Mr MALOUF:** Sir, these are all on public record.

**The Hon. JOHN GRAHAM:** Sure.

**Mr MALOUF:** We said we do not need to answer to this.

**The Hon. JOHN GRAHAM:** Well you are disputing some of them. I am asking you to confirm that one.

**Mr MALOUF:** You could occupy your time better than this, I think.

**The Hon. JOHN GRAHAM:** In 2007, another property was found with 1,300 cubic metres of asbestos contaminated soil levelled and spread across it.

**Mr MALOUF:** Correct.

**The Hon. JOHN GRAHAM:** That is correct. You acknowledge that one?

**Mr MALOUF:** We received a clean-up notice and we cleaned it up.

**The Hon. JOHN GRAHAM:** Yes, and that was a property that belonged to your mother-in-law. Is that correct?

**Mr MALOUF:** That is correct. Your last statement was wrong.

**The Hon. JOHN GRAHAM:** What are you disputing?

**Mr MALOUF:** Whatever you said about two questions ago.

**The Hon. JOHN GRAHAM:** I cannot recall that one now.

**Mr MALOUF:** Okay.

**The Hon. JOHN GRAHAM:** Based on the complaints, how can you say it is going very well? We have sat in front of the community and I do not accept that this proposal is in their interest. They do not accept you have consulted with them. They do not support this proposal.

**Mr MALOUF:** The population of New South Wales or the Sydney Basin is in the order of 4.5 million people, if I am correct. A handful of residents does not represent 4.5 million people.

**Mr JEREMY BUCKINGHAM:** Mr Malouf, on 16 May this year you sent this letter threatening defamation to a Western Sydney housewife opposed to your garbage incinerator, did you not?

**Mr MALOUF:** Mr Buckingham, would you please read to me what part of that letter you think is threatening? Maybe you should voice it with the non-facts that are in that letter.

**Mr JEREMY BUCKINGHAM:** "On review, it has come to our attention that a number of incorrect and potentially defamatory statements have been made that negatively affect the reputation of The Next Generation." It goes on to say—

**Mr BIGGS:** No, please read it in full. Please read it in full.

**Mr JEREMY BUCKINGHAM:** I will table it in full.

**Mr BIGGS:** No, please read it in full. Read it onto the record.

**Mr JEREMY BUCKINGHAM:** I will table the document.

**Mr BIGGS:** I challenge you, sir, to read it onto the record.

**Mr JEREMY BUCKINGHAM:** Excuse me, I will not be badgered by you.

**Mr BIGGS:** I think you might.

**The CHAIR:** Order!

**Mr JEREMY BUCKINGHAM:** The question I am asking is: Why did you send a Western Sydney housewife a letter, threatening her with defamation because she is opposed to your incinerator?

**Mr BIGGS:** Please read it onto the record.

**Mr JEREMY BUCKINGHAM:** I am asking Mr Malouf. Why did you send her the letter? Are you trying to threaten and intimidate your way into the community?

**Mr MALOUF:** Would you like me to answer?

**Mr JEREMY BUCKINGHAM:** Yes.

**The CHAIR:** Order! Let the witness answer the question.

**Mr MALOUF:** The letter is not threatening. You are waving it around. You refused to read it on offer by Mr Biggs.

**Mr JEREMY BUCKINGHAM:** It is a letter threatening defamation.

**Mr MALOUF:** It was a—

**Mr JEREMY BUCKINGHAM:** It is asking her to—

**Mr MALOUF:** To remove the falsities.

**Mr JEREMY BUCKINGHAM:** Yes, and saying they are potentially defamatory statements.

**Mr MALOUF:** You agree that they are falsities?

**Mr JEREMY BUCKINGHAM:** I am saying it is a letter that threatens defamation action, is it not?

**Mr MALOUF:** Well, it is a letter full of—

**Mr BIGGS:** No.

**Mr MALOUF:** No.

**Mr JEREMY BUCKINGHAM:** You are backing away?

**The CHAIR:** Order!

**Mr MALOUF:** Mr Chairman, may I read it and put it on the record?

**The CHAIR:** Order!

**Mr JEREMY BUCKINGHAM:** Mr Chairman, I do not want it—

**The CHAIR:** Order! You have referred to a document. The witness is entitled to look at the document and refer to it to answer the question.

**Mr JEREMY BUCKINGHAM:** Mr Chairman—

**The CHAIR:** If you want to change your questioning, that is okay.

**Mr JEREMY BUCKINGHAM:** I would rather move on if he does not want to answer the question. I do not want to waste my time with him reading out the letter.

**The CHAIR:** Then move on, otherwise he has a right to answer the question now he has the document in his hand.

**Mr MALOUF:** If anything was going to be threatening it would normally be the last paragraph, so how about I just read that. "We request that you delete this document and refrain from directly or indirectly publishing statements concerning The Next Generation proposal unless the statements (a) are factual, correct and verifiable, or (b) do not impute improper motives or behaviour by TNG or its officers or employees which could damage the reputation of either. Please provide confirmation that the document has been deleted by 4 p.m. Tuesday, 16<sup>th</sup> April 2017." There is no threat in that letter.

**Mr JEREMY BUCKINGHAM:** That is a threat of defamation, but if you do not have the courage to stand up and own it, it shows how good you are going. Do you accept that there is massive community opposition and no social licence to operate your facility in Western Sydney?

**Mr MALOUF:** Mr Chairman, Mr Buckingham, true to form, has made many sweeping and false statements, using them as a grandstand for self-notoriety.

**Mr JEREMY BUCKINGHAM:** Point of order—

**Mr MALOUF:** Mr Chairman, false information from public officials is not—

**Mr JEREMY BUCKINGHAM:** Point of order—

**The CHAIR:** Order!

**Mr MALOUF:** —in the public interest.

**Mr JEREMY BUCKINGHAM:** He should not be making personal imputations against myself.

**The CHAIR:** Order!

**Mr MALOUF:** I am stating the facts of how you are behaving. Stating energy from waste technology is worse than burning of coal is incorrect. You did that on a television show.

**Mr JEREMY BUCKINGHAM:** It is called *Four Corners*, and it is correct.

**Mr MALOUF:** I beg to differ. Stating the burning of asbestos and concrete is counterintuitive. Stating the plant blows toxins in the air once the air temperature exceeds 37 degrees is a false statement. By your own admission, Mr Buckingham, you admit that you made a stupid video to attract attention. The Greens in Germany support energy from waste. I would rely on that. People are experienced with it more than The Greens here, and I do not think you represent all Greens.

**Mr JEREMY BUCKINGHAM:** Thank you, Mr Malouf.

**Mr MALOUF:** Mr Chairman, false information from public officials is not in the public interest.

**Mr JEREMY BUCKINGHAM:** Whoever gave you that advice has done their dough. Mr Malouf, you said that this is a tried and proven technology around the world, did you not?

**Mr MALOUF:** Yes.

**Mr JEREMY BUCKINGHAM:** You said that there are 2,200 of these plants operating successfully, and 400 built by HZI. This morning the HZI representative said that they could not indicate a single plant that uses the waste streams that you are proposing to guide us in our deliberations. Can you name a single plant that uses HZI technology that is going to use the waste streams you are providing to guide us in a determination on whether this is safe? I am asking you, Mr Malouf. Name the plant in the world that uses the waste streams—

**Mr MALOUF:** Ferrybridge.

**Mr JEREMY BUCKINGHAM:** It uses the waste streams that you are proposing?

**Mr MALOUF:** It is a very, very similar waste stream to what we are doing.

**Mr JEREMY BUCKINGHAM:** You stand by that?

**Mr MALOUF:** You are off topic, anyway, but, yes, we do.

**Mr JEREMY BUCKINGHAM:** I am going off what you have said. You said that is the example that you are going to rely on. It is not the one they are relying on, by the way.

**Mr MALOUF:** You have thrown something with no bearing and no sense. This is typical of you, my friend.

**Mr JEREMY BUCKINGHAM:** Out of the 2,200 that you cited and the 400 built by HZI, there is one that uses the waste stream—

**Mr MALOUF:** If you read the documentation, there is a list of several similar plants around the world, and it is in our documentation. If you want a list of those, I will take it on notice, Mr Chairman.

**Mr JEREMY BUCKINGHAM:** Thank you. You also said there are mistruths and it is ridiculous. Are you suggesting there will never be any asbestos turning up in that waste stream going into your garbage burner?

**Mr MALOUF:** Mr Buckingham, if you relax, I will talk to you about the waste industry.

**Mr JEREMY BUCKINGHAM:** I am not relaxed, mate. I am standing up for the people of Western Sydney.

**Mr MALOUF:** I know you are not relaxed. Mr Buckingham, if you relax this forum is to talk about issues, and asbestos is a great issue to talk about.

**Mr JEREMY BUCKINGHAM:** Will you guarantee to us there will be no asbestos in that construction and demolition waste going into the burner?

**Mr MALOUF:** Mr Buckingham, I have said that asbestos is a major problem in our industry.

**Mr JEREMY BUCKINGHAM:** You said it was ridiculous and a mistruth that any asbestos would be turning up in that waste stream. Do you stand by that?

**Mr MALOUF:** I said it is a mistruth for you to imply that asbestos will be burnt in a facility when in its own right it does not burn.

**Mr JEREMY BUCKINGHAM:** So you are saying that asbestos will not be in the waste stream?

**Mr MALOUF:** We contend with asbestos containing material—ACM as it is referred to in the industry—every day of our life. We have had—

**Mr JEREMY BUCKINGHAM:** And there will be none ending up in the waste stream? None ending up in the burner?

**Mr MALOUF:** We have places, we have procedures and we are very effective.

**Mr JEREMY BUCKINGHAM:** Is that a yes or a no? Will there be any asbestos turning up in that waste stream being delivered to that receival bay? Yes or no?

**Mr MALOUF:** No.

**Mr JEREMY BUCKINGHAM:** None whatsoever?

**Mr MALOUF:** None.

**Mr JEREMY BUCKINGHAM:** None, ever?

**Mr MALOUF:** None.

**Mr JEREMY BUCKINGHAM:** Good luck with that.

**Mr MALOUF:** That is why—

**Mr JEREMY BUCKINGHAM:** On Channel 7—

**Mr MALOUF:** Excuse me, Mr Buckingham. I am the waste expert here; you are not. I deal with this every single day of our lives.

**Mr JEREMY BUCKINGHAM:** I know. We have seen the EPA has fined you for dealing with it every single day of your life a couple of times.

**Mr MALOUF:** Can you retract that statement because it is totally wrong?

**Mr JEREMY BUCKINGHAM:** It is totally true.

**Mr MALOUF:** You just said that we got a fine very single day of our lives. Retract your statement, sir.

**Mr JEREMY BUCKINGHAM:** I do not have to retract the statement.

**Mr MALOUF:** If it is false you probably should.

**Mr JEREMY BUCKINGHAM:** Whatever. How good are your connections with the Liberal Government and how much money have you donated to the Liberal Government?

**Mr MALOUF:** It is on the public record and its minuscule.

**Mr JEREMY BUCKINGHAM:** What does "minuscule" mean? Is it just a couple of thousand dollars, \$10,000, \$100,000—

**Mr MALOUF:** Mr Chairman, this is all on the public record. Before we even lodge our application that is all declared.

**Mr JEREMY BUCKINGHAM:** So you are a donor to the Liberal Party?

**Mr MALOUF:** Yes, in very small form.

**Mr JEREMY BUCKINGHAM:** How does that facilitate your access and your relations? Does it grease the wheels a bit?

**Mr MALOUF:** Mr Buckingham, what a ridiculous statement.

**Mr JEREMY BUCKINGHAM:** Why do you do it? Why do you donate money to the Liberal Party?

**Mr MALOUF:** To keep informed and put—

**Mr JEREMY BUCKINGHAM:** To keep informed?

**Mr MALOUF:** To keep up-to-date.

**The Hon. MATTHEW MASON-COX:** Point of order: The member well knows this is not relevant to the terms of reference. He is simply going down another side gully. I ask that the member be drawn back to the terms of reference. The member should be asking questions about the terms of reference rather than smearing people or political parties.

**The CHAIR:** Mr Jeremy Buckingham does get excitable. However, he should be mindful of the terms of reference of this inquiry and stay true to them.

**Mr JEREMY BUCKINGHAM:** NSW Health has said of your proposal, and I quote:

To build and operate an incinerator within city limits is not consistent with over one hundred years of environmental regulation to improve urban air quality.

Mr Malouf, why have you located the incinerator in the heart of Western Sydney?

**Mr MALOUF:** Mr Buckingham, our facility is in an industrial estate; it is not in the heart of Western Sydney.

**The Hon. PENNY SHARPE:** Is it not 800 metres from houses?

**Mr JEREMY BUCKINGHAM:** You do not think—

**Mr MALOUF:** The closest house is one kilometre away, correct.

**Mr JEREMY BUCKINGHAM:** You do not think it is close to Western Sydney?

**Mr MALOUF:** Mr Buckingham, our facility is located in an industrial estate.

**Mr JEREMY BUCKINGHAM:** But it is in the middle of Western Sydney, is it not?

**Mr MALOUF:** Mr Buckingham, the middle of Western Sydney to the best of my knowledge is Parramatta; we are not operating in Parramatta.

**Mr JEREMY BUCKINGHAM:** How far away are you from Parramatta? Two kilometres? Five kilometres?

**Mr MALOUF:** Mr Chairman, can I take that on notice because I actually do not know.

**The CHAIR:** You may take that on notice.

**Mr MALOUF:** I will tell you how many kilometres in our response.

**Mr JEREMY BUCKINGHAM:** It is about four kilometres, is it not?

**The Hon. LOU AMATO:** It is a lot more than that.

**Mr MALOUF:** A sweeping statement again, Mr Buckingham.

**Mr JEREMY BUCKINGHAM:** Why don't you put the incinerator a long way away from people's homes? Why don't you put it somewhere a long way away from hundreds of thousands of people?

**Mr MALOUF:** Mr Buckingham, I am happy to acknowledge that that is a good question. Will you let me answer it?

**The CHAIR:** It is a question. The witness will answer.

**Mr MALOUF:** Sorry, I meant to put on the end of that "without butting in".

**Mr JEREMY BUCKINGHAM:** If you behave.

**Mr MALOUF:** Okay. The location of the energy from waste facility is at our Eastern Creek location. There is an obvious reason for that—because we own a substantial amount of land in that area. The other reason is that there is a landfill where we are burying the fuel for this plant right now. To pick it up and move it out to somewhere else would not make a lot of sense. Another strong reason is that the facility is opportunely located 1.2 kilometres from the grid, which makes no line loss for electricity, the substantial amount of electricity that is made by the plant, which will benefit the community with cheaper electricity prices. It is 1.2 kilometres so you have no line loss running electricity down a short distance. It is a very good location for what we are proposing. It is integrated then with our recycling facility; the integration of the whole effect makes total sense. These plants are in Paris, Japan, they are in major cities. In Paris we are talking about a kilometre from the Eiffel Tower.

**Mr JEREMY BUCKINGHAM:** But they burn municipal waste, do they not?

**Mr MALOUF:** They burn a mixture of waste, including municipal. We have chosen not to take municipal waste here for the very fact that we are specialists in C&D waste. If you are condoning that municipal waste—

**Mr JEREMY BUCKINGHAM:** Thank you, Mr Malouf. I understand. Will all of that C&D waste and that C&I waste go through your materials reprocessing or what do you call them—MRFs?

**The CHAIR:** Multi re-use facility [MRF].

**Mr JEREMY BUCKINGHAM:** Will all of the C&D and C&I waste streams from source go through those facilities before going to the burner?

**Mr MALOUF:** Mr Biggs answered to this in our last submission so I am going to hand it back to him—sorry, in his last presentation here.

**Mr BIGGS:** I confirm my previous answer. The answer is yes.

**Mr JEREMY BUCKINGHAM:** Every single tonne will go through that facility, be sorted and all recyclables removed and the rest? As it operates now—concrete, timber, steel—all of that sorted and processed before it is delivered? To make myself clear, you will not have trucks driving directly from point A to the tipping bays and dropping waste in?

**Mr BIGGS:** I said on a previous occasion that all the waste would go through the Genesis processes prior to going to TNG.

**Mr JEREMY BUCKINGHAM:** What does "Genesis processes" mean?

**Mr BIGGS:** As outlined in the documents lodged in the planning application.

**Mr JEREMY BUCKINGHAM:** So they will be sorted and all the concrete—

**Mr BIGGS:** All that stuff. There is no point putting concrete, metal and non-burnable stuff into—

**Mr JEREMY BUCKINGHAM:** But all the organics and all the things as they go through now?

**Mr BIGGS:** Yes.

**Mr JEREMY BUCKINGHAM:** Every single tonne will be?

**Mr BIGGS:** Yes.

**Mr JEREMY BUCKINGHAM:** Of the waste stream, 20.3 per cent of the proposed fuel mix for the facility is simply classified as "other" or "other combustibles" for which there is no explanation in the environmental impact statement [EIS] as to what this will include. This means, according to your figures, that we have no idea what a total of 225,000—this is the expanded project—of waste being fed into this incinerator each year even is. What will this mystery waste be? Twenty per cent of the waste is a mystery.

**Mr BIGGS:** I refer you, sir, to a document recently lodged with the Department of Planning—

**Mr JEREMY BUCKINGHAM:** When you say "recently" what do you mean?

**Mr BIGGS:** A week ago last Friday—"Feedstock Review in Accordance with the Resource Recovery Criteria of the New South Wales EfW Policy Statement".

**Mr JEREMY BUCKINGHAM:** Are you prepared to table that?

**Mr BIGGS:** Absolutely. It is a public document. It is on the Department of Planning website. Attached to this are three independently conducted audits of residual waste, which I mentioned at the last hearing. So the results are available for you to see.

**Mr JEREMY BUCKINGHAM:** I will have a look, do not worry.

**Mr BIGGS:** Those details—

**Mr JEREMY BUCKINGHAM:** That modelling tells us—

**Mr BIGGS:** The contents.

**Mr JEREMY BUCKINGHAM:** The contents?

**Mr BIGGS:** Correct.

**Mr JEREMY BUCKINGHAM:** So do you think that you have hindered your capacity to win community support when up to this point—basically a week ago—20 per cent of the waste was unidentified?

**Mr BIGGS:** One of the matters that you refer to the EPA being dissatisfied with, was in fact a request for further particular information.

**Mr JEREMY BUCKINGHAM:** What you are going to burn.

**Mr BIGGS:** In response to that, rather than a simple category of construction and demolition waste or commercial and industrial waste, which are categories known under the Protection of the Environment Operations Act, the chemical and physical attributes of the actual waste under those headings has been further delved into to produce this information.

**Mr JEREMY BUCKINGHAM:** Very good. I am glad you have finally provided that. What is your relationship with the Re.Group and its chairman, Robert Hill?

**Mr BIGGS:** We do not know the Re.Group.

**Mr JEREMY BUCKINGHAM:** You have no relationship with Robert Hill?

**Mr BIGGS:** Do not know a Robert Hill.

**Mr JEREMY BUCKINGHAM:** Former Liberal Senator and Minister for the Environment.

**Mr BIGGS:** No.

**Mr MALOUF:** No.

**Mr JEREMY BUCKINGHAM:** The EPA asserts that if this facility is approved, it will require 50 per cent of the total available construction and demolition waste in the Sydney metropolitan area as a feedstock, and this will result in market monopolisation of available waste and compromise present and future resource recovery activities. How do you respond to that?

**Mr BIGGS:** I can refer you to the document we tabled earlier. It specifies the quantities of waste, where the waste will be sourced from. All the answers to your questions are in the document.

**Mr JEREMY BUCKINGHAM:** And there is no asbestos in that?

**Mr BIGGS:** Correct.

**The Hon. LOU AMATO:** Mr Malouf, have you ever donated to the Labor Party?

**Mr MALOUF:** I do not recall.

**The Hon. LOU AMATO:** You mentioned that asbestos materials come from China, which is a concern. How can they be identified?

**Mr MALOUF:** It is of high concern and is obviously a border protection issue, without knowing too much about how that works. Your question is about how to identify these materials. The good news is that we have—the name slips me—

**Mr BIGGS:** Microphazir.

**Mr MALOUF:** —a microphazir unit, which we call the gun. It is able to accurately detect material that contains asbestos. That is the good news, because there was always the need to look at old material containing ACM, asbestos, to distinguish it from new fibro, which is more flexible, and so on and you would send it off to the lab. This has made it far less difficult from the procedure we used to follow. The advancement through a mistake we made of falling for processing asbestos in our facility is that we now have these guns, which are very expensive. They are about \$50,000 each, and at every point of our site where we accept material we have one. The reliance of men picking it and sending it off to the lab is over, and these guns are far more accurate. We synchronise them and take the tests, which is quite a breakthrough for us. We believe the industry should adopt this more and more, despite the great expense. It is well worth it.

**The Hon. LOU AMATO:** Will you have these guns in your proposed new development?

**Mr MALOUF:** Definitely, any facility or checkpoint on our sites where we receive waste, we believe this is an essential item for us now.

**The Hon. LOU AMATO:** That is good and it probably answers part of my next question. What reassurances and guarantees can you give the residents of Western Sydney that their health and the health of their families will not be affected by this development?

**Mr MALOUF:** As far as the handling of the waste, there are probably two answers. Some of the residents have taken the opportunity to take an interest in our facility, and I think they have been impressed. Mr Buckingham has not done any such thing.

**Mr JEREMY BUCKINGHAM:** I have had a look.

**Mr MALOUF:** Without getting distracted, we combat this issue every day now with the waste that we receive and deal with, and that will not go away. Every recycling facility and every facility handling waste, which comes from our greater community including everybody in this room, has this combative issue. Even waste in your wheelie bin at home, which is waste that we do not receive, can end up with asbestos in it. It is up to you, the consumers, what you do with it. We are at the other end trying to solve the issues that are created by the community. We are not here to do anything wrong; we are here solving some issues that confront us every day.

**The CHAIR:** A lot of people do not know how to identify asbestos.

**Mr MALOUF:** No, that is true. I think there is a lot more awareness of it now, but the corrugated fibro roofing is all asbestos and the hailstorms destroyed a lot of it around the place. I think the biggest threat is something coming from overseas, whether it is bad food from China or bad asbestos from China. That needs to be elevated to a level of importance, even to the stage of glass coming from overseas causing an issue for our recycling industry. I thoroughly agree with that.

**The CHAIR:** A lot of mums and dads are renovating and cannot identify asbestos.

**Mr MALOUF:** They cannot. As a facility, we have a couple of choices under EPA control. If our facility is licensed to take asbestos, we receive it and we can landfill it, in particular Genesis, as we could at Alexandria. We have a choice when you turn up in your car and do not know what it is. We can turn you back on the street, and the chances are it ends up on a back street, or we can take it and handle it safely. The EPA make it very difficult to have on transfer station sites even a small bin in which to put it once it has been wrapped in plastic so we can take care of it. To reject something from a facility like ours and send it back to the street, I say is irresponsible. We deal with this issue every day. We do a good job of it, although occasionally we make mistakes. I do not stand here saying we have not made mistakes in business. In 33 years I have most certainly made mistakes in a commercial situation. That is why we are the market leader—because from our mistakes we learn and we do better.

**The Hon. MATTHEW MASON-COX:** I thank you for coming in. It is very important that you have been given the opportunity to address some of the concerns that have been raised and put forward your case. Please outline where things are in relation to the environmental assessment process. What is the current status of your application and when do you expect things to be finalised, one way or the other?

**The Hon. PENNY SHARPE:** We can give you the link to the website.

**Mr MALOUF:** We brought Ms Brown along to answer that question.

**Ms BROWN:** The response to submissions report, which addressed the community submissions and all of the agencies submissions including that from Health, Water, the EPA, was submitted to the Department of Planning on 28 July. The department has that document and is going through it and the 20-odd attachments to it, which included the document identified by Mr Biggs. The Department of Planning's assessment officers are assessing that at the moment. Once they have completed that process, they will distribute the response to submissions report and all annexures to the relevant agencies for their comment. After that, they will provide that comment and the assessment report will be completed by the department's officers and presented through their processes.

**The Hon. MATTHEW MASON-COX:** What is your expectation in relation to the timing of that process and a final decision at this stage?

**Ms BROWN:** I would expect it would be some time within the next six months.

**The Hon. SHAYNE MALLARD:** Mr Malouf, in your 33 years in the industry, do you believe there has been a problem with corruption and rogue operators? I am not specifically suggesting something about your business.

**Mr MALOUF:** The levy brings with it the good and the bad. It brings with it a drive not to landfill material, for the positive. We created the Genesis facility on the back of very clear guidelines in New South Wales 15 or 20 years ago, before I was in business. At that stage, the levy would not have been 50¢ a tonne—in fact, it was non-existent. It then grew to the level it is at now, and from the back of that we have created a great industry. We have created the Genesis facility, the leading one in Australia. We now turn our mind to energy from waste, also because it is the policy of government. The downside is that to avoid a load of rubbish going somewhere it should go, because it is an expensive business, there is a financial incentive to lose the load. Do I think that materials are being disguised and rebirthed as something else? Absolutely, I am sure that we covered that in our submission. Do I think that stuff is getting lost? Do I think that illegal dumping should be necked? Yes, 100 per cent.

Do I think we have a solution for it? We have. We have presented government with a solution on every level we can. The likes of the *Four Corners* story is great because it is starting to put a spotlight on something. I applaud this inquiry because it is also putting a spotlight on this issue. There is a solution, which is still a levy-based solution. It transfers the levy from a blunt instrument of stopping waste from going to landfill where there is a primary responsibility for the generator of the waste from cradle to grave. If you do not have to prove where it is, rather than go to a transport company and say, "Great, you've got the cheapest price so you can transport the waste from my site so it is out of my hair once it leaves my site," we say no to that. We say that the

primary responsibility should stay with the site, the generator, whatever it may be, and they become responsible for the levy. That is a very plain explanation of what we put forward.

**The Hon. SHAYNE MALLARD:** I asked Mr Biggs about that.

**Mr MALOUF:** My apologies.

**The Hon. SHAYNE MALLARD:** Your peak industry group appeared before the Committee today. They said that there should be greater regulation and that we should license all transport operators. What is your response to that?

**Mr MALOUF:** In short, it is about time. We believe that every truck should be tracked. All of our trucks are tracked. We do not simply say that something is wrong; our company offers solutions. We put a tracking solution to government—

**Mr BIGGS:** Ten years ago.

**Mr MALOUF:** Yes, we did. We recommended driving down and supported the driving down of waste facilities to the low level that now exists. If you handle 6,000 tonnes of waste, you now need to have a licence. It was 30,000 tonnes. We believe that all waste facilities should be licensed, full stop. We also believe that illegal dumping can be eradicated. We should have tougher regulations pointed in the right direction. As happens in many industries, the licensed operators get hit hardest, on all levels. Some of the PINS we have had are testament to that. We have a licence and it is easy to find us. They know our phone number and they know where we live, so to speak. If they have to increase their PINS, it is easy to hit us for whatever it may be.

**The Hon. PENNY SHARPE:** Are you suggesting that the EPA is targeting you over non-essential compliance issues?

**Mr MALOUF:** I am doing nothing other than answering the question asked.

**The Hon. PENNY SHARPE:** You just called your breaches "pings". You suggested that the EPA is busting you unnecessarily rather than—

**Mr MALOUF:** There was no "you" or "me" in my answer; I was referring to licensed facilities. They are a greater target to the regulator than unlicensed facilities.

**The CHAIR:** I understand the spirit of what you said; that is, the bigger you are the more obvious—

**The Hon. SHAYNE MALLARD:** I think we had evidence earlier today that the legal operators are targeted because the illegal and fly-by-night operators—

**The CHAIR:** They are under the radar and are operating illegally.

**The Hon. PENNY SHARPE:** I look forward to the honourable member's recommendation about more resources being allocated to the EPA to do this.

**The Hon. SHAYNE MALLARD:** I have already made that recommendation.

**The CHAIR:** We want more compliance, but we also want the section 88 waste levy to be hypothecated so that councils can take care of their waste.

**The Hon. SHAYNE MALLARD:** I worked at Liverpool council for a while and I know it spends \$2 million a year investigating illegal dumping. It is a big issue. These operators disappear overnight and they bury commercial and construction waste on land and cover it. They are trying to use new technology. Clearly, the illegal dumping problem is bigger than we realise. You are a major operator and you must be aware of it.

**Mr MALOUF:** It has a dramatic effect on our business. In this modern age and with technology there is a solution. We must track every truck to the point where when their hoist goes up it can be detected and monitored. That is simple and cheap. We have put that to the EPA. I am not here to slam anything. The regulator possibly is under-resourced. Sometimes misleading environmental things that are not important are drawn to its attention, but it has a tough job.

**The CHAIR:** It is not under-resourced in financial terms. Shoalhaven City Council paid \$33 million into that fund. What could it have done with waste management with those funds? The problem is that the money is not going where it should go to deal with illegal dumping and providing a network of waste facilities around New South Wales. The money is being collected, but it is being irresponsibly redirected to general revenue. That has left a gap open for illegal trade and under-the-radar waste management.

**Mr MALOUF:** I agree 100 per cent.

**The CHAIR:** On that note, we will conclude this hearing.

**The Hon. SHAYNE MALLARD:** Table your statement.

**The CHAIR:** There should be no double-dipping. It should be given back and hypothecated so that we can have zero illegal waste disposal. Thank you for appearing before the Committee this afternoon. You have taken some questions on notice and you said that you would table some documents. The secretariat will assist you in that regard. In light of your evidence, the Committee may have some further questions. Once again, the secretariat will assist.

**(The witnesses withdrew)**

**(Short adjournment)**

**BARRY BUFFIER**, Chair and Chief Executive, NSW Environment Protection Authority, sworn and examined

**HENRY MOORE**, Manager Waste Reform, NSW Environment Protection Authority, on former oath

**GREG SHEEHY**, Director Waste Compliance, NSW Environment Protection Authority, affirmed and examined:

**The CHAIR:** Would anyone like to make an opening statement?

**Mr BUFFIER:** Thank you for the opportunity to say a few words in terms of an opening statement. I want to talk about waste in general terms and I believe that the New South Wales Environment Protection Authority [EPA] has the most comprehensive, multifaceted and successful waste management program in Australia. We are recognised as the leading waste regulatory authority and we deliver the country's largest waste strategy, backed by a strong and active compliance and enforcement. At the heart of what we do is the waste hierarchy, which places an order of preference around use of resources. The first high order one is avoidance, including action to reduce the amount of waste generated by households, industry and government. The second is about resource recovery, which includes re-use, recycling, reprocessing and energy recovery, which is germane to energy from waste. The third area is disposal, including management of all disposal options in the most environmentally responsible manner.

When you look at the growth in waste in New South Wales, over a period of about 10 years the total waste generated has gone from 12 million tonnes to almost 17 million tonnes. This is expected to rise with our State's population rising steadily over time. However, waste going to landfill has steadily declined to just over six million tonnes. I will provide some graphs which show that. We have actually had significant increase and a reduction in what is going to landfill. That is in large part because of our very successful recycling programs. The New South Wales energy from waste policy statement positions energy from waste in New South Wales as part of that integrated waste management strategy. What it says is where further recycling is not feasible it may be possible to recover the energy from the material and feed that back into the economy where this is acceptable and poses no risk to the community.

A key part of our waste strategy is the waste levy. The waste levy is a price signal that has significantly reduced waste going to landfill and has increased recycling rates in New South Wales in the last decade by making recycling cost competitive with disposal. The levy funds very significant environmental programs, including the Waste Less, Recycle More program, which is an \$800 million program over a nine-year period. We are in phase two of Waste Less, Recycle More. The key objectives of that program are changing community attitudes, providing facilities and infrastructure to encourage re-use and recycling and improving compliance and enforcement. In relation to enforcement, total expenditure on enforcement is in the order of \$123 million over that period of the two phases of Waste Less, Recycle More.

Our recycling rates in New South Wales have increased from 45 per cent in 2002-03 to 63 per cent in 2014-15. So the system works well in New South Wales. The levy has been fundamental in transforming the waste industry so that disposal to landfill is no longer the only cost-effective solution. Waste has always moved between States and Territories and that was not too big a problem, but in 2012 Queensland removed their levy. That has created a situation where we have seen more waste going to Queensland. The National Waste Report for the three years to 2016 has just been released last week by the Australian Government Department of the Environment and Energy. That indicates that recycling rates in Queensland are 35 per cent compared with New South Wales at 63 per cent.

In relation to waste infrastructure, our waste and resource recovery strategy sets an ambitious target to divert 75 per cent of waste from landfill in 2021. That is up from the current 63 per cent. To achieve that we need significant investment to build the infrastructure that can process the increasing volumes of waste generated. We anticipate there is going to be a total production of waste by 2021 of about 20 million tonnes of waste. We have recently commissioned a resource recovery infrastructure needs analysis which details the gap in the existing processing capacity for waste in New South Wales. It identifies the need for more resource recovery facilities statewide as well as region by region. Even if we are successful in increasing the recycling rates above where they are now and we drive down the total amount going to landfill, there is a finite amount of infrastructure available for landfill and we will require more as we go forward. That report is not yet available but we are hopeful about getting that out into the public arena fairly quickly.

Illegal dumping is a significant matter for us as a regulator. It is important because when you are regulating an industry you are aiming to provide a level playing field for all the operators in that industry. If

there is an opportunity for people to avoid a regulation or avoid a levy or avoid a cost, that provides them with a competitive advantage which they should not have over the genuine operators. We are very strong in terms of what we are aiming to do in terms of compliance and enforcement. We have an illegal dumping strategy, which is now out for consultation in the public arena, which looks at ways in which we can improve our performance in terms of illegal dumping.

We are putting a lot of effort into technology, into tracking waste, into using tracking systems and data collection systems that will give us a much better understanding of where waste is going and who is trying to avoid the system. Technology is really coming to the fore in terms of helping us in that whole process. But core to what we are doing and the reason why we have been able to have this three-pronged approach to waste in New South Wales has been Waste Less, Recycle More and the funding that has provided in order to change community attitudes, to put infrastructure in place and to provide a very strong compliance.

In closing, I would say the EPA introduces policies and implements programs that reduce waste, increase recycling and improve behaviour associated with littering and waste disposal to protect the community and the environment. We regulate the transportation, collection, treatment, storage and disposal of waste and support the reduction of the use of materials by encouraging re-use and recycling and material recovery. The New South Wales EPA has the toughest waste regulation in the country and puts significant effort into regulating the waste industry, monitoring compliance and taking enforcement action.

**The Hon. PENNY SHARPE:** Where to start? There are number of issues relating to the EPA. This inquiry starting off looking at energy from waste and we are now looking at the impact of the allegations made in the *Four Corners* program. My first question is in relation to tracking. Are you able to provide to the Committee information about the number of trucks that currently do not have tracking devices that are making their way up the Pacific Highway to Queensland?

**Mr BUFFIER:** What we are doing with tracking is we have the ability to put tracking devices on trucks. We do not require all trucks to have tracking devices.

**The Hon. PENNY SHARPE:** Which trucks are exempt?

**Mr BUFFIER:** Most trucks are. It involves where we are involved in compliance activities. The waste tracking system does not require a tracker on the truck. It is a system where you comply with the requirement to enter the data and we are tracking that system.

**The Hon. PENNY SHARPE:** Has it not been shown that that has been massively ignored?

**Mr BUFFIER:** We are not tracking every truck in New South Wales. That might be a nice position to get to.

**The Hon. LOU AMATO:** You are only tracking the trucks that are actually engaged in the industry?

**The Hon. PENNY SHARPE:** The legal ones.

**The Hon. LOU AMATO:** The legal ones in the waste industry.

**The Hon. PENNY SHARPE:** Not even them.

**The Hon. MATTHEW MASON-COX:** Or the ones that let you know?

**Mr BUFFIER:** We are using tracking where we are involved in an investigation.

**The Hon. PENNY SHARPE:** There has to be accusation before a truck gets a tracker on it?

**Mr BUFFIER:** There does not have to be an accusation. We might arrive at a position ourselves where we have suspicion of that sort of activity.

**The Hon. MATTHEW MASON-COX:** How many times have you actually enforced a tracker on a truck?

**Mr SHEEHY:** At the moment we have seven trackers operating around Sydney relating to vehicles that were involved in illegal landfilling activity.

**The Hon. MATTHEW MASON-COX:** So we have seven trucks being tracked in the whole of New South Wales.

**Mr SHEEHY:** At the moment, yes.

**Mr BUFFIER:** That is with a tracker. There are other systems that we require for transport of other waste such as tyres and so on, which relate to a QR code and tracking where that is picked up from, where it is dropped off and so on.

**The Hon. MATTHEW MASON-COX:** How many trucks would there be carrying waste on any particular day in New South Wales?

**Mr BUFFIER:** I would have to take that question on notice.

**The Hon. PENNY SHARPE:** Well, there are 2,300 a year going to Queensland.

**The Hon. MATTHEW MASON-COX:** And we have got seven covered. Okay. Sorry, Penny.

**The Hon. PENNY SHARPE:** That is all right.

**Mr BUFFIER:** We have seven covered in relation to investigation, so that is what we are doing in terms of investigation. We have a waste tracking system that is different to that.

**The Hon. SHAYNE MALLARD:** Is it a log book or something?

**Mr BUFFIER:** Mr Moore, would you like to—

**Mr MOORE:** It is called the metropolitan area tracking system.

**The Hon. PENNY SHARPE:** Can you ask that in your questions? I have other questions. We are on our own times today.

**The Hon. MATTHEW MASON-COX:** You can have some of my time.

**The Hon. PENNY SHARPE:** Thank you very much. I want to clarify an issue that arose. Previously the EPA has provided information in relation to the breaches associated with Mr Malouf and a range of his different companies. You have provided information in relation to written warnings, penalty notices, official cautions and prosecutions. Are clean-up notices picked up in that?

**Mr BUFFIER:** I do not have those precise stats in front of me at the moment, so I cannot answer that.

**The Hon. LOU AMATO:** Take it on notice.

**The Hon. PENNY SHARPE:** Could you take it on notice?

**Mr BUFFIER:** I will take that on notice.

**The Hon. PENNY SHARPE:** If it is different—that clean-up notices are separate to these other issues—could you please provide to the Committee a list of all the clean-up notices that have been given to Mr Malouf and his range of companies?

**Mr BUFFIER:** Certainly.

**The Hon. PENNY SHARPE:** Thank you very much. I want to ask you about the proximity principle. Obviously the idea is that we deal with waste as close as possible to where it is generated. There is very serious evidence of tens of thousands of tonnes of waste going to Queensland, a long way from where it is generated. I understand that there are some constitutional concerns around trade of waste. What is the EPA doing in relation to the proximity principle and stopping waste from going over the border?

**Mr BUFFIER:** The proximity principle was around reducing the carbon footprint on waste. As I said, we produce a large amount of waste. Ways in which you reduce that carbon footprint include increasing recycling rates. Avoiding large- and long-scale transport of waste is another way in which you reduce the carbon footprint of that waste.

**The Hon. PENNY SHARPE:** Yes. It is not going so well, is it?

**Mr BUFFIER:** I am explaining the proximity principle. We looked at what applies overseas. That concept of the proximity principle works well overseas. We were attracted to that in New South Wales. It reduces that carbon footprint but it also sends a signal about communities being responsible for the waste that they create. As I said, we will be creating 20 million tonnes of waste per annum.

**The Hon. PENNY SHARPE:** But is it true that the EPA has just told the industry that you are doing nothing in relation to implementing that principle?

**Mr BUFFIER:** I was getting to that point. I was wanting to explain what the principle was.

**The Hon. PENNY SHARPE:** I understand what the principle is. I am interested in why it is not working.

**Mr BUFFIER:** Okay. There was a court challenge on that issue. We formed the view that it offended section 92 of the Constitution and that it could not be enforced. We relayed that information that we would not be enforcing it to the industry. I am sorry to say that section 92 did intervene in that, because the principle itself is a very good principle.

**The Hon. PENNY SHARPE:** And you have obviously advised the Government about that. Given that problem, what action has been taken to try to find other ways to deal with proximity?

**Mr BUFFIER:** There are a few simple solutions. As I said, interstate movement of waste was not a problem while all States had a levy of some form. But when Queensland removed their levy—

**The Hon. PENNY SHARPE:** True, but Queensland is now turning our trucks around at the border, so they seem to have found their own way of dealing with it.

**Mr BUFFIER:** Not very successfully. Most trucks are not being turned around.

**The Hon. PENNY SHARPE:** That is what they say they are doing.

**Mr BUFFIER:** Well, they are not. So a levy in Queensland would certainly solve the problem overnight, but because you need a national approach we have been very active nationally, looking at the things we could do if all the States were in agreement. If all the States—

**The Hon. PENNY SHARPE:** Yes, but if we wait for that, as we know—

**The Hon. MATTHEW MASON-COX:** It is forever.

**The Hon. PENNY SHARPE:** It is a glacial pace of reform through the Council of Australian Governments [COAG] process. I know that there is an EPA working group on that and I congratulate you for being part of that. What I am interested in is why there is no action—

**Mr BUFFIER:** We are leading that.

**The Hon. PENNY SHARPE:** That is great, but two years ago there were 240,000 and this year there were 380,000 tonnes, tens of millions if not hundreds of millions of dollars being lost to New South Wales and we are just putting it into the glacial pace of COAG?

**The Hon. SHAYNE MALLARD:** You should ring up your Labor Premier and ask her to sort it out.

**Mr BUFFIER:** Queensland have announced an inquiry. I do not know where that will lead to.

**The Hon. PENNY SHARPE:** It is very welcome.

**Mr BUFFIER:** But if you go back to what we were trying to do with the proximity principle, which was reduce our carbon footprint of waste, what we are looking at now is a way in which we might improve the quantity and quality of the recyclable material that comes out of that waste stream. Whilst the levy does drive a certain amount of recycling activity, the other part of the equation is the price that you get for the recycled product. If you can get better quality product out of that waste stream, you actually improve the commercial viability of recycling. We have been looking at that. We have been very careful not to have another situation that might offend section 92 of the Constitution. We expect over the next few weeks to be in a position to have that idea out for discussion and consultation. So we have not been waiting for national agreement on issues, but we do see that as being an important component of where we can go.

**The Hon. PENNY SHARPE:** I go to the issue of recycling rates. It is my understanding that the EPA board was alerted to the issue about what we claim in relation to recycling rates. I think we claim around 63 per cent is a diversion from landfill. In terms of genuine recycling, it is my understanding that groups like the Boomerang Alliance and others suggest that it is only 34 per cent and that the way the EPA counts the figures by ignoring New South Wales local government reporting, for example, and omitting some other forms of recycling, that you get this figure that is instead of 1.61 million tonnes of recycling it goes up to 2.8 million tonnes. Do you want to comment on that?

**Mr BUFFIER:** Certainly. I welcome the opportunity because there is always discussion about how you measure recycling and what it really means. The reference I referred to in my opening comment, and I will leave it here for the Committee, is the Australian National Waste Report 2016, a three-yearly report which looks at the performance across all the States. It looks at this in a standard way. Jeff Angel came along to the EPA Board and indicated where he thinks there are some problems in definitional issues. We are taking those issues to a national level for discussion but the reality is there has been agreement for a fair period of time about the

way in which you measure waste and recycling levels. It is not New South Wales that is one out on this. It is a national approach that we take. There are differences of opinion as to how you measure that. Boomerang Alliance, for example, say that using something in less than its highest value is not recycling. So if glass does not go back to become a glass bottle, that is not recycling.

**The Hon. PENNY SHARPE:** I think a lot of the community would agree with that, by the way. I will take you to a different issue as I do not have a lot of time.

**Mr BUFFIER:** I think the important point is that that is not dumped in landfill. So it is reused.

**The Hon. PENNY SHARPE:** Okay. I have been very concerned about the issue that was highlighted in *Four Corners* in relation to Spencer—20,000 tonnes of rubbish including asbestos dumped into a sensitive wetland without approval, first alerted to the EPA in December 2014, and still prosecution is only happening right now in 2017. How do you justify the length of time it has taken to sort out this issue?

**Mr BUFFIER:** The Spencer issue is one which relates to an understanding of who the appropriate regulatory authority for managing that is. In the early stages that was not the EPA. When the EPA became the appropriate regulatory authority—

**The Hon. PENNY SHARPE:** Which was when?

**Mr SHEEHY:** December 2015.

**The Hon. PENNY SHARPE:** That is still two years ago.

**Mr BUFFIER:** Eighteen months ago. I am going to be fairly careful what I say here, because this matter is before the courts and I do not want to prejudice that. We have undertaken a long, complicated and exhaustive monitoring and investigation. These are not simple matters to prosecute.

**The Hon. PENNY SHARPE:** No, but I am interested in how you actually stop this from happening.

**Mr BUFFIER:** I am sorry. I thought the question was around why it took so long.

**The Hon. PENNY SHARPE:** There are two issues. Some of the evidence we took this morning was that there are illegal operations all over the State, that it takes a long time—sometimes months, sometimes years—before the EPA decides to even prosecute. In the meantime these operations continue and harm is being done to the environment because there are no stop-work orders or others put on there. What is your response to that?

**Mr BUFFIER:** As I said, I do not want to go into the Spencer matter.

**The Hon. PENNY SHARPE:** I am happy to talk about any of the others.

**Mr BUFFIER:** Well, we might talk about Dib Hanna, who was a serial offender and who we prosecuted strongly.

**The Hon. PENNY SHARPE:** That is your one prosecution.

**Mr BUFFIER:** No, it is not.

**The Hon. MATTHEW MASON-COX:** How are we going on Mangrove Mountain?

**Mr BUFFIER:** Are we talking prosecutions?

**The Hon. PENNY SHARPE:** No. I am sorry, we have not got to that. The Hon. Matthew Mason-Cox should stop interrupting.

**The Hon. SHAYNE MALLARD:** Chair, we might let the gentleman answer the question.

**The CHAIR:** Yes. Mr Buffier, how many prosecutions have you had?

**Mr BUFFIER:** I am sorry—how many have we had?

**The CHAIR:** Yes. In the light of your answer that that is not true, it is not just one.

**Mr BUFFIER:** No, no, no. And certainly in terms of our overall prosecution record within the EPA, I have looked at some stats there and over the three years from 2013-14 to 2015-16, New South Wales had 179 successful prosecutions. Victoria, which is roughly comparable to what we do in New South Wales, had 18.

**The Hon. JOHN GRAHAM:** One of the views that has been put before the Committee today was really that when there is non-compliance, often it is treated in quite a confidential manner by the EPA working with the company. I am interested in your view about whether we could make that more public as part of the set

of regulatory tools that the EPA uses. Surely it makes sense, when we are enforcing these standards that are often set in public in the first place, to be clear where companies are not matching up to those standards.

**Mr BUFFIER:** I am sorry, I do not quite understand the question. What was said? I do not understand what was said.

**The Hon. JOHN GRAHAM:** Just so that you know where it is coming from, it was in evidence put in front of us by Environmental Justice Australia. I am confident you will be familiar with some of their work.

**Mr BUFFIER:** We certainly are, yes.

**The Hon. JOHN GRAHAM:** It really goes more to air emissions than the dumping issues, but really making the argument that this should be more public. Is that possible? Is there a reason why we cannot do that?

**Mr BUFFIER:** Any issues of non-compliance are all on the public record in relation to—I presume we might have been talking about Whitehaven, were we?

**The Hon. JOHN GRAHAM:** That was one of the issues. The evidence this morning was that it took nine months to get access to some of that information about breaches.

**Mr BUFFIER:** I will talk about that in more detail but I happen to know that issue. That was part of the Government Information (Public Access) [GIPA] Act process and third parties having the right to object to information being made available. That is not something that I can control, but certainly under the GIPAA—

**The Hon. JOHN GRAHAM:** But why should we have to go through the GIPAA process? As part of the regulatory tools the EPA uses, why can we not take a more open approach? If there are breaches, maybe they are explicable, maybe they are not.

**Mr BUFFIER:** They certainly are on—

**Mr SHEEHY:** The public register contains all the information about penalty notices we issue, clean-up notices we issue—that is all available on the public record pretty well live from when we issue those notices. A new initiative we have started now when we do issue clean-up notices on illegal landfilling activities or illegal dumping activities, we now put what we term a real estate sign that actually indicates that we have served a notice on a property and warns people that it is illegal to dump any more waste on that property.

**The Hon. JOHN GRAHAM:** In the case that we were talking about this morning, why has it taken nine months to go through the GIPAA process? Is that looking for more detail than what you are making public at the time?

**Mr BUFFIER:** Yes, and the company objecting to it.

**The Hon. JOHN GRAHAM:** Do you think there is the capacity to make more information available about the sorts of breaches in order to have a more effective regulatory regime?

**Mr BUFFIER:** Well, I do not want to criticise the GIPA process because that protects third-party rights. But the reality is that people look at that delay and say, "That's the fault of the EPA." It is not the fault of the EPA.

**The Hon. JOHN GRAHAM:** Yes, but the EPA makes a choice about what information it makes public, and I am asking: Could that be more public? The example in my mind is something more like the food safety regime, which really does rely—

**The Hon. SHAYNE MALLARD:** The food compliance regime—name and shame.

**The Hon. JOHN GRAHAM:** A big part of that is about restaurants' fear of having a notice issued on them. It is a very effective regulatory tool. Could we not apply that public element more powerfully?

**Mr SHEEHY:** We currently do that now. Every penalty notice we issue now, we put a media release out so that information gets put out pretty well on a daily basis.

**Mr BUFFIER:** We have a policy that we do not issue a penalty notice without a media release.

**The Hon. JOHN GRAHAM:** Those two detailed issues on the Mangrove Mountain issue, I am happy for you to take them on notice. We were asked whether there was a request for a risk assessment of site stability that had been made to the EPA recently. I wondered if you were agreeable to that risk assessment being performed?

**Mr BUFFIER:** Right. Do you want me to answer that question first?

**The Hon. JOHN GRAHAM:** Yes.

**Mr BUFFIER:** I am not aware of that request, but what I can say is that we have been very agreeable to meeting all requirements of the Mountain District Association. We have been engaged with them since February 2016.

**The Hon. JOHN GRAHAM:** If you are not aware, I am happy for you to take that on notice.

**Mr BUFFIER:** We have been engaged since February 2016, but I do want to demonstrate we have had a lot of engagement. We have had 11 meetings involving us and the independent expert selected by the Mountain Districts Association. Since February last year until July this year, Rob Hogan has attended 11 meetings. Those meetings have all gone for two to two and a half hours, plus a couple of hours travelling time. Steve Beaman attended five of those meetings and other technical officers attend meetings. The consultant who was selected to do that report was selected with the agreement of the association. We are very keen to work with them.

**The Hon. JOHN GRAHAM:** I take the general point, if you are happy to take the specific point on notice.

**Mr BUFFIER:** Well, we will take it on notice. I need to see the request.

**The Hon. JOHN GRAHAM:** Yes, understood.

**Dr MEHREEN FARUQI:** Good afternoon, and thank you for coming in to provide evidence. Mr Buffier, you said in your opening statement that the EPA obviously goes with the waste hierarchy in terms of waste management and that avoidance was also a big part of the strategy.

**Mr BUFFIER:** Yes.

**Dr MEHREEN FARUQI:** Could you tell me in the last five years how much waste generation per person in New South Wales has reduced by?

**Mr BUFFIER:** If you look at the waste strategy that was published in 2014, one of the targets that we had in there was to reduce the per capita consumption of waste in New South Wales. The reason I was focused on that is Australia is the silver medal holder in terms of waste production per capita in the world, so we are very significant producers of waste.

**Dr MEHREEN FARUQI:** Yes. Has it reduced at all?

**Mr BUFFIER:** We have. The stats indicate that there has been a slight reduction in the waste production per capita.

**Dr MEHREEN FARUQI:** Only slight in the last five years?

**Mr BUFFIER:** Only slight, yes, but it had an upward trajectory.

**Dr MEHREEN FARUQI:** Could you, possibly on notice, let us know exactly what it is?

**Mr BUFFIER:** I can provide you with our latest data, yes.

**Dr MEHREEN FARUQI:** What percentage of the waste budget is actually put into waste avoidance? Really, you can take that on notice as well.

**Mr BUFFIER:** We can take that on notice, but we do in our Waste Less, Recycle More initiative—the latest program—maybe I could table that document because that spells out in detail how much we spend.

**Dr MEHREEN FARUQI:** We can table that or take that on notice. That is fine. Grant Musgrove, who is the chief executive officer [CEO] of the Australian Council of Recycling on *Four Corners* actually provided an estimate of about half of the recyclables collected ending up in landfill or simply disappearing, either interstate or overseas. Do you agree with that estimate?

**Mr BUFFIER:** I do not agree with that estimate.

**Dr MEHREEN FARUQI:** What is your estimate?

**Mr BUFFIER:** I do not have an estimate but I do know what our estimates of recycling rates are.

**Dr MEHREEN FARUQI:** No, I am asking about the estimates of waste that is collected as recyclables but does not end up being recycled. Let me know if you disagree with this, but we do know waste or our recyclables do end up in Queensland and recyclables do end up in, say, Victoria and have been stockpiled there.

**Mr BUFFIER:** Yes.

**Dr MEHREEN FARUQI:** But do you have an idea of what percentage of the collected recyclables end up not being recycled?

**Mr BUFFIER:** My opinion is that in New South Wales that would be a very low percentage simply because if a recyclable ends up in landfill, you pay the levy on it.

**Dr MEHREEN FARUQI:** But not in Queensland.

**Mr BUFFIER:** No, but our information would not indicate that recyclable material or large amounts of recyclables are going to Queensland. It is largely construction and demolition waste.

**Dr MEHREEN FARUQI:** I think it was in the 2015 State of the Environment report that 62.5 per cent of waste in New South Wales is being recycled.

**Mr BUFFIER:** Yes.

**Dr MEHREEN FARUQI:** Does that 62.5 per cent include the material that is collected as recyclable, but actually is not being recycled?

**Mr BUFFIER:** What I rely on is this document.

**Dr MEHREEN FARUQI:** But you should know how you estimate recyclable material.

**Mr BUFFIER:** No. It is not how I estimate it. These are the statistics that are compiled and that is what I rely on in terms of saying there is a 63 per cent recycling rate.

**Dr MEHREEN FARUQI:** This morning evidence was provided by the Waste Contractors and Recyclers Association of New South Wales. They said they do not understand why the EPA does not enforce the law. They gave the example of requiring a rail operator that is shipping waste by rail to hold a waste facility licence. Why does the EPA not enforce this law?

**Mr BUFFIER:** That is a matter which is under investigation at the moment.

**Dr MEHREEN FARUQI:** How long has that law been in place?

**Mr BUFFIER:** That law in relation to the licence of the facility has been in place for some time. Greg, can you say anything without compromising—

**Dr MEHREEN FARUQI:** Can you tell me in years how long that has been in place?

**Mr SHEEHY:** There is an active investigation into what we believe is a facility operating without a licence. We are finalising that investigation. That facility has a different view to us, so we are working through that, and I am hoping to resolve that and commence proceedings shortly.

**Dr MEHREEN FARUQI:** When was the investigation started?

**Mr SHEEHY:** I will have to take that on notice.

**Dr MEHREEN FARUQI:** Can you let me know when that law came into place? Or how long has that law been in place?

**Mr BUFFIER:** The requirement to hold a licence.

**Mr SHEEHY:** Yes, the requirement to hold a licence has been in place since the legislation—

**Dr MEHREEN FARUQI:** And there is one investigation?

**The CHAIR:** Are you aware of any other providers working outside that licence?

**Mr SHEEHY:** I am only aware of one that we are investigating.

**The Hon. SHAYNE MALLARD:** They have a different legal view?

**Mr SHEEHY:** They do.

**Mr BUFFIER:** They do.

**Dr MEHREEN FARUQI:** The Waste Contractors and Recyclers Association also raised a point this morning about co-mingling of recycling. They said that that was a significant issue and that about 10 to 15 per cent of bales were being sent overseas because they were contaminated. Is there anything the EPA is doing to address that?

**Mr BUFFIER:** I am not familiar with that particular issue. I would like to see exactly what the context of the statement was.

**Dr MEHREEN FARUQI:** I read the statement out to you.

**Mr BUFFIER:** Co-mingling of what products? What recyclable products are we talking about?

**The Hon. SHAYNE MALLARD:** Plastic, was it not?

**Dr MEHREEN FARUQI:** I cannot remember if it was plastic. It does not matter. It was recyclable material that has been contaminated.

**Mr BUFFIER:** It does matter. I cannot—

**The Hon. SHAYNE MALLARD:** You can take it on notice.

**Mr BUFFIER:** I can take it on notice.

**Dr MEHREEN FARUQI:** Maybe take it on notice.

**Mr BUFFIER:** I would like to understand what type of material we are talking about.

**Dr MEHREEN FARUQI:** You can take that on notice.

**The CHAIR:** Some evidence was given today about your take on Mangrove Mountain in respect of the water quality measurement. The evidence seemed to be that the NSW Office of Water sees it differently from you. Do you want to give some clarification on that?

**Mr BUFFIER:** I do not want to compare it to the NSW Office of Water, but I know that the monitoring we have done has not indicated that there has been any problem in relation to water quality.

**The CHAIR:** Why would there be a discrepancy? Why would one agency have an issue and the other agency does not?

**Mr BUFFIER:** I am not familiar enough with that particular difference.

**The CHAIR:** Can you take that on notice?

**Mr BUFFIER:** We will take that on notice.

**The CHAIR:** It seems inconsistent that you have two government agencies that see it differently.

**Dr MEHREEN FARUQI:** Can you tell us what specific allegations EPA has referred to ICAC?

**Mr BUFFIER:** No, I could not.

**Dr MEHREEN FARUQI:** What is the reason for that?

**Mr BUFFIER:** I regard any referral to ICAC as something which is confidential and needs to be maintained. The appropriate course of action is not to talk about what has been referred to ICAC, and so I do not think it is appropriate for me to say anything further.

**Dr MEHREEN FARUQI:** You cannot tell us specifically what the allegations are, but are any of the concerns that you referred to ICAC raised with you previous to the *Four Corners* expose?

**Mr BUFFIER:** I have already said, Dr Faruqi, I do not think it is appropriate for me to detail what communication I have had with ICAC and the content of that communication.

**Dr MEHREEN FARUQI:** Tony Khoury, who is the executive director of Waste Contractors and Recyclers Association of New South Wales, told the *Sydney Morning Herald* that a meeting between the 10 industry members and EPA, which was set for 9 August, was cancelled 45 minutes before it was due to commence and that this was in retaliation for appearing on *Four Corners* and that it is the behaviour of a bully in the schoolyard. Was EPA retaliating against whistleblowers in the industry?

**Mr BUFFIER:** Not to my knowledge, no.

**Dr MEHREEN FARUQI:** Can you tell us why the meeting was cancelled?

**Mr BUFFIER:** There was a lot happening in the EPA that morning.

**Mr SHEEHY:** We are actually meeting Mr Khoury on Monday morning.

**Dr MEHREEN FARUQI:** And the 10—

**Mr SHEEHY:** Yes, on Monday morning.

**Mr MOORE:** It was rescheduled.

**Dr MEHREEN FARUQI:** That is good to know. Some people have suggested that the EPA is too reliant on the waste levy and there is a conflict of interest in terms of how waste is managed. Can you tell us how much of the EPA funding comes from the waste levy?

**Mr BUFFIER:** The waste levy is not hypothecated to the EPA; it goes into consolidated revenue. We receive a share of that in conjunction with the Office of Environment and Heritage. The amount we spend on waste is largely the \$800 million that I have indicated through the Waste Less, Recycle More program.

**The CHAIR:** I want to raise questions arising from the Shoalhaven City Council submission, which talks about the applicability of fairness. It states:

As a regional area with low socio economic indicators and high unemployment, the Shoalhaven is regulated together with the Sydney Metropolitan levy area and charged a levy of \$138.20/t. In comparison, the Blue Mountains and Wollondilly, both clearly closer in distance to Sydney and more economically empowered, are classified as being in the Regional Levy area and charged a levy of only \$79.60/tonne. Eurobodalla, the Shoalhaven's immediate southern neighbour, on the other hand, is considered to be outside of the levy regulated areas and does not get charged any waste levy.

Do you think it is fair that two of the regions that are closer pay half the levy and that there seems to be an inequity of fairness?

**Mr BUFFIER:** That issue about boundaries and who is in which area predates me by a considerable period of time. I am not aware of the policy discussion that occurred at that time, but I think it is largely a policy issue.

**The CHAIR:** Do you think it is unfair?

**Mr BUFFIER:** I think it is largely a policy issue.

**The CHAIR:** I am not asking you about a policy issue. I am asking is it unfair?

**Mr BUFFIER:** As a public servant I do not get the right to opine policy issues.

**The CHAIR:** Are you prepared to take a question on notice and supply the reason for your predecessor, or whoever, making that policy decision and why it still stands, given its unfairness?

**Mr BUFFIER:** I think that is another way of asking me to give an opinion.

**The CHAIR:** I am asking you to forward to the Committee an explanation why that exists. I want to ask you about the levy income used by the State Government. There is a table in this submission, which I do not think you have. It shows that from 2013 to 2017 the levy paid to the EPA was a total of \$33,352,268, non-contestable grant funding received was a total of \$955,355, and contestable grant funding received was approximately \$780,000. Of \$33,352,268, that represents only 5.2 per cent going back to the community. Earlier you quoted that there is a 68 per cent recycling effort in New South Wales.

**Mr BUFFIER:** Sixty-three.

**The CHAIR:** A local council is paying \$33 million. Do you not think that target of 63 per cent could be more effective if that waste levy was hypothecated to local councils to deal with waste at the point of disposal rather than trucks travelling massive distances with massive loads to contribute to other recycling efforts?

**Mr BUFFIER:** In relation to the statistics, I am presuming that the \$33 million you are talking about is the total waste levy that is paid?

**The CHAIR:** That is correct: section 88 waste levy.

**Mr BUFFIER:** Which does not go to the EPA—I think that is an important issue—it goes to consolidated revenue. What the EPA gets is money through waste that is recycled more. The money coming to OEH and EPA is about one-third of the waste levy and we roughly split that 50:50, just so we have that clarity. In terms of the question of hypothecation, I think that fits into the policy issue again.

**The CHAIR:** You are not going to agree that hypothecation could not only employ regional people and divert waste from landfill?

**Mr BUFFIER:** It is a policy issue, but it depends on what the money that is collected is spent on.

**The CHAIR:** Thirty-three million dollars in an area where there is a significant amount of Crown land and national parks. There is quite a bit of illegal dumping down there and they get a maximum of up to \$200,000 to man illegal dumping in the area. Would you not agree that is quite ridiculous? Is paying \$33 million out and getting \$200,000 back to address illegal dumping a fair thing? Or is that another policy question?

**Mr BUFFIER:** The policy question relates to how much of the \$33 million gets spent by government back in that region. I do not have that—

**The CHAIR:** Some 5.2 per cent.

**Mr BUFFIER:** No, from other programs. I mean, presumably funds from other programs.

**The CHAIR:** This is all meant to be for the environment. The reason for the waste levy is, and I quote:

The intent of the levy is to encourage recycling and divert waste away from landfill.

**Mr BUFFIER:** Yes.

**The CHAIR:** How can that be happening when you are double dipping on a council and the money is going into general coffers, which you then derive some funding from?

**Mr BUFFIER:** I did try to address that in some of my earlier comments around: What is the purpose of the waste levy? The waste levy is an economic instrument; it serves two purposes. The first part is that the price needs to be set at a level that ensures that recycling is a better proposition than disposal—the price drives that. The second part is: What do we need in order to provide infrastructure and support for illegal dumping activities, et cetera, to ensure that we have a level playing field? They are two separate questions—there is a price mechanism, which is what determines where the price is set in order to make recycling attractive versus dumping; and then there is the question about: How many resources do you need to put into infrastructure, community recycling centres, behavioural change activities and compliance.

**The CHAIR:** You are certainly getting behavioural change activities because it is diverting waste from landfill. They are putting it around the fire trails because it is too expensive.

**Mr BUFFIER:** As I said, there is \$123 million over the nine years of the program looking at illegal dumping.

**The CHAIR:** Another point they bring up is the current provision of waste disposal and recycling. They say that the scale of the operation varies from Bendalong, which opens two mornings a week, averages 27 tonnes per month through 111 transactions; to West Nowra, which is open seven days a week, averages 5,857 tonnes per month through 4,342 transactions. That means that nine of the facilities operate at a financial loss and rely on West Nowra. Once again, still picking up \$33 million.

**Mr BUFFIER:** One of the programs we have is Waste Less, Recycle More. It is about encouraging the rationalisation of landfills and the consolidation of landfills. Those smaller ones we do not think are the most efficient way to be organised.

**The CHAIR:** The whole initiative is not to have to agree that any more landfills are needed, but when you are ripping \$33 million out of a community and the council has to go back to its ratepayers and say, "We would love to build a MRF but if we build it, we are coming back to you for the cash." They have already paid \$33 million to divert their waste from landfill, and that is not really fair either, is it?

**Mr BUFFIER:** There is funding available under the—

**The CHAIR:** The issue is that they do not get the funding—the \$15 million to build a facility goes onto the back of the ratepayers. This is double dipping. Is not the section 88 waste levy meant to drive that waste from landfills into other good streams?

**Mr BUFFIER:** In addition to the money that they are getting, which you have itemised, there are other funds in Waste Less, Recycle More, which are contestable funds they can apply for.

**The CHAIR:** They mention that.

**Mr BUFFIER:** The Waste and Recycling Infrastructure Fund—\$48 million over four years.

**The CHAIR:** They got \$1 million, if they are lucky, over five or six years.

**Mr BUFFIER:** The Organics Infrastructure Fund—\$35 million over four years.

**The CHAIR:** That \$35 million came from the Shoalhaven, so they are sharing the love.

**Mr BUFFIER:** They can apply for that funding.

**The CHAIR:** My point is that they have to go and reapply for money that came out of that community, which is not a rich community, to divert waste from landfill. I will leave it there. I am very passionate about the injustice of this.

**Mr BUFFIER:** Thank you.

**The Hon. LOU AMATO:** Would you recommend that the Queensland Government introduce a waste levy similar to that of New South Wales? Do you know why Queensland removed the levy back in 2012?

**Mr BUFFIER:** I think we are getting into Queensland policy issues now.

**The Hon. PENNY SHARPE:** I am happy to talk about that.

**Mr BUFFIER:** No, I am not going to talk about it. The simple reality is, as I said in my introduction, a levy system works best if you have got all jurisdictions applying it.

**The Hon. LOU AMATO:** If it is a national system then it will obviously work best.

**Mr BUFFIER:** A national system is preferable when you are talking about market instruments and where they apply, and constitutional issues.

**The Hon. LOU AMATO:** My question relates to the illegal dumping and tracking of trucks. Years ago when I was a councillor there was a way to track this from a development application [DA]. For example, if there was a fibro house there, they would have to put in something that said, "We are going to get rid of this material. It is going to go from point A to point B." So you could regulate it and know it had been achieved. Has the EPA looked at something similar? A lot of this illegal dumping is coming from parts of Sydney, particularly in the south-west of Sydney where a lot of old houses from the 1950s and 1960s are being demolished and a lot of development is occurring.

**Mr BUFFIER:** Certainly we spend a lot of time looking at ways in which we can structure regulation so that it is more efficient and more effective, and we can use technology to do it. One of the issues around the waste levy is: Who is responsible for paying it? One of the ideas we are looking at is having that responsibility going back to the person who produces the waste so that the transport of that waste does not carry the levy responsibility with it. At the moment there is an incentive for the transporter to dump illegally, but if you bring it back to where the waste is produced and apply it there—

**The Hon. LOU AMATO:** So if you go to the beginning, they have to demonstrate where it went and how it was disposed of.

**Mr BUFFIER:** We are certainly looking at that. We are looking at whether there might be a couple of—

**The Hon. MATTHEW MASON-COX:** It sounds like policy.

**Mr BUFFIER:** It has probably gone a bit past—it is not actually policy because it is a matter of where we can apply it more effectively. We are having this discussion with another government department.

**The Hon. SHAYNE MALLARD:** The evidence from some of the industry, including Dial A Dump today, is that a solution to illegal dumping—

**Mr BUFFIER:** Yes.

**The Hon. SHAYNE MALLARD:** —and also to the waste in Queensland, would be to apply it at the instigator.

**Mr BUFFIER:** Yes.

**The Hon. SHAYNE MALLARD:** How hard would that be to do?

**Mr BUFFIER:** It has some complexity about it but certainly for the larger operators, for a large site, it makes a lot of sense to do that. Where you have smaller sites, one truck et cetera, it probably becomes a bit more difficult to enforce. But there is a real opportunity to do something around that.

**The Hon. SHAYNE MALLARD:** Around regulation or legislation?

**Mr BUFFIER:** I would have to take that on notice.

**The Hon. SHAYNE MALLARD:** We have talked about Queensland waste, and you raised the Constitution and the COAG process. Is there any other mechanism that we could look at to stop the amount of waste going to Queensland?

**The Hon. PENNY SHARPE:** Re-electing a Labor government in Queensland would stop it. Labor said it would do it after the election.

**The Hon. SHAYNE MALLARD:** That is news. Obviously, a levy could be applied for the producer of the waste and that could be part of the solution.

**Mr BUFFIER:** No, because section 92 of the Constitution still allows free trade between the States. We do have a working party on this. I understand the frustration at national processors. I suffer from that frustration as well. We are talking to the industry, the National Waste and Recycling Industry Council, Max Spedding, about some of the possibilities with which we might more effectively manage waste so it does not get transported huge distances. It is crazy to be transporting waste huge distances.

**The Hon. SHAYNE MALLARD:** Some of my correspondents on social media have argued that the Government has interfered in the market and a free market would not have an artificial economy in going to Queensland or dumping. What is your response to that?

**Mr BUFFIER:** The Government certainly has interfered in the market. As I said, the levy is a market instrument. It is there because the market, as it was, was not driving recycling.

**The Hon. SHAYNE MALLARD:** This is a policy issue. We have achieved good levels of recycling, but it is patchy across local government areas. I have opened two community recycling centres, one in Penrith and one at Leichhardt. Those communities embrace the centres. Could we back off from the levy to deal with the issue of the waste going interstate?

**Mr BUFFIER:** We need to deal with the issue that waste production is continuing to increase. We are pleased that we have reduced it to 6 million tonnes in total and it is going down. But over the next 10 years or so, we need more landfill capacity. Unless we have higher recycling rates than we currently have, we will have the issue of where to have landfill. In whose backyard are we going to have landfill? The draft document I spoke about highlights what we need in terms of infrastructure, even if we are able to increase our recycling rates.

**Dr MEHREEN FARUQI:** Why not put more effort into waste avoidance? That is something that has not happened at all.

**Mr BUFFIER:** It is.

**Dr MEHREEN FARUQI:** You said there was hardly any change in per capita waste generation.

**Mr BUFFIER:** I said it had declined slightly, yes.

**The Hon. PENNY SHARPE:** In relation to the National Waste Reports, can you confirm that the most recent report says that New South Wales cannot supply accurate data so that there are estimates in relation to the recycling rate in New South Wales?

**Mr BUFFIER:** I cannot. Please tell me the page, and I will look at it.

**The Hon. PENNY SHARPE:** I believe it is section 1.4. You can take the question on notice, if you like.

**Mr BUFFIER:** I would need to take it on notice. The report came out last week, but I must admit I have not read every page of it.

**The Hon. PENNY SHARPE:** Could you come back to us on that?

**Mr BUFFIER:** I could.

**The Hon. PENNY SHARPE:** The recycling rate issue is important. The general community believes, when they sort rubbish and put recycling into the yellow bin, they are doing the right thing and it is being dealt with. People were generally shocked about how broken the recycling system is, and we know that a lot of it is not being recycled. Getting the data right is very important.

**The Hon. SHAYNE MALLARD:** In evidence this morning, the industry peak body went down the line of needing greater regulation for licensing transport operators and more tracking. What is your view on that?

**Mr BUFFIER:** If we change the system and move to the person who produces the waste being responsible for paying the levy then the need to license everyone who is transporting waste changes to some extent or even significantly. All they are doing is providing a service to cart the waste to where it is going. They are not able to extract a benefit from dumping it illegally. The two are tied together.

**The Hon. SHAYNE MALLARD:** I am passionate about local government and I enjoyed opening the two recycling centres. However, I note that recycling rates are very patchy. I congratulate Penrith Council for its 60-plus per cent recycling rate and targeting 70 per cent with a green waste project. I live in the Blue Mountains,

where the rate is as low as 30 per cent. Local government elections in Dubbo are on at the moment, and one team is proposing to abolish green bins. How can we get a more consistent approach to recycling and waste management, noting that government plays a key part in this?

**Mr BUFFIER:** I know about the issue at Dubbo, where it is a highly contentious matter. As I understand the Dubbo issue, it is around a lack of certainty in the market for the end product.

**The Hon. SHAYNE MALLARD:** The council is proposing to compost the green waste.

**Mr BUFFIER:** Yes, and the fact that there is not a clearly defined market ready and willing to take what is going to be produced. Whereas the proponents are saying the market will develop, you cannot have a market without having some product.

**The Hon. SHAYNE MALLARD:** Penrith Council told me that green waste was food waste, and recycling it was to get recycling rates to 70 per cent. It is a high greenhouse gas producer, so it is a good outcome.

**Mr BUFFIER:** To Dr Faruqi's point about avoiding waste, one of our programs is our Love Food Hate Waste program. We would prefer to have no food waste getting into the waste chain. We are finding some significant changes in community attitude, and we are getting good traction on some of those programs. But when the product comes in from overseas and it is packaged, it is very difficult to manage the packaging and waste associated with that.

**The Hon. MATTHEW MASON-COX:** Have you visited any waste to energy incinerators?

**Mr BUFFIER:** No.

**The Hon. MATTHEW MASON-COX:** Have you had much interaction with the waste to energy technology—the pitfalls, the opportunities, the pros and cons—as it feeds into the waste to energy policy of the Government?

**Mr BUFFIER:** Yes, we certainly have an energy from waste policy.

**The Hon. MATTHEW MASON-COX:** But you have not visited an incinerator?

**Mr BUFFIER:** I am talking about a question to me personally.

**The Hon. MATTHEW MASON-COX:** I mean the EPA. Have you or your representatives been to see a facility like that?

**The CHAIR:** Have any of those who formulated the policy visited such a facility?

**Mr BUFFIER:** I would need to take that question on notice.

**The Hon. MATTHEW MASON-COX:** Please take that on notice and also the level of engagement with that technology more generally and the input in relation to the energy from waste policy. It was put to us this morning by the Mountain District Association that there is an inherent conflict of interest with Mangrove Mountain because you receive the waste levy and that compromises your decision-making in relation to variations in that licence—and there have been a number of variations. Please respond to that.

**Mr BUFFIER:** I find that an unusual suggestion. If waste goes to landfill, it does not make any difference to us or to the levy whether it goes to landfill at Mangrove Mountain, Kemps Creek or somewhere else. The levy is the same. No, I do not think we have a conflict of interest in saying that we want a site to operate because we will get the levy.

**The Hon. SHAYNE MALLARD:** You do not get it.

**Mr BUFFIER:** We do not get the levy anyway. However, the levy is paid when it goes to landfill. Unless you are going to do something else with it, the levy will be paid.

**The Hon. MATTHEW MASON-COX:** I understand that. That is great. Is it illegal to evade the payment of the levy by transporting waste interstate?

**Mr BUFFIER:** Section 92 of the Constitution provides that there shall be free trade between the States.

**The CHAIR:** That is why there have been no prosecutions.

**Mr BUFFIER:** We were challenged and we felt that the proximity principle offended section 92 of the Constitution, so we were not in a position to enforce it.

**The Hon. PENNY SHARPE:** Who challenged the principle?

**Mr BUFFIER:** I am not certain of the legal entity.

**The Hon. PENNY SHARPE:** Can you take that question on notice?

**Mr BUFFIER:** I am hesitating because it was the Bingo Group, but I am not sure of the exact entity.

**The Hon. MATTHEW MASON-COX:** Do you have an estimate of how much waste has been transported to Queensland?

**Mr BUFFIER:** In the past financial year it was 670,000 tonnes.

**The Hon. MATTHEW MASON-COX:** How much was transported in the past five years, since the levy was introduced?

**Mr BUFFIER:** It has ramped up to that.

**The Hon. MATTHEW MASON-COX:** How much has been transported since 2012 and since they took the levy?

**Mr BUFFIER:** I will take that question on notice.

**The Hon. MATTHEW MASON-COX:** What would be the estimated levy if they had dumped the waste in New South Wales?

**Mr BUFFIER:** I will take that question on notice.

**The CHAIR:** Thank you for appearing before the Committee this afternoon. The inquiry has extended its terms of reference. Given that, it will take a little longer to complete. Given the *Four Corners* report, we may give you a right of reply. You have taken some questions on notice. You have 21 days in which to answer them, and the secretariat will assist you in that regard. In light of your evidence, the Committee may forward some further questions.

**(The witnesses withdrew).**

**(The Committee adjourned at 16:32.)**