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RE: ASBG's Submission on *NSW Asbestos Waste Strategy 2018-22*

The Australian Sustainable Business Group (ASBG) welcomes the opportunity to comment on the *NSW Asbestos Waste Strategy 2018–22 Draft for consultation* (the Strategy)

The Australian Sustainable Business Group (ASBG) is a leading environment and energy business representative body that specializes in providing the latest information, including changes to environmental legislation, regulations and policy that may impact industry, business and other organisations. We operate in NSW and Queensland and have over 110 members comprising of Australia's largest manufacturing companies and other related businesses.

1 Overview

ASBG understands that asbestos is one of the few environmental contaminants, which is directly linked to deaths of Australians and with the Government, wishes the efficient and safe management of asbestos and asbestos contaminated materials. Asbestos is also a highly emotional issue with many aggrieved families requiring action by Governments to prevent and minimise future deaths from the various forms of this substance. However, this should not detract the NSW Government from the use of a scientific approach and application of an outcomes and risk based approach to asbestos waste. To use the proposed presence based approach will lead to absurd outcomes, the basis of which seriously undermines the recycling sector at a time where it is struggling on multiple fronts including:

- China's National Sword impacts
- Shrinking manufacturing sector reducing market opportunities
- Impact of Queensland's Waste Levy, which will drive at least 500,000 tonnes per annum of C&D and contaminated soils back into the Sydney market in July 2019
- The Government's closure of Alternative Waste Facilities which was diverting ~550,000 of general waste away from landfill

Development of the Asbestos Waste Strategy cannot be undertaken in isolation to these other major waste management issues. To do so will simply fill our landfills quickly, leaving Government with the vote loosing task of siting new ones and or other unpopular waste management and disposal technologies.

Balancing environmental protection and resource recovery is also critical to EPA achieving its priorities. EPA's Strategic Plan 2017-21 on waste includes the following actions:

- Combat more waste crime and track down rule breakers through our new Waste Crime Taskforce

- Reduce waste and encourage recycling by embedding the container deposit scheme, and progressing the state's response to China's National Sword Policy, which limits the kinds of recyclable waste material China will accept
- Halt the growth in per capita waste generation and divert more waste away from landfill, with more recycling
- Reduce illegal dumping by 30% by 2020
- Enhance community confidence about environment protection by making decisions supported by scientific evidence with the support of the Office of Environment and Heritage (OEH) - Our partnership agreement will cover *scientific evidence-based decisions, risk-based assessments,* threatened ecological community mapping, old growth mapping, laboratory analyses (including water and asbestos), PFAS science and other emerging issues.

Consequently, the EPA must not overdo environmental protection as it has a knock-on effect especially in recycling. Use of a *presence* level for asbestos as in the *POEO Amendment (Asbestos Waste) Bill 2018* contradicts the EPA's Strategic Plan. EPA policy must strike a careful balance to best manage waste in an efficient and low cost manner and do at a reasonable and environmentally tolerable level of risk. Recycling has tiny profits per tonne and much can only be made economic at large economies of scale. Hence, many subsectors in the recycling sector can easily be made uneconomic by additional red (or green) tape.

2 Issues with the Asbestos Related Controls on C&D Recycling

Balance between the Asbestos Strategy and the Circular Economy has been distinctly swung against the circular economy and recycling with the recent controls on C&D Recycling including:

- The *Asbestos Waste Bill* undermines confidence in C&D recycling due to unscientifically based liabilities, especially from the proposed presence based approach.
- Amendments to the *POEO (Waste) Regulation* due to uncertainties on when and how the EPA will be satisfied transport to *bond fide* recycler has been achieved and or EPA believes the mass balance provided by a C&D recycler.
- St*andards for managing construction waste in NSW* → this is little different from its drafts which were considered unworkable by ASBG[1] and the C&D recycling sector

ASBG is concerned about the forecast diversion back of at least 500,000 tonnes per annum into the Sydney area as a direct result of the introduction of Queensland's Waste Levy. The bulk of this waste is C&D material and contaminated soils. For NSW to properly manage this additional waste amount the EPA should be encouraging investment in the C&D and contaminated soil treatment sector. However, this strategy, with its tighter controls, increased liabilities on recyclers the reverse will occur. Consideration of the impacts on remaining landfill capacities, C&D recycling and other recycling should be part of this strategy. If C&D recycling becomes too costly against landfill this affects 4.5 million tonnes of C&D material NSW currently recycles each year. A good strategy will consider the full impacts of its actions, which include the costs in managing asbestos waste and the supply of infrastructure to achieve effective outcomes.

ASBG has reviewed NSW C&D recycling and provides four scenarios and its forecasts from July 2019, when Queensland's levy commences:

[1] See ASBG's Submission on Asbestos Management in C&D Recycling 2014

4 Scenarios On C&D Recycling Capacity Based on Variation in Asbestos Contamination Enforcement			
Scenario 1	**Scenario 2**	**Scenario 3**	**Scenario 4**
Description: NSW Government provides confidence in the C&D sector and investment occurs, perhaps with low cost CPAX made available.	**Description:** NSW Government is indifferent to business confidence in the C&D sector. But the new controls are enforced in a balanced and flexible manner	**Description:** NSW Government considers the C&D sector has issues and the rules are enforced in a firm but fair manner, with little flexibility.	**Description:** NSW Government considers the C&D sector requires a lesson on asbestos management and the asbestos rules are enforced with no flexibility.
Recycling Outcome: A number of new C&D facilities are build within two years which cope with the additional 0.5+MT that went to Queensland.	**Recycling Outcome:** 4.5 MT p.a. continues (size of the C&D recycling market). No investment is provided for new C&D recycling facilities across NSW. Extra capacity[2] is fully absorbed due to the processing time for each vehicle increases from 5 minutes to about 20.	**Recycling Outcome:** 4.5 MT p.a. initially recycled reduces over time towards 3.5 MT over the longer term. A reduction in the volumes of C&D processing occurs due to every load requires to be tested. Some C&D site close due to poor economics and being prosecuted with asbestos in product or process, but not at presence or trivial levels.	**Recycling Outcome:** 4.5 MT p.a. initially recycled reduces over time towards <2.5 MT over 4 years as it becomes clear of the enforcement levels and standards required by EPA. A reduction in the volumes of C&D processing occurs due to every load requires to be tested. Many C&D facilities close rapidly as EPA aggressive court actions shows liabilities are considerable and the business risk is too high.
Landfill outcome: 1+ MT C&D waste is sent to landfill for two years waiting for the new C&D facilities to open. This then drops to currently levels	**Landfill outcome:** 0.5+ MT pa C&D waste is sent to landfill continuing indefinitely. A reduction in the volumes of C&D processing with occur due to every load requires to be tested. Few C&D recyclers are found to have asbestos issues and EPA requires improvements on minor breaches without penalty actions.	**Landfill outcome:** Initially 0.7+MT C&D waste is sent to landfill, initially due to the reduced capacity of the C&D sector. This increases to 1.5 MT pa as more C&D recycling facilities close due to the inability to control asbestos contamination and legislative actions against many C&D recyclers. Asbestos wastes will find Victorian or Queensland more attractive than NSW landfills due to less controls and lower levies.	**Landfill outcome:** Initially 0.7+MT C&D waste is sent to landfill, initially due to the reduced capacity of the C&D sector. This increases towoards 3 MT pa as most C&D recycling facilities close due to the inability to control asbestos. Closure is brought on by the impossible business risk to achieve asbestos presence free processes and products. Large qualities Asbestos wastes will be sent to Queensland.
Summary: Requires the NSW Government to work with C&D recyclers to work within the rules and provide assistance in both compliance and financial support.	**Summary:** Requires the EPA to enforce the new rules on C&D recyclers in a flexible manner working with them over time to improve and assist in dealing with problem suppliers.	**Summary:** EPA to continue to enforce its rules in a similar manner. This is the more likely scenario. However, it will lead to a material shrinkage of C&D recycling over the next 5 years.	**Summary:** EPA enforces its rules in an inflexible manner. If too many bona fide C&D recyclers are prosecuted there will be a tipping point where this business will be considered too risky to be in. Most close and C&D recycling collapses in less than 5 years.

[2] Waste and Resource Recovery Infrastructure Strategy - 2017-21, has NSW with a total C&D excess capacity of 0.9 MT pa. But this is based on planning consent levels not actual capacity.

For licensed sites a major issue is the variation of enforcement and interpretation between different EPA inspectors and assessors. While a firm but fair approach is considered optimal, ultra conservative interpretations of EPA policy and rules is not uncommon. The NSW Audit office found[3] *The EPA has not balanced its devolved regional structure with appropriate governance arrangements to give it assurance that it applies a consistent approach to enforcement.* And.. *the devolved regional structure the EPA has adopted in delivering its compliance and regulatory functions, increases the risk of inconsistent compliance decisions and regulatory responses.* Hence, the heavy handed approaches used by EPA as enforcement measures resonate through the industry sector. As a consequence, ASBG expects more prosecutions based on tiny amounts of asbestos will be pursued if the poor management of front line inspectors continues. ASBG forecasts scenario 3 is the most likely, as little has changed since this report. Poor management of the enforcement of the new asbestos rules on C&D recyclers will result in a number of C&D recyclers leaving NSW. NSW landfills will simply fill faster and new ones will be required. The question is how aggressively will the rules be pursued on facilities trying to do the right thing, using the focus of the presence of asbestos and not a risk-based or flexible approach?

As there are only 5 landfills in the greater Sydney area and given the greater controls on landfills upon acceptance, the tipping fees will increase significantly and Queensland landfills, despite their levy will again become more attractive. This may take some pressure off NSW landfill capacity, but ASBG expects Queensland will react if this occurs. The inevitable consequence is that the Sydney area will require new landfills and urgently, given their long planning and if possible approval cycle. This is supported by the EPA's *Waste and Resource Recovery Infrastructure Strategy*[4] which states:

> *As a result of the diversion assumption this model projects that 4,600,000 tonnes/year of waste will be landfilled in 2021. Approximately 6,000,000 tonnes were landfilled in 2014/15 therefore the target assumes demand for landfill space will fall by over 20% during the period of this projection. Failure to meet this target will increase demand for landfill capacity.*

Scenario 3 is considered the likely result this will inject an addition 700,000 tpa into landfill in the short term, but increasing this to 1.5 MT shortens existing NSW landfill life by 32%. Adding to this the closure of AWTs via the pulling of the RRO/E on Mixed organics of 763,000 tpa, NSW is looking at 50% shortening of landfill life.

3 Additional Considerations to Benefit the Strategy

ASBG considers there are a number of additional matters and inclusions which should be explored to enhance this strategy including:

- Providing data on the mass flows of asbestos waste in NSW, splitting these into various categories:
  - neat asbestos (e.g. >90%),
  - highly contaminated waste (e.g. >25%<90%)
  - medium contaminated (e.g. >5%<25%)
  - low contaminated (e.g. >0.5%<5%)
  - very low contamination (>0.5% to threshold limit).

  and the final disposal places, which includes specific landfills or on-site capped landfilling.
- Supply of landfill capacity accepting commercial quantities of asbestos wastes.
- Assessment of the future requirements for landfill capacity for asbestos wastes including commercial quantities and remaining capacities.

[3] Regulation of water pollution in drinking water catchments and illegal disposal of solid waste, NSW Audit office July 2018

[4] Waste and Resource Recovery Infrastructure Strategy 2017-21

- Economic impact of the suite of legislative controls including the Sta*ndards for managing construction waste in NSW* and other proposed standards on various recycling sectors.
- Assessment of the future infrastructural requirements for various recycling activities affected by varying degrees of asbestos waste contamination, especially the Construction and Demolition (C&D) recycling sector.
- Economic assessment of the support required to maintain and increase the supply of recycling infrastructure affected by asbestos waste contamination and the rules the strategy applies.
- A flexibility analysis of the impacts on the supply of C&D recycling capacity given various scenarios ranging from increased supply to a semi collapse of this area.

ASBG has addressed each of the 5 section of the strategy and made comment where it is considered appropriate.

4 Making asbestos waste disposal easier

This section has some practical solutions, which are supported. ASBG note this is limited to non-commercial asbestos waste management which in quantity terms is a tiny portion of all asbestos wastes.

5 Making asbestos waste disposal cheaper

This section is supported, but it does little to address the high costs of disposal of commercial quantities of asbestos waste. There is also little incentive for most landfills that currently only accept direct domestic asbestos waste to also change to accept commercial quantities. To be effective EPA needs to also focus on commercial quantities, the vast bulk of asbestos waste.

ASBG is concerned proposed requirements on the landfilling of asbestos waste during tipping will come at higher special waste charges, negating other actions of this section.

Removing the waste levy on separated asbestos materials may have some merit, but it also punishes lower concentration materials over higher concentration materials.

A lower cost solution for asbestos contaminated soils should also be provided. See Appendix 1 ASBG's proposal for a SRRO/E and or Special Landfill class for < 1% asbestos contaminated soils in infrastructure projects.

Asbestos dumping is also a crime which commonly results in a double impact on victims. First their land, property or materials are illegally contaminated. Secondly, in most cases the victim is required to clean up the mess and pollution left by the offender, commonly via clean up notices, other regulatory requirements and suffer financial damage to property.

ASBG recommends where a Clean Up Notice or a requirement to remove asbestos waste is made, and the party is a bona fide victim of illegal dumping or upstream contamination and not involved in this process be considered, using an assessment protocol for provision of waste levy relief for this waste's disposal.

6 Increasing awareness and changing behaviour

7 Closing loopholes and increasing transparency

ASBG supports both these strategy initiatives.

8 Disrupting unlawful business models

ASBG supports the general thrust of making it harder to do the wrong thing, but the issue is the vast variations in EPA interpretation of what is the wrong thing and the lack of guidance of what is right thing to do. This needs clarification to avoid large variations in interpretation. ASBG recommends that a risk-based approach be used to assess the likely impacts of the gray area between a set of well defined wrong and right behaviour. A comprehensive document complemented with case studies and better defining the gray areas is recommended.

Direct customer billing has been used in the past, such as for liquid waste. This works for loads over a minimum size by taking the transporter's incentive to "find a cheaper alternative". It can fail where the load is too small, hence a threshold should be established via consultation with the waste sector. Due to the additional administrative costs this action detracts from part 2 of the Strategy.

Use of the *presence of asbestos* is unscientific, contradicts EPA's Strategic Plan and NSW Government's Guidance for Regulators to Implement Outcomes-based Regulation, is liable to abuse and undermines confidence and future investment in the recycling sector. The move to place this in the *POEO Amendment (Asbestos Waste) Bill 2018* undermines the consultation process this draft Strategy represents. ASBG has prepared a separate submission on the Asbestos Waste Bill and recommends the removal of s241(f), which enshrines the presence based approach among other recommendations.

Reducing evidentiary burdens is a fraught process for the recycling sector and industry in general. Limiting such to only asbestos waste dumping cases helps, but dumping requires careful defining and needs to be separate or a defined subset of illegal disposal. Only carefully debated variations to this area of law should be considered. It must face a full public consultation process as like with s241(f) it can undermine confidence in NSW recycling sector undermining investment and driving up costs unnecessarily.

This submission has been prepared with the input and assistance of members of ASBG's Policy Reference Group (PRG).

Should you require further details and clarification of the contents of this submission please contact me.

Yours Sincerely

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Appendix 1

Specific Resource Recovery Order and Exemption for Low Concentrations of Asbestos in Soils or Special Low level Asbestos Soil Landfill Licence

Background

The amount of lightly contaminated asbestos impacted soils contributes significantly to scarce landfill capacity. Finding alternative methods to safely bury asbestos materials can be critical in avoiding difficult siting issues associate with new landfills or their extensions.

Types of Soils – SRRO Criteria

Asbestos impacted soils would be the only waste type considered. No other waste incorporated into the soil would be acceptable. It is proposed that the *RRO for Excavated Natural Material* or *Special Landfill* be the basis for the soil and eliminating other wastes other than asbestos. If a Special landfill is (must be) used then the proposed SSRO would establish its acceptance criteria. Only asbestos cement containing materials would be acceptable.

- Only soils with 1% or less non-friable asbestos in soil weight to weight basis would be acceptable.
- This SRRO/E would not apply to friable asbestos.
- The SRRO criteria could limit the sources where the process is vetted e.g. by a Contaminated Site Auditor.
- A visual inspection process be used to enforce the 1% concentration limit

Issues: Determining if the maximum concentrations are exceeded, but the reason for the 1% is to avoiding the blending of soils and asbestos to take advantage of this approach, hence the 1% limit is suggested. Hence, strict adherence with the 1% should not be the priority as the outcome is to prevent blending, by making it cost prohibitive at 1%.

Transport

Transport of the asbestos impacts soils under the SRRO would not change from provisions under the POEO (Waste) Regulation as it is still *asbestos waste*.

Tracking

Either the On-Line Waste Transport Certificate or WasteLocate could be used to track this waste. The on-line system ensures the site of generation is linked into the system, so may be preferred over WasteLocate in some circumstances.

Resource Recovery Exemption / Landfill Licence - Types of acceptance areas

Sites accepting burial of low level asbestos contaminated soils would need to meet criteria including:

- A predesigned cell arrangement for burial of a minimum size
- On a site, which requires fill primarily for specific infrastructure projects e.g. roads, rail, airports etc

- Design to be approved by a Certified Contaminated Land Auditor
- During the operation of the cell, it will be audited on a regular basis
- Final capping to be subject to a verification audit by a Certified Contaminated Land Auditor
- Mapping of the cell to be recorded on the title and made available for a dial before you dig requirements
- Use of other mapping systems to accurately identify the location
- A gatehouse which processes acceptances, but not requiring a weighbridge

Acceptance

Use of this SRRO/E will need to be tightly constrained at the land application side. Only larger prepared sites would make the economics of pre assessment work. If this is not considered effective enough the SRRE could set a minimum quantity requirement. It would also need to pass other criteria such as applies to all RROs and RREs:

- Is genuine, rather than a means of waste disposal
- Is beneficial or fit-for-purpose, and
- Will not cause harm to human health or the environment

Only sites that have applied for the SRRE or have the Special Landfill and met its criteria will be accepted. This would require approval from the EPA. Approval would be based on the following conditions:

- Vetting of the soils on receipt
- Tracking using WasteLocate or on-line tracking system → the site must have permission to receive this waste
- Having a rejection procedure
- Identification of disposal areas
- Procedures to minimise emissions during tipping → inappropriately delivered soils will be rejected until changes from that source are demonstrated
- Immediate coverage as per landfill conditions (s80 POEO (Waste) Regs)

Legislative exemptions

Legislative exemptions are the key advantage offered to use this SRRO/E and may include:

- No waste levy would apply: Acceptance of the material would be on a contract basis with no public access. This could be seen as extending a contaminated site to include a remote site in its operations. Having no waste levy and not being a landfill should provide significant cost advantages and save on limited landfill space. This could be a boon for major projects, Councils and other public works areas where low level asbestos concentrations in soils is a current major cost.
- Need for an EPL can be avoided: Being a monofil and similar to the currently permitted on-site approach with the auditing by a contaminated site auditor.
- Tracking and site vetting would be included unlike other RREs
- It would need to be exempt from s81 of the POEO (Waste) Regulation 2014.

Alternatively, it could be licensed as a landfill, but with a small set of controls and conditions. Such as it will not require leachate controls, simplified gate controls and record keeping.