

The Beneficial Use of Wastes and the Waste Levy

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The Australian Sustainable Business Group (ASBG) is a business representative body with a broad cross range of members covering some waste management organisation, but a majority are the customers of the waste industry. This article represents some of the issues raised by Andrew Doig at ASBG's Waste Laws Update Seminar on 1 September 2010.

At the heart of NSW's waste regulatory system lies the definition of waste. Its broad definition was made to permit almost anything that the Department of Environment, Climate Change and Water (DECCW) wishes to call a waste, a 'waste'. To understand why, you have to look at the history of waste regulation. In the late 1980s some dubious waste contractors got off on dumping waste on land by declaring it as a product, not waste. In those days waste was more or less defined as a negatively valued product. So by having a related company paying 50 cents per tonne, it was then, legally, no longer a waste. Naturally the government changed the waste definition to close this legal loop hole. So now the waste definition includes *'any ..., surplus or abandoned substance intended for sale or for recycling, processing, ...'*

So now, technically, a second hand good, such as a second hand car is "waste". To manage waste practically the DECCW has an internal rule of thumb: if the waste is not exposed to the environment then they are 'not interested' in it. Like all rules of thumb there are exceptions to it. So the second hand car, if used for transport, is 'not of interest' to the waste section of DECCW. However, if that car is dumped into a creek or land fill or processed etc, then it becomes a waste of interest.

With these approaches, beneficial uses of waste were left with little legal comfort on how they could be managed. Then DECCW introduced the 3Fs, fill, fuel and fertilizer gateway. This provided some relief for beneficial use of waste, but the waste regulatory structure still left many legal drivers sending waste to licensed facilities and few means to go elsewhere. Enter the exemption process. Under s51 of POEO (Waste) Regulation 2005 DECCW can exempt wastes used for beneficial purposes from most of the regulatory constraints. This particularly assists industrial ecology practices, if you can meet or obtain an exemption.

The question is how far will DECCW go with the exemption process? It is fundamentally a good legally comfortable means that deals with beneficial use of waste whilst protecting the environment. Its downside is that it takes time, data and resources to apply and use one. This area is fraught with traps. Approval will require more than the waste section consideration, other branches can be involved. There is a risk that the rather polarised and politicised management of waste will influence the decision. To be frank, waste to energy, in particular incineration of waste is an almost taboo subject. Just imagine, trying to get such a facility through the air branch, then try to site such a facility. There are many philosophical and politically, economically self serving and ideological issues that pull against each other in this area.

Another issue with Waste Exemptions is treatment of the waste levy. The waste levy is designed to promote the diversion of waste away from disposal, largely landfills. But this is not always the case. Take the liquid waste levy; it applies to a treatment process, unlike all the other activities where wastes end up in contact with the environment. A key role of a Waste Exemption is to exempt the waste from the levy. Many beneficial reuse options will not be viable unless the receiving entity, which is not a waste facility, must charge for these wastes. DECCW interpretation and discretion applies here, increasing the risk of gaining successful exemption application. With the exception of levy payment, transfer of money between parties, for beneficial use of wastes, should not concern

DECCW. The reason comes back to the definition of waste where the economics are not an issue and all wastes are captured, and as such, can be controlled by DECCW.

In addition to exemptions, DECCW can also issue 'Approved Notice' under s 143(3A) POEO Act to permit non-landfilling/application of waste for beneficial purposes, though this is rare.

As the waste levy continues to increase and makes its way to over \$135/t in the Sydney area, there is concern the NSW Government has become reliant on it as an income source. By 2014-15 the levy will comprise over 2% of the State budget. Paltry amounts are returned to assist NSW's waste management. NSW's Levy triggered Queensland's \$35/t levy from mid 2011. Despite its other issues, Queensland's levy supports the Waste Avoidance and Resource Efficiency (WARE) Fund — \$159 m over 4 years for waste management. The knock on effect of waste levies are continuing with Victoria recently announcing a range of annual increases, starting with a doubling of the urban levy to \$30/t then to \$40/t next year. Victoria is already known for its HazWaste fund, and is leading Australia in these technologies as a result. NSW is left behind, with the levy acting as a punitive measure. The size of the waste levy creates much debate, but it has not been able to be associated with State recycling rates. Victoria, with its much smaller waste levy than NSW, manages a higher recycling rate. The key seems to be how much of the waste levy goes to addressing waste issues.

As the liquid waste levy applies only in NSW, competition issues will kick in. It has been estimated that when the liquid waste levy exceeds about \$100/t this will balance the transport cost to go to Victoria, even other jurisdictions. If not checked, this could result in the commercial collapse of the NSW liquid waste treatment industry — a major unrecoverable loss of infrastructure for NSW resulting in further shrinkage of manufacturing in this state.

NSW waste levy is increasing its considerable market distortions and perverse environmental outcomes (e.g. increased transport distances). In 1996 50% of the levy was to cover methane emissions. So why do landfills accept paying the CPRS and the levy? They will be double taxed.

NSW Government really needs to sit down with the waste management industry and waste generators to undertake a major reform the levy process. Also requiring addressing is the increasing cross boarder levy issues and should be addressed by some form of agreement between the states. This is a tricky matter, but should produce better environmental outcomes than the current *ad hoc*, knock on approach to waste levies.