

REPORT ON PROCEEDINGS BEFORE

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

'ENERGY FROM WASTE' TECHNOLOGY

At Macquarie Room, Parliament House, Sydney on Friday, 24 November 2017

The Committee met at 11:10 am

PRESENT

The Hon. Paul Green (Chair)

The Hon. Lou Amato

Ms Mehreen Faruqi

The Hon. John Graham

The Hon. Shayne Mallard

The Hon. Penny Sharpe

The CHAIR: Welcome to Portfolio Committee No. 6 inquiry into energy from waste technology. The inquiry is examining the waste industry in New South Wales. Before I commence, I acknowledge the Gadigal people who are the traditional custodians of this land and I pay respects to the elders past and present of the Eora nation, and extend that respect to other Aboriginal people present or who may be listening today. Today we will hear from the NSW Environment Protection Authority.

Before we commence, I will make some brief comments about today's procedures. Today's hearing is open to the public and is being broadcast live on 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 broadcast guidelines, I inform members of the media who are here or who may be joining us that while Committee members and witnesses may be filmed or recorded, people in the public gallery should not be the primary focus of any filming or photography. I also 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 of their evidence at this hearing. I urge witnesses to be careful about any comments you may make to the media or to others after you complete your evidence, as such comments would not be protected by parliamentary privilege if another person decided to take action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be questions that a witness could answer only if they had more time or with certain documents at hand. In those circumstances witnesses are advised that they can take a 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 terms of reference and avoid naming individuals. In terms of delivering messages, please use the secretariat to pass messages between you and people in the gallery. In terms of audibility, to aid those who are here today who have hearing difficulties, it may be helpful if they sit towards the front. Finally please turn mobile phones to silent for the duration of the hearing.

BARRY BUFFIER, Chief Executive and Chair, NSW Environment Protection Authority, on former oath

MARK GIFFORD, Chief Environmental Regulator, NSW Environment Protection Authority, on former oath

Mr BUFFIER: Could I make just one comment, please?

The CHAIR: Yes.

Mr BUFFIER: I will table this document. We responded to a question on notice in August after we appeared last time in relation to the amount of waste going to Queensland. We have done some more compliance and auditing of that data integrity work, and I want to now table the revised estimates of the amount of waste going to Queensland.

The Hon. PENNY SHARPE: Will you tell us quickly what they are?

The Hon. JOHN GRAHAM: Is it up or down?

Mr BUFFIER: It is up. We previously said 690,000 tonnes in 2016-17 and 410,000 in 2015-16. The revised figures are 830,000 tonnes for 2016-17 and 430,000 tonnes in 2015-16. The main problem was caused by a Queensland receiving facility that was misreported as a New South Wales facility.

The Hon. SHAYNE MALLARD: What does one of those semi-sized trucks hold? I drive the M5-M7 and I see these giant trucks.

Mr BUFFIER: Thirty to 50 tonnes.

Mr GIFFORD: The single ones are 10 tonnes plus. Then you have a B-double with a trailer at the back and they are 20 or so.

The Hon. SHAYNE MALLARD: It is a lot of truck movements.

Mr BUFFIER: Yes.

The Hon. SHAYNE MALLARD: A lot of danger on the roads.

The Hon. JOHN GRAHAM: I note in the submission from the NSW Environment Protection Authority [EPA] that you say the EPA is the leading jurisdiction in Australia for prosecutions. I do not accept it is a fair comparison in that we have a higher waste levy. The incentives here for reward are higher. One would expect more regulatory activity, more prosecutions—put aside our higher population—in order to enforce that. I do not accept one of the premises in your submission although I accept that you have made the point. I am not disputing the facts you are putting, they are relevant, but they are not sufficient in my view. In 2016-17 the EPA completed 11 waste prosecutions amounting to \$411,000 in financial penalties. It does not seem very high per penalty for what has been put to the Committee as the price of doing business, the price of breaking these waste laws if you are only being fined about \$40,000 for each offence. Is that enough if you break these waste laws?

Mr BUFFIER: I will respond at a fairly high level first and then ask Mr Gifford to provide some more detail. When we are looking at our prosecution record, we are looking across more than waste. Yes, we might be a larger State than Tasmania which had no prosecutions last year, but even allowing for scale I think we do have a very significant prosecution record.

The Hon. JOHN GRAHAM: But the average is even lower for general prosecutions, at about \$20,000. I am just asking specifically about waste.

Mr BUFFIER: I was not defending the amount, I was just talking about the number of prosecutions which is quite a significant number. In relation to the amount, that is one of the issues that we were talking about earlier when we were talking about monetary benefits. I will ask Mr Gifford to respond.

The Hon. JOHN GRAHAM: I am happy for you to put that on the record.

Mr GIFFORD: The first comment I would make is with respect to penalties as a result of criminal prosecution, we have no control over that; that is a matter for the court. The court determines those penalties. The maximum penalties are set in the legislation.

The Hon. JOHN GRAHAM: The court and the legislation determine those, so the Committee is interested in the legislation.

Mr GIFFORD: So the legislation sets the maximum amount, the court determines the penalty for the particular instance or issue. In terms of those figures, what also occurs is that it takes some time before we are in court and so the matters themselves predate the court hearing, often by some years. In some matters we have had

before the courts they have taken an extraordinarily long time to reach conclusion—again something we do not have control over once it is in the courts. In terms of the numbers of prosecutions, I can tell the Committee that it is growing. The numbers of prosecutions that the EPA takes overall are growing and the percentage of those overall numbers that are waste are also growing.

The Hon. JOHN GRAHAM: And you have put that on the record, but I want to ask about the fines. The amount of \$40,000 is three loads of contaminated waste, potentially, based on other evidence, or maybe eight loads of building and construction waste. If a person can run three loads illegally they have already paid the fine. Even after years of court action, is that enough to act as an economic disincentive for these operators?

Mr GIFFORD: No. We would absolutely prefer if the penalties are higher.

The Hon. JOHN GRAHAM: I want to ask about the issue of phoenixing from a policy level. The Committee has evidence of companies in this industry that operate with multiple corporate shells that are being registered and then deregistered, or are in the process of being struck off the ASIC register. It looks like it is shonky. What concerns does the EPA have about phoenixing when it is trying to regulate this industry?

Mr GIFFORD: We absolutely have a concern about corporate structures and the phoenixing of companies. It is an area where we are putting a great deal of attention to understand how corporate structures are created and the purposes for which they are created. We find with some corporate entities that might have multiple businesses registered and then deregistered that those businesses are not necessarily involved in, for instance, waste activity; they are being created for other purposes for that particular corporate entity. But for activities that are licensed by us and that we regulate or those that we seek to take regulatory action against because they are doing something unlawful or illegal, it is a challenge that companies can be deregistered and that means that there is no-one left to prosecute, essentially. Then there are challenges in getting the material cleaned up in cases where it is illegal dumping, for instance.

The Hon. SHAYNE MALLARD: I want to explore illegal dumping in the outer suburbs. My experience comes from local government in Liverpool as well as in the city. Would you talk us through your relationship with local government, because councils are often the first to get reports of illegal dumps? I know there has not always been a smooth connection with the EPA and I would like to know a bit about that. I would also like to know about the area of command. At the end of the day, a local area command like Liverpool would have a lot of intelligence regarding illegal dumping and the types of operators doing it.

Mr BUFFIER: I will talk again about the high-level relationship. We meet on a regular basis with Local Government NSW. In fact, we provide support for one of the staff members there in relation to ensuring that the relationship regarding what we are doing with waste is well understood. We have a relationship with local government that covers three broad areas. One is they are significant partners in the Waste Less, Recycle More program in that they are eligible for significant grants for their programs. We are co-regulators with them—and Mr Gifford will talk about this in more detail—where they are the appropriate regulatory authority for the smaller end of the issues that we deal with. A good example of where we work very closely together is the regional illegal dumping [RID] squads, the illegal dumping squads, which are jointly funded by EPA and councils.

The Hon. SHAYNE MALLARD: Are they based in councils?

Mr BUFFIER: Yes, they are based in councils. There is a governance committee which we are involved in but they are based in councils.

Mr GIFFORD: They are typically hosted by a council on behalf of a collective of councils.

Mr BUFFIER: Then we also regulate councils. They have licensed facilities and activities where we are the regulator. It is a complex relationship but I think it is a productive and mature relationship. That does not mean it works seamlessly everywhere. We will often have to go back and review or rework relationships. Sometimes where an incident occurs and we are both responding it is not as seamless as we might want it to be—we cannot find the appropriate person on council or council thinks it is our job and we think it is theirs. There are always those intersections.

The Hon. SHAYNE MALLARD: That intersection is where I have seen the conflict. There might be landfill and asbestos and the council is waiting for the EPA to come along and do the work.

Mr BUFFIER: I think that is the issue you want to focus on, so I will ask Mr Gifford to answer that.

Mr GIFFORD: Yes, it is a multifaceted relationship but it is a strong partnership as well. It has to be because we are co-regulators. There will sometimes be circumstances where a council is investigating a matter that the council officers determine is one for the EPA because of the nature or the scale of the activity. There are

formal mechanisms through which they can notify us of that and then we will respond. Then together we either assist them to undertake the activities that they might need to take in terms of getting things back to compliance or cleaning up the cause of the pollution or concern, or we take over the matter through a formal agreement that we will do that.

It is a relationship that is also supported by us through capacity building of councils and their officers through training and support. In some circumstances even when we are not the regulatory authority for the matter that council has in front of them, with council's permission we might assist in drafting statutory notices and things of that type because we understand that they do not have the capacity or the capability to do it. It is variable across local government and local government areas. Some councils have very strong environmental management areas in their councils. In others it is dispersed across other things because of the small nature of the council. Particularly in our regional locations, our regional staff work very closely with local government. It is a very strong and close relationship in those regional locations because that is often where the capacity is less in local government.

The Hon. SHAYNE MALLARD: This goes to the Chair's regular area of discussion that councils are always struggling for resources. Can some of the Waste Less, Recycle More funding go into the enforcement capability building area as well?

Mr GIFFORD: Yes. The Government has an Illegal Dumping Strategy that allocates around \$63 million over a four-year period. A proportion of that funding goes to the RID squads, but there is also funding out of that particular allocation for other compliance enforcement activity that councils might want to undertake, as an example. There are other areas through Waste Less, Recycle More that they can access as well.

The Hon. SHAYNE MALLARD: During the time taken from identifying a dump through to engaging you, the illegal dump operator can shoot through and be gone and there is just a mess left to clean up on someone's land. Is the time line a problem?

Mr GIFFORD: Not generally between council officers and ourselves, or certainly not between RID squad officers and ourselves because of the systems that are there to support that. In 2015 we released a system we called RID Online where members of the public can report illegal dumping. It was specifically for illegal dumping. There is a component of that system that is available specifically to the EPA and council officers as well to register into that system to get data from it and to communicate back in the sort of example I gave before where council officers or RID squad officers might respond to an illegal dumping matter through there but then determine that perhaps this is one for the EPA. There is a formal mechanism that they can use to alert us. Certainly the systems are there for that quick response and notification. There might well be a delay between the dumping occurring and either council or ourselves becoming aware of it. Illegal dumping by its nature is often in remote, inaccessible or difficult to access areas. It means that you are not aware of it until you get a notification often from a member of the public.

The Hon. SHAYNE MALLARD: I sense that you are getting more notifications because suburbia is pushing into those areas where it is done at night and is not seen. The second part of the question was about the area command. What capability do you have at the local area command to identify illegal activity or dumping?

Mr GIFFORD: That is a good question, and a good way to answer it would be to provide an example. We had a matter that we were investigating that council originally had and we took it over because of the nature and scale of the activity. It appeared that illegal dumping was occurring, but we were not entirely sure where. However, we had a general idea based on data we were able to get from Roads and Maritime Services about truck movements. We then needed to engage with not only the local police but also others about where truck movements might have occurred to narrow down where it might be happening and therefore to deal with it. That is an example of that kind of interaction. It can be through an investigation.

It might also be through our ongoing investigation relationship with the police around other matters to do with environmental crime. Relationships are built between local area commands and our regional staff. From time to time we call on the police for assistance to support our staff when investigating matters and when we think there might be safety risks, or where we have notifications of persons of interest to us or to the police where they share that concern about those people. Those relationships are built up through those interactions and therefore can be called on for other intelligence or information of that type.

The Hon. SHAYNE MALLARD: In your opening statement you talk about the revised figure for waste going interstate being 830,000 tonnes over the past year. I live in the mountains and I often travel on the M7, the M4 and the M2. I see thousands of trucks, but they are not marked. Sometimes they are clean and sometimes they are dirty. There are giant containers on semitrailers and I assume they are carrying compacted

waste north. At the moment we are not able to address the fact that that is happening. Should we require signage on these vehicles so that people know what is going on? Should the sign say, "Waste going to Queensland"?

Mr BUFFIER: We could.

The Hon. SHAYNE MALLARD: They are unmarked.

Mr BUFFIER: I am not sure why we would do that. What would we do with it? We could require them to have a placard, but we would require a regulation to do that. We do not have that power at the moment. Of course, dangerous goods must be placarded.

The Hon. SHAYNE MALLARD: I think the public would be shocked to know that so many trucks were travelling to Queensland carrying landfill waste.

The Hon. LOU AMATO: It is contaminated material. That is a good point. It is hazardous.

Mr BUFFIER: There is no suggestion of that.

The Hon. SHAYNE MALLARD: I am not suggesting that. I am suggesting that the public would be shocked if they knew how much waste was involved.

Dr MEHREEN FARUQI: I have some questions about the exhumation of waste, which has been raised in the inquiry a couple of times. What is the environmental purpose and why is the levy refunded?

Mr BUFFIER: I do not presume to have all the knowledge on this, so I might have to answer some of the questions on notice. We do not support the exhumation of waste and having it used to refund the waste levy. We do not believe that has any particular purpose. There might be some instances where you are able to recover a resource, but that in itself is not supported.

The Hon. PENNY SHARPE: How can it happen? Is there a loophole we need to close?

Mr BUFFIER: I will get advice on that. The regulation, which is out for public discussion at the moment, refers to banning that process.

Dr MEHREEN FARUQI: How long has it been in place? How long has it been going on? Do you have any records of how much has been exhumed?

Mr BUFFIER: I will take that question on notice.

Dr MEHREEN FARUQI: How long has it been going on for, how much waste has been exhumed during that time, and how much in waste levy has been refunded?

Mr BUFFIER: I will take that question on notice.

The CHAIR: Ms Sharpe made a comment. If you disagree, why?

The Hon. PENNY SHARPE: I want to know under what regulation it is happening and what we need to change. I have not seen the draft regulation.

Mr GIFFORD: The draft regulation that is out for public exhibition has a specific prohibition on the exhumation of waste.

Dr MEHREEN FARUQI: Is there a discussion paper or just the regulation?

Mr GIFFORD: There is some material on our website that explains the background to some of those things. However, there is no discussion paper as such.

Dr MEHREEN FARUQI: I was surprised to read in your submission that the EPA did not have its own legal branch until 2016. Is that because you did not have that capacity that we are seeing about issues with prosecutions and you do not have the expertise to be able to explore or to investigate more?

Mr BUFFIER: When the EPA split from the Office of Environment and Heritage [OEH] we had a service agreement that covered corporate, administration, science and legal support. We had always worked closely with that team. Mark Gifford worked with them. The legal services were provided to us under a service agreement and that worked very well.

Dr MEHREEN FARUQI: Why was it changed?

Mr BUFFIER: Because the opportunity came along with the creation of the larger Department of Planning and Environment [DPE] cluster. There was a view that there should be one large legal branch and the OEH would move to the larger team. I spoke to the Secretary of the cluster and said that my preference would

be to keep that expertise close to us and in-house, and that I was prepared to pick it up and not have it provided by a service agreement. That was done.

Dr MEHREEN FARUQI: Obviously you think that is a better arrangement.

Mr BUFFIER: We have always had a very close working relationship. One of the advantages has been that the head of legal now sits on the Environment Protection Authority Executive and I think we have more day-to-day engagement. However, the working relationship has always been excellent. Mark has worked with Steve Garrett and Gordon Plath for a long time. There was no issue with the working relationship.

Dr MEHREEN FARUQI: And the OEH still has its own legal team?

Mr BUFFIER: No. Legal services are provided by the DPE legal team.

Mr GIFFORD: There is a cluster arrangement.

Dr MEHREEN FARUQI: They went with the cluster, but you decided to keep it in-house?

Mr BUFFIER: We took the opportunity and I was keen to do it.

Dr MEHREEN FARUQI: Page 15 of your submission refers to a case study involving Crush and Haul Pty Limited, which had an operation at Badgerys Creek and which was operating without a licence. I think they took about 65,000 tonnes of waste and some prosecutions were launched. Is the facility still operating?

Mr GIFFORD: I do not know. I will take the question on notice.

Dr MEHREEN FARUQI: If it is operating, how is it operating? Has it been licensed?

Mr BUFFIER: We will take that question on notice.

Dr MEHREEN FARUQI: Did you or the DPE undertake any analysis of where that 65,000 tonnes of waste came from?

Mr GIFFORD: We will take that question on notice as well.

Dr MEHREEN FARUQI: Did any of that waste come from the WestConnex project?

Mr GIFFORD: I will take that on notice.

Dr MEHREEN FARUQI: Earlier the Hon. John Graham was talking about phoenix operators. A bill was passed in 2013—I had just started in Parliament—called the Protection of the Environment Operations Amendment (Illegal Waste Disposal) Bill. As far as I remember the then environment Minister was Robyn Parker. The whole premise for that bill was to stop phoenix operators and penalties for repeated waste offences. It is now 2017 and you have said that phoenix operators are still a problem. Did that kind of law work?

Mr BUFFIER: I think we said we are still aware of that as an issue.

Dr MEHREEN FARUQI: Did it help to improve the issue? It has now been four years. Surely, if that was the purpose of the bill, most of the phoenix operators would have been tackled by now.

Mr GIFFORD: The nature of phoenix operators is that they come and go.

Dr MEHREEN FARUQI: Do you know how many people have been prosecuted under that law?

Mr BUFFIER: No, we will take that on notice.

Dr MEHREEN FARUQI: During this inquiry the issue of charging a waste levy at transfer stations and recycling facilities has been raised.

Mr BUFFIER: Yes.

Dr MEHREEN FARUQI: I think you said, based on the experience of the NSW Environment Protection Authority [EPA], that there are potential constitutional issues.

Mr BUFFIER: Yes.

Dr MEHREEN FARUQI: But none of those issues, as far as I can see, were highlighted in your submission. Can you explain a little bit more about those potential constitutional issues?

Mr BUFFIER: I think we did mention specifically sections 90 and 92 of the Constitution. Section 90 relates to applying a levy. The general approach with waste has been that it is not a levy on anything in the production chain because waste is at the end of the production chain. So if you apply it at the end of the

production chain then that provides some protection against section 90 of the Constitution. Section 92 talks about free trade between the States.

Dr MEHREEN FARUQI: That I understand. What does that have to do with applying a levy at a transfer station?

Mr BUFFIER: It doesn't. What we are saying is that there are two sections of the Constitution that can potentially cause problems.

Dr MEHREEN FARUQI: But that has not been tested?

Mr BUFFIER: I am sorry?

Dr MEHREEN FARUQI: If you apply section 90 not at the end of the chain?

Mr BUFFIER: I think there might have been some other challenges, but certainly the obligation for us is not to apply something that would be regarded as a levy and therefore someone could challenge that under section 90 of the Constitution.

The Hon. PENNY SHARPE: How did it get made in the first place if it was going to be so unconstitutional?

Mr BUFFIER: I think you are talking about section 92.

The Hon. PENNY SHARPE: I am talking about the proximity principle that you are now proposing to repeal.

Mr BUFFIER: The proximity principle—

The Hon. PENNY SHARPE: I understand what it is.

Mr BUFFIER: The issue there was in relation to section 92.

Dr MEHREEN FARUQI: So that did not come under the EPA's radar or the Government's radar when you put it in place?

Mr BUFFIER: Yes, it did.

Dr MEHREEN FARUQI: It did?

Mr BUFFIER: Yes.

Dr MEHREEN FARUQI: So why was it put in place?

Mr BUFFIER: Because lawyers have different opinions—

Dr MEHREEN FARUQI: That could be the same with section 90?

Mr BUFFIER: —as we are seeing now with section 44 of the Constitution. If there was never a dispute there would be a lot of poor lawyers around the place.

Dr MEHREEN FARUQI: But you are now giving the opposite argument for section 90.

Mr BUFFIER: No, I am not. What is the opposite argument?

Dr MEHREEN FARUQI: If we did not have section 90 of the Constitution, would there be any advantage in putting a waste levy at a transfer station and recycling facility rather than at a landfill?

Mr BUFFIER: The complexity would be an issue in terms of how you would apply it. Material comes into a recycling centre and it does not all go to landfill. At what point do you apply the levy to that material that comes in? Some of it goes to recycling and some of it goes to landfill. If you are applying it at the point at which it comes in, that is an issue. Then you have to track the waste that goes to landfill, keep track of that and refund. These are quite complex issues, which have had a lot of discussion and a lot of investigation. There is nothing we would like more than a simple solution to this issue. How do you stop people using their best endeavours to circumvent a levy? The levy is there in order to provide an incentive for people to recycle.

Dr MEHREEN FARUQI: I do understand that.

Mr BUFFIER: We are on about 63 per cent recycling rates now—up from 45 per cent. We are aiming to get to 75 per cent recycling rates by 2021. If we do not get to 75 per cent recycling rates we will be drowning in our own waste. The reality is we will be exhausting landfill in Sydney if we do not get to 75 per cent. The total volume of waste produced in New South Wales is at about—we are the second highest per capita producers of waste in the world—17 million tonnes.

Dr MEHREEN FARUQI: That is an issue in itself. We need to probably go up in the chain and stop producing so much waste.

Mr BUFFIER: I agree. And that is our waste hierarchy, which says the first thing is to try and stop it. The waste levy is there to achieve something which is a very real issue. We are producing vast quantities of waste and we send to landfill every year now six million tonnes of waste. The increase that will occur if we do not get to 75 per cent means that we will exhaust those landfills. This is an important issue for the community and it goes to the heart of what the energy from waste inquiry is about. What is driving that?

The CHAIR: This is my point of contention. You speak so passionately about that, yet we rob the people in our local areas to build these waste diversion stations by ripping them off with the waste levy and hypothecating it in their regions. Local governments pay that waste levy twice over: they pay the waste levy and then the ratepayers in those areas pay again for initiatives to divert waste from landfills. We need to hypothecate a large portion of those things so that regional waste diversion stations can be built, but all this cost shifting to local government is ridiculous.

It will never reach the sort of passion that you are seeing because, for a start, local government does not have the money to do it and the double-dip on their ratepayers is just wrong. If we are serious about dealing with the issue we have to hypothecate some of that waste levy and give it back to the ratepayers so they can build these waste diversion stations at the landfill gateway. I am really passionate about this. You say we can make so much difference if we divert from landfill but there is a hand up the back of local councils across New South Wales. With the regional waste strategy we need to network right across New South Wales and we cannot expect the outcome you are talking about without giving the money back.

The Hon. SHAYNE MALLARD: Mr Chair, I think that is being unfair to the witnesses.

Mr BUFFIER: That is a policy.

The Hon. SHAYNE MALLARD: That is a policy matter, which they have articulated in previous evidence. The Chair might want to take it up with the Department of Finance or Treasury.

The Hon. PENNY SHARPE: We will take that as a comment.

The CHAIR: I am allowed one comment but I was trying to avoid it.

Dr MEHREEN FARUQI: On page 2 of your submission you mention that the high level of subcontracting in the industry is leading to difficulties in establishing evidence of accountability for illegal waste dumping. How do we address that issue?

Mr BUFFIER: We are open for suggestions. There are, as we say, 330,000 licenced trucks over eight tonnes in New South Wales.

Dr MEHREEN FARUQI: How do we track back to the producer?

Mr BUFFIER: That is a huge number of trucks that can be involved in subcontracting. We are not suggesting that they are all owned by individuals.

Dr MEHREEN FARUQI: But it is an issue.

Mr BUFFIER: It is an issue.

Dr MEHREEN FARUQI: You have the experience so any suggestions would be appreciated.

Mr BUFFIER: I think what you are seeing is that we are increasingly using technology in trying to track movements and trying to require people to record so that we do exercise more control. There are more regulations and we are requiring people to abide by those regulations, but you can rapidly get to a stage where you have got a huge amount of regulation.

Mr GIFFORD: The subcontracting and sub-subcontracting that goes on, the hiring of vehicles and the hiring of drivers separate to vehicles, is absolutely a problem. There probably is one thing that we have thought about which might be beneficial in terms of being able to make the owner of the vehicle and the trailer associated with the vehicle that transports waste responsible for the transport, so you would have someone to come back to. Even if that owner has sublet the vehicle, you can come back to the owner and make the owner responsible. We cannot do that under current legislative arrangements. That is one thing that could perhaps be brought to bear.

The Hon. PENNY SHARPE: Thanks for providing us the updated figures on the amount of waste that is going to Queensland. Obviously no-one is happy about that. It is many, many trucks. It is dangerous. Even on the back of an envelope it is \$114 million that New South Wales is losing every year.

The Hon. SHAYNE MALLARD: Five hundred to 1,000 trucks—

The Hon. PENNY SHARPE: I accept that there are constitutional issues in relation to the proximity principle, and I understand—it is in your submission—it is going to be repealed, possibly through that. Your submission seems to indicate that there are two ways that this is going to be sorted out. One is through a national approach; the other is if Queensland institutes its own waste levy. The industry argues differently to you on that and suggests that there are other options, and Dr Faruqi has alluded to some of that, which is other ways of collecting it.

What else have you looked at? I know that you are not unaware. The \$114 million a year is a huge amount of money lost to this State that we cannot afford to lose. It is also jobs. What other options are there beyond the glacial pace of change through the national reform process? My understanding about the Queensland election is that only a Labor government has suggested that if they get re-elected on Saturday might put in a waste levy. It seems a long way off, and in the meantime we have thousands of trucks and hundreds of millions of dollars going out the door.

Mr BUFFIER: This is an issue that has had a lot of discussion by heads of EPA. At the last meeting of heads of EPA there were six options that were looked at to try to address this issue. I agree with you about the glacial pace of national solutions.

The Hon. PENNY SHARPE: We could be waiting for a decade, at least.

Mr BUFFIER: It can be a long and difficult process. By far the quickest and simplest answer would be if Queensland had a reasonable waste levy. That would be good for their recycling. The business model that we rely on in New South Wales is about making it attractive for people to recycle. The easy and simple way to do that is by a levy. That has been generally agreed. If there has been any agreement around the States, it has generally been on that issue. If it was within my remit I would certainly like to see a levy in Queensland.

The Hon. PENNY SHARPE: So we have nothing else, basically?

Mr BUFFIER: No; we are looking at the other options that might be available. You could step in and have a national approach.

Dr MEHREEN FARUQI: It is not in your remit.

The Hon. PENNY SHARPE: That is two options. What are the other four options we have here?

Mr BUFFIER: Sorry, the six options that we looked at were various types of national schemes.

The Hon. PENNY SHARPE: I think we are going to be waiting a long time.

Mr BUFFIER: Could I just make one point so that people understand? I do not know the figures but a lot of the waste going to Queensland is going by train.

The Hon. PENNY SHARPE: We still lose the money, but yes.

Mr BUFFIER: There was a reference to all the trucks. I am just saying—

The Hon. PENNY SHARPE: I was going to come directly to that train issue. You say in your submission that there are intermodal facilities that are storing waste. Are they licensed to do so?

Mr BUFFIER: It is a point of considerable dispute as to what the requirements are there. The intent is to make it very clear that those facilities would need to be licensed.

The Hon. PENNY SHARPE: They are not currently licensed?

Mr BUFFIER: It is a dispute as to whether they need to be or not.

The CHAIR: In your view do they?

The Hon. PENNY SHARPE: But they are not currently licensed.

The Hon. SHAYNE MALLARD: Are you in court?

Mr BUFFIER: Not yet.

Dr MEHREEN FARUQI: Do those figures that you have given us on the waste to Queensland include waste transported by both trains and trucks?

The Hon. PENNY SHARPE: That is the total?

Mr GIFFORD: It was the total.

The Hon. PENNY SHARPE: I would hope so, otherwise it would be double. Everyone talks about New South Wales's good recycling rates. We know that there is significant community concern in relation to this. It is good that we are doing the recycling but people are concerned about what is happening with the recycled products. My question is: What preparations have been put in place by the EPA given China's impending ban on the receipt of recycling material?

Mr BUFFIER: In one particular area, which relates to glass, we have engaged the Centre for International Economics to do a review. What is the market for glass? What are the issues at play there? What are the other opportunities? Et cetera. That is a reasonably substantial piece of work. But in relation to—

The Hon. PENNY SHARPE: The impending China ban?

Mr BUFFIER: In relation to recycling generally that has been an issue that has been on the agenda for heads of EPA and ministerial council in terms of how we develop other markets in Australia to use those products.

The Hon. PENNY SHARPE: I get all that. That is all very slow. We have an impending ban in—

Mr BUFFIER: Some of it is not particularly slow. The use of tyres in roads and things like that—

The Hon. PENNY SHARPE: What the industry is telling us is that there is an impending ban in China. Those that are licensed and are doing the right thing have got limits on the amount of waste and recycling they are allowed to store on site. They believe that by, I think, 1 December they are not going to be able to ship it to China, which is what they are currently doing, and they are going to end up with stockpiles, which could see them being fined by the EPA. What I am asking you is: What discussions have you had with industry about that, and are you making allowances until some of this situation is sorted out? How is it going to be dealt with?

Mr BUFFIER: I do not have the precise answer to that at this stage. It is a problem.

The Hon. PENNY SHARPE: I would also argue that the container deposit scheme is going to lift the volumes enormously, if it works. Again, it is good that people are going to recycle. The community think they are doing the right thing and they are doing the right thing by recycling their material, but if it is just getting stored in containers with nowhere to go, that is not recycling, that is just a very expensive storage system.

Mr BUFFIER: One of the provisions under the container deposit scheme is that to be eligible to get the 10¢ refund the material needs to be recycled and it needs to be shown to be recycled. There is an audit process in that. Effectively, what the container deposit scheme [CDS] is doing in that particular instance is putting a value on that glass—

The Hon. PENNY SHARPE: I am across that. My issue is that people are doing the right thing in recycling it. The recyclers are taking the material, but with China closing down in terms of taking plastics there is nowhere for it to go.

Mr BUFFIER: I understand the issue you are raising but I am saying that the container deposit scheme puts a value on that product and a requirement that it be recycled. So there is a financial incentive for it to be recycled and there is a regulatory requirement for it to be recycled.

The CHAIR: What would be the market for that if China shuts its doors? Where do you see the market for such a thing being driven?

Mr BUFFIER: If we are talking about glass, it would be a lower value use for glass because you have the value embedded in the 10¢ per container. That will drive that material into recycling.

The CHAIR: It is already in storehouses in Victoria.

The Hon. PENNY SHARPE: Are you saying that we are not going to see more storehouses in Queensland and Victoria as a result of this for glass?

Mr BUFFIER: You may possibly, but if it is coming from CDS it will not get the 10¢.

The Hon. PENNY SHARPE: I want to go back to the issue in relation to organised crime within the waste industry. Obviously that is a huge issue, which we have discussed. Your submission, on page 2, talks about the opportunity for profiting from unlawful activities, which means that there is "a persistent criminal element in the waste industry that is both agile and difficult to neutralise". In your submission you talk about the establishment of the waste crime task force. Could you provide to the Committee how big it is, what you expect it to be dealing with and what sort of outcomes you are hoping to get through this task force that was recently established?

Mr GIFFORD: The task force will initially have 10 or 11 members and they are officers who have strong demonstrable investigative experience—ex-police in some cases. We have skilled operations staff who have been working in the waste area for a long period of time, so they bring back knowledge of the industry to the task force; intelligence officers as well, and dedicated legal staff to that team. That is the make-up of that task force. It will be taking on those matters that are high profile, complex, difficult, perhaps involve hazardous materials or involve organised criminal activity. That is generally the remit for that group. Our operations compliance and enforcement staff will continue to also investigate waste crime and other matters. The group is overseen by an investigations management committee that I head up to make sure that it is focused on those particular activities.

The Hon. PENNY SHARPE: Is there any formal police involvement with this task force?

Mr GIFFORD: Not directly at this stage, but there no doubt will be—or my expectation is that there will be as we move through particular matters. The matters that they have assigned to them currently are all high-profile matters, some of which have been in the media in recent times, some of which involve police already, and there will be strong links between the group and police through the intelligence-gathering aspect of the responsibilities of that waste task force as well. The aim of that task force is to deal with that high-level organised, complex-type activities, but also to do more work around understanding the nature of the players and individuals who engage in that activity—so that is that more detailed intelligence and analysis work—to disrupt the business models that we are seeing develop before they take hold, essentially. So there is a reactive and a proactive element.

The Hon. PENNY SHARPE: In terms of trying to get the shonks and the criminals out of the waste industry, would the application of a "fit and proper person" test further down the chain through licensing and those kinds of things be useful to you?

Mr GIFFORD: We currently have a "fit and proper person" test within the legislation.

The Hon. PENNY SHARPE: At what level does it go to? I am asking about whether we need to drive it further down, say, with trucks—

Mr GIFFORD: The "fit and proper person" test applies to anyone who applies to have an environment protection licence. So it is anything we license, essentially.

The Hon. PENNY SHARPE: I suppose what I am getting at is that if there is some subcontracting which is where the problem is, whether it is worth looking at driving that further down the chain in terms of what we are seeing and what we understand to be some of the problems.

Mr GIFFORD: It is possibly something we could examine, yes.

Mr BUFFIER: Could I make one final comment?

The CHAIR: Yes.

Mr BUFFIER: At the last hearing I was asked questions in relation to the matter that I referred to ICAC and the *Four Corners* program. I just wanted to let the Committee know that yesterday I received a note from ICAC saying they would not be investigating the matter as they had found no evidence of corrupt behaviour.

The CHAIR: Thank you for appearing. You have given a lot of evidence today and we may have some further questions in light of that evidence. You will have 21 days to answer, and the secretariat will be able to assist you with that. Your evidence has been very helpful. Once again, we appreciate your attending. We may get you to attend in the future because the inquiry will not be finished until next year. We may need you back to clarify some matters as well. Thank you for your time.

Mr BUFFIER: In relation to the questions that were asked of me in the in camera session, which might be fairly confidential, what is the status of those when we respond?

The Hon. PENNY SHARPE: They are still confidential, they will not be published. They will only come to us.

The CHAIR: Nothing will be published without your permission. That concludes the hearing.

(The witnesses withdrew)

(The Committee adjourned at 12:05)