LOGAN CITY COUNCIL SUBMISSION
ON THE
WASTE REDUCTION AND RECYCLING BILL 2011

(RELEASED AUGUST 2011)

INTRODUCTION

On behalf of Logan City Council, the *Waste Reduction and Recycling Bill 2011* has been examined by Council's Environment & Sustainability Branch and City Standards Branch, primarily with respect to the Bill's proposed:

- Chapter 5 (Offences relating to littering and illegal dumping) provisions -
  - Littering and illegal dumping;
  - Public reporting of vehicle littering or illegal dumping
  - Unsolicited advertising material

- Chapter 10 (Authorised persons) provisions

- Chapter 11 (Show cause and compliance notices) provisions

- Chapter 14 (Miscellaneous) provisions

This submission is a modified version of that which Council forwarded to DERM in July on the Confidential Consultation Draft Bill, accounting for the changes made to the Bill since and encompassing additional areas of comment.

For the purposes of responding on the Bill, where appropriate, recognition has also been given to the current monitoring and enforcement provisions of the *Environmental Protection Act 1994 (EPAct)* when analysing equivalent provisions of the Bill.

Observations are also made about:

- The proposed removal of *Chapter 7, Part 7* of the EPAct as per s313 of the Bill contained in its Chapter 16 (Repeal and amendment of other legislation) in relation to waste management works approvals; and

- Certain aspects of the waste levy provisions (Chapter 3 of the Bill), where the latter interrelates with historical enforcement areas. (The abovementioned branches acknowledge that the waste levy is largely the province of Council's Logan Waste Services to comment. This is therefore an independent submission to anything that Logan Waste may have provided or intends to provide).

GENERAL

- It is acknowledged that the *Environmental Protection (Waste Management) Regulation 2000* (which Council recognises is over 10 years old) will not be repealed, but the *EPP (Waste Management) 2000* will. Therefore waste legislation will sit under two Acts. This makes it incumbent on DERM to ensure that the Environmental Protection Act 1994 (EPAct) and future *Waste Reduction and Recycling Act (WRRAct)* are as consistent as possible, particularly with respect to monitoring and enforcement (authorised person) provisions.

- Time has not permitted every single word of the 'Authorised Person' provisions to be studied, but Council has often advocated for monitoring and enforcement provisions to be made as consistent as possible across Local Government Acts (Acts administered by local governments - see the *Local Government Act 2009*). Council has input into the State Governments 'Local Government Statute rationalisation Project' this year, which is apparently looking at this very issue.

- Council outlined in its earlier submission on the confidential consultation draft Bill that the requirements contained in *Part 2A* of the above Regulation should be maintained irrespective of the particular reform path taken. This has occurred.

- In view of its community sharps management initiatives, Council takes note of the provisions of the above Regulation pertaining to clinical and related waste management plans being repealed (as per s313 of the Bill). It would appear that the equivalent provision under the Bill may be Chapter 6, Part 4.

- Council also awaits the presumed associated reforms to the State Penalties Enforcement Regulation 2000, and specifically requests the opportunity to comment on proposed PIN offences.

- The establishment of the 'Waste and Environment Fund' and its object of providing funding for waste management initiatives and environmental initiatives is acknowledged. It is affirmed that the Fund should also support activities, including collaboration between DERM and local government, to ensure better compliance amongst various industry sectors.

SPECIFIC COMMENTS

Delegation / devolution to local government

It is acknowledged that the Bill now contains s262(1)(b) (equivalent to *s516(2)* of the EPAct) for delegating powers of the chief executive to local government. This had been an omission in the confidential draft Bill. It is noted that this change has coincided with the deletion of devolution provisions from the previous draft. It is recognised that multiple agencies regulate the 'littering' provisions of the EPAct, so that the powers pertaining to these provisions of the Act are currently delegated, not devolved.

Council currently derives its powers with respect to the EPAct's littering provisions through an 'Instrument of Delegation' from the DERM chief executive to Council. The instrument

provides the ability to delegate to the local government chief executive officer the power to appoint authorised persons with respect to specific monitoring and enforcement provisions of the Act. It is envisaged that the same process will be effected for the WRRAct.

Littering reforms and resources

The last significant reform of littering laws was via the *Environmental Protection Amendment Act 2007 (Act No.44 of 2007)* and *EPOLA Regulation (No.1) 2008* which essentially commenced on 11 February 2008.

To support the implementation of these reforms, the former Environmental Protection Agency produced a training CD-ROM and a suite of complementary educational tools for local government. These resources helped support internal training of authorised officers at Council in the changes to the legislation and their application to local government. The contents of the 'Queensland's new litter laws' resource CD, produced to support the last major reform to littering laws, included example shell advertisements, graphics and marketing slogans with the intention that local governments would further promote the reforms in their local area.

These existing resources should be updated to accommodate the new legislation. The well established Local Government Toolbox initiative, (viewable at http://www.lgtoolbox.qld.gov.au) would be an ideal avenue for DERM to distribute information to officers. This initiative has expanded outside of the South East corner, gaining more momentum with every new local government signing on to access statewide consistent procedures, tools and resources.

With the new reforms, it would be timely to at last seriously consider the need for a more strategic approach to litter management across the State. Messages targeted at littering and illegal dumping would be more likely to resonate in the wider community and support behavioural change if they were part of a statewide communications marketing campaign. Local governments, including Council, would be keen to support such a program. Individual local governments have developed local littering strategies and educational programs to aid their compliance programs. Council works with the SEQ Healthy Waterways Network, for instance, in alleviating the incidence / impacts of littering across its waterways.

Littering & illegal dumping

Many aspects of the Bill's littering and illegal dumping provisions have been transposed across from the EPAct. However, many changes are noted relating to the way that littering and illegal waste dumping offences have been prescribed, their separation from vehicle based offences, and their relationship to unsolicited advertising material and deposit on roads. These are supported.

With respect to ss102 & 103, there is further clarity around the meaning of litter and illegal dumped waste, and what is unlawful deposit. Dangerous littering is highlighted under the general littering provision and it is noted that a 3rd example of dangerous littering has been included, (ie. leaving a syringe in a public place other than in a container intended for receiving used syringes). This is supported, and topical in light of Council's emphasis on community sharps management across the City.

Circumstances where people dump their waste into industrial bins left open on footpaths appears to have been addressed through s102(3) & (4). This has been a relative limitation of the EPAct.

The much higher penalties for illegal dumping of waste that is 200L or more in volume are acknowledged. Notwithstanding the comments below, they aid the more realistic ability to recover the cost of clean up where the offender is identified, although litter/waste dumping investigations often leave the majority of cases unable to be resolved, and local governments are subsequently required to remove the material at their own cost (where the community pays).

An authorised person under the EPAct can direct a person to remove litter, although the opportunity to effect this arises infrequently. The only equivalent in the Bill is a direction to collect advertising material which has been unlawfully delivered, where a penalty is incurred for non-compliance. The current EPAct (*s474A*) has an offence of not complying with an authorised person's direction (pursuant to *s463A* of the EPAct) to remove litter, but it goes no further than that (although the Bill doesn't even have that).

In Council's previous submission, it recommended that to ensure efficient enforcement in line with the objects and approaches for achieving the objects of the Bill, compliance tools as captured in the direction, clean-up and cost recovery provisions under the EPAct be included in the new waste legislation. It further advised that these tools would enable both local government and DERM the ability to require waste dumping/littering to be removed, the ability to undertake the works if the notice is not complied with, and the ability to recover the costs for the clean up.

An interesting observation though deals with the event whereby waste is dumped onto private property by a person who is not the property's owner or occupier. In deciding on compliance actions via a notice, cognisance would have to be given to the person's ability or otherwise of gaining entry onto someone else's property to remove the waste. This may not be understood by the offender. If the owner or occupier denies access, then the offender could not reasonably comply with the direction. Would the owner or occupier be separately and severally liable?

Section 103(5) allows for the accumulation of two or more deposits to be taken as 1 deposit, although the timeframe is not indicated. Reference is made to, *'connected series of deposits'*. There could be some clarity around this. Connecting the deposits would have to be substantiated to validate the extra penalty that may apply.

Vehicle littering & illegal dumping

It is seen that a new provision under s112(3) has been inserted to include littering/dumping of waste by a person immediately after they exit a vehicle, when the waste littered/dumped was taken from the vehicle. This would cater for the situation canvassed in Council's previous submission whereby someone takes a food container from a vehicle, exits the vehicle and then drops the food container on the ground.

The combined littering and secure delivery provisions appear wide ranging enough to support compliance action (although the lack of a penalty is noted) whereby a person deposits unsolicited advertising material from vehicles onto any part of the road reserve or private

property as a method of delivery. It is noted that such materials are to be placed securely in a receptacle or slot or under a door, which in theory shouldn't present much of a hindrance to those who have tried to comply with codes of practice previously developed for distributors (ie. such codes require that material is not thrown from a vehicle).

However, it would be nigh impossible to do this from a vehicle, the point being that this is going to be a common offence or compliance issue. An alleged offender could argue at least that they were trying to leave advertising materials under a door of a premises, but again it is disputed whether this could be regularly achieved from a vehicle. Certainly, there should not be any recourse to arguing that a reasonable attempt equates to a reasonable excuse.

Public reporting of vehicle littering & illegal dumping

New provisions cater for the public reporting of vehicle littering and illegal dumping offences. It is noted that other States have had hotlines for reporting littering and waste dumping (eg. Victoria and New South Wales) and Council supports this concept in Queensland (ie. State coordination and implementation). It is noted that Council has no capacity to take on the additional workload these provisions would create and therefore any mandatory delegation of these provisions to local government is not supported.

The relevant government agency will need to consider how they handle evidence received from the public to ensure that it is valid and can be reliably used as evidence of the offence. Wider public education and promotion of the reforms will be necessary and DERM will again need to consider dedicated community information and marketing strategies.

Of interest is an extract from a 2005 submission, included below:

> ***'Systemic issues relating to litter management***
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> It is considered that there should be more effective evidence provisions for issuing penalty infringement notices for litter, including the ability to use publicly reported vehicle registration numbers as suitable evidence re the litter provisions of the *Environmental Protection (Waste Management) Regulation 2000*.
>
> Before a penalty notice can be issued, sufficient evidence must be provided to prove that an offence has been committed. Generally this means the officer must catch the offender in the act. Very few local governments have prosecuted or served penalty infringement notices on any party for a littering or dumping offence since the commencement of the Regulation.
> Only a limited number of PINs were issued state-wide last year, indicating that this system is not working. The intent of the legislation is not being achieved. Reform is needed in order to protect the environment by minimising the incidences of littering. The most effective method to minimise the incidences of littering is by using a strong educational campaign coupled with harsh, on the spot fines for offenders. The deficiencies in the enforcement powers limit the ability of Councils to effectively and cost efficiently undertake this devolved duty.
>
> New South Wales State Government has a litter hotline as part of their pollution reporting system, whereby members of the public are encouraged to become litter reporters and submit reports when an offence is observed. PINs are not issued for an offence reported by the public. Instead, the alleged offender is issued with a warning letter.
>
> Effective legislation enforcement:
>
> - establishes a number of littering offences;
> - creates investigative and enforcement powers;
> - establishes cost recovery mechanisms for those affected by litter; and
> - provides legislative tools such as the litter abatement notices.

In 1997 the Victorian EPA introduced a public litter reporting program and a dedicated litter reporting hotline. This system allows the public to "dob" in an offender when litter is thrown from a vehicle. Since its inception, the number of infringement notices that have been issued has risen dramatically. In the 1993/1994 financial year the number of fines issued was 619. In the 2003/2004 financial year that number has risen to a projected figure of 18,000.

When an alleged offender appeals against a PIN that was issued, the EPA will generally repeal that PIN unless firm evidence is in hand or the PIN was issued by an authorised person. The Victorian EPA estimates that only 10% of PINs are repealed.

While any reduction in the amount of litter ending up in streets and waterways is very difficult to measure, it has been suggested that this reporting hotline, coupled with effective advertising campaigns, is slowly bringing about a behavioural change in the general population of Victoria. More and more litter reporters are registering, both online, and over the phone.'

Unsolicited advertising material

Nuisance litter associated with unsolicited advertising material is often a community complaint issue and has been a "hot topic" from time to time. Council has previously engaged with the industries concerned (including local newspapers and newspaper distributors) to effect a more coherent approach to resolving the problem. It has also been raised through the SEQ Environmental Protection Interest Group (of which DERM is a member). Council supports in principle reforms specifically aimed at this issue instead of accepting it as an aspect of the littering provisions of the Act (as is currently the case with the EPAct).

This part places obligations on both the company that distributes the advertising material and the person physically delivering the material to premises, which is generally supported. However, greater emphasis should be placed on the company being responsible for training, supervising and monitoring their workers, rather than relying on a government agency to undertake extensive monitoring and enforcement action which is funded by the broader community.

Although the new provisions more specifically stamp unsolicited advertising material as a stand alone issue to be addressed under the future WRRAct and remove its perhaps ambiguous standing around the current interpretation of 'littering', Council recognises that this opens up a more pronounced compliance area than is currently the case. It will demand greater juggling of already demanding workloads on compliance staff. For this reason, it is vital that DERM communicates strongly with industry, provides resources to support compliance and raises industry awareness of the expectations and requirements that would be placed on it. With awareness would hopefully come a more responsible corporate attitude amongst printers, distributors and newspaper entities.

Impacting on the eventual scope of these provisions is the definition of advertising material (s104). It is recommended that the inclusion or otherwise of how to vote cards and flyers be clarified (see *s392A* of the *Local Government Act 2009*). What 'commercial purposes' means is unclear: does it apply to fund raising or making a profit?

Re s105(1), it is known that Australia Post deliver some advertising materials (in envelopes of bulk materials) that are addressed to "The Owner" or "The Occupier" or "The Householder". They are not addressed to a person. Are these items 'unsolicited advertising material'? Has Australia Post been consulted on these specific reform proposals?

Re s105(2), the onus should be on the occupier of the premises to notify a publisher/deliverer to cease delivery of items to their premises. It is suggested that an approved form or on-line mechanism be developed to achieve this.

It is questioned whether s107(a) would present undue difficulties on Australia Post workers who it is understood often have to remove advertising material from letterbox slots so they can deliver mail. It is also suggested that consideration be given to preventing the amount of advertising material exceeding the capacity of the receptacle (eg. around Christmas and other major sale times, large volumes of material may be delivered by several people throughout one day). Although the general offence provision in s111 does not appear to deal with the person 'on the ground', it would appear that the s102 'littering' offence can apply.

Council is not opposed to the proposed s108 provisions governing the placement of 'documents' (which may include advertising material) on or in a motor vehicle in order to reduce the risk of businesses placing flyers onto cars, thereby reducing the potential for littering in car parking areas. It is seen that the previous confidential draft Bill offence provision directed at the person placing the material on the vehicle has been deleted. In Council's previous submission, it made the points: that it was unrealistic for a regulatory agency to be able to prove who placed the advertising material on a vehicle; consequently it is businesses or individuals being advertised who should be prevented from allowing their advertising material to be placed on vehicles; the regulatory agency would then be able to take action against any company/individual who was being advertised on the material. The insertion of the more general s111 (Avoiding accumulations of waste) offence provision in the current Bill and its application to the person ('responsible entity') who authorises or arranges for the distribution of advertising material to premises in the area is acknowledged.

The s110 provisions prescribing the requirements for the name and contact details of persons involved in the delivery, distribution and printing of advertising material to be required by notice and the penalty for non-compliance are noted, but again there should be a requirement for advertising material to contain the name and address of the distributor.

It would appear that the State Government considers that the previous penalty provisions under ss106 & 107 were not needed in view of other Bill provisions, including the penalty for failure to comply with a compliance notice issued to the responsible person (s250), the new general penalty under s111(2) (Avoiding accumulations of waste), and the littering provisions. However, with respect to s111(1) & s111(2), it may at times be more problematic gaining the necessary evidence that a *'person (who) authorises or arranges for the distribution of advertising material to premises in an area* (has not taken) *all reasonable steps to ensure that advertising material does not, having regard to the way in which it is delivered, become waste'*.

Notwithstanding the above, and the uncertainty over the State Government's intended delegation arrangements, the additional workloads foreseen by these new regulatory provisions are of concern. It remains Council's position that it has limited capacity to effectively administer these provisions of the future WRRAct, and therefore any mandatory delegation of these provisions to local government is not supported.

Other documents

Comments above regarding s108 also apply here. Other points around s108 follow.

It is again recommended that the inclusion or otherwise of how to vote cards and flyers be clarified (see *s392A* of the *Local Government Act 2009*). It is common practice for these materials to be placed on vehicles, and many volunteers are used to distribute information during a campaign period.

There is concern that s108 would unreasonably hinder authorised persons from enforcing laws. It states in part that:

'(4) A person does not contravene subsection (1) or (2) if the person places a document in or on a motor vehicle, or attaches a document to a building or other fixed structure—
(a) in the lawful performance of a function under an Act; or
(b) if the action is reasonable in the circumstances.'

There are numerous occasions when officers attach documents to motor vehicles or a building. It is noted that a parking infringement notice would be exempt from the provision as it relates to '*the lawful performance of a function under an Act*', namely service of an infringement notice in accordance with *s14(3)* of the *State Penalties Enforcement Act 1999*. This is supported.

The following compliance methods are not specified in the Bill and raise questions about whether they are conducted '*in the lawful performance of a function under an Act'*. To be lawful, the function needs to be authorised, justified or excused by law.

- Council officers frequently attach warning notices (eg. parking brochures), stick on notices (eg. suspected abandoned vehicles) or fact sheets (eg. heavy vehicle parking) to vehicles. There is nothing written in local laws or legislation to authorise this. It needs to be clarified in relation to section 108(4) that attaching a warning notice, advice notice or fact sheet to a vehicle or building found or suspected to be in breach of the law does not contravene the Act.

- Council officers frequently leave courtesy cards (calling cards) in mail boxes or at the front door of premises, addressed to "The owner" or "The occupier". Any restriction on this process would seriously hamper the ability of Council and other regulatory agencies to investigate offences.

Compliance action and penalties

It is again noted that a direction can be given to collect advertising material which has contravened the unlawful or secure delivery provisions of the Bill. This is supported.

Sections 109(2) & 110(2) of the Bill now state that a notice may be given to a person who is an adult. It is also noted that many people employed to deliver unsolicited advertising material are minors. Therefore there would still be significant issues for authorised persons trying to deal with non-compliances. Notwithstanding this, it is recognised that the notice may also be given to an adult believed to have authorised or arranged for the distribution or printing.

There are also several evidentiary issues relating to proving who is responsible for the materials not being secure. For example, another person may remove the material to place other items in the letterbox.

The apparent interrelationship between the ss102, 106, 107 & 111 has been discussed.

The way s111(3) has been drafted, it permits the chief executive (and therefore, by implication, a delegated authority) to direct a person who contravenes the unlawful or secure delivery provisions to collect the material from the premises within a timeframe. It is still unclear if this direction can be a verbal direction, verbal direction followed by written notice or via statutory notice. 'Direction' is not defined within the chapter or in the dictionary to the Bill.

It is suggested that there be offences for individuals and corporations.

The example provided in s245(3) (Giving show cause notice) could also be extended to relate to environmental harm.

There are a range of offences in the Bill that deserve to be PIN offences, including s250 for not complying with a compliance notice.

It is considered that a greater penalty in the Bill should apply for s250 as an incentive for someone to more likely remove and dispose of the waste appropriately (as required).

Authorised persons

The insertion of 'protection from liability' provisions is noted (ie. s265). As per Council's previous submission, all current 'local government Acts' administered by Council have such provisions protecting authorised persons from civil liability when acting without negligence.

It is noted that the EPAct has recently been amended to make it an offence to submit incomplete information. It is questioned whether Chapter 10, Part 4, Division 5 of the Bill covers incomplete information and the provision of false or misleading information.

The EPAct makes it an offence not to provide answers to questions. This should be provided in the new Act.

It is noted that the power to require information in the Bill is conditional on an offence against the Act being committed and a person being able to give information about the offence. The equivalent section of the EPAct is broader in scope as it only needs to be a matter relevant to the administration or enforcement of the EP Act. It is noted, however, that it is an offence to contravene an information requirement.

Waste levy

The waste levy exemption for lawfully managed and transported asbestos in accordance with the *Public Health Act 2005* could greatly assist with the appropriate disposal of asbestos material, if the exemption is properly promoted to the general public (ie. home renovators). Ignorance of this exemption could encourage more illegal dumping of asbestos waste if residents believe they may have to pay a waste levy in addition to the cost of disposing their

asbestos waste. Council already incurs a considerable cost for the removal and clean up of illegally dumped waste containing asbestos material on public property.

On application, charitable recycling organisations may receive an exemption from the levy, predicated on the organisation not practicably being able to re-use, recycle or sell donated items. Should these organisations experience an influx of waste being dumped at their premises from people trying to avoid the general waste levy, the exemption would help alleviate the impact on these non-profit entities. This exemption may also further drive the trend to remove publicly accessible collection bins from private properties. Nuisance littering and unsightly accumulations at these sites have long been issues that Council has tried to contend with, including through its memorandum of understanding arrangements with NACRO Inc. that have been in existence since 2003.

It is noted that waste removed by local government in response to illegal dumping is now defined as exempt waste (ie. s25). This will ensure that Council does not have to apply to the chief executive every time it is required to clean up a site of dumped waste.

The exemption given to biosecurity waste is acknowledged, as is the fact that the ability to apply for an exemption is given to the chief executive of the department responsible for administering a biosecurity related Act operating in relation to waste. This provision seems to imply that it is State Government that would be taking the lead role in dealing with such waste (eg. deal animals that have died as a result of zoonotic disease). Council is inherently interested in clarifying with State Government response protocols to communicable diseases, including zoonotic diseases.

Waste transporters

It is noted that the draft Bill now repeals the whole of *Chapter 7, Part 7* of the EPAct. In Council's earlier submission, the omission of *s369* of the EPAct had been supported, but advised that sections *369-369C* of the EPAct would also require repeal.

It is reaffirmed that the waste management works approvals are seemingly of little benefit to the environment or Logan City Council as an administering authority, as few incidents have occurred. However, it is perceived that waste management works approvals may be of greater value to some larger local governments with greater residential density (eg. amenity issues).