

Investigation into the Transport of Waste into Queensland

Submission no. 0027

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QUEENSLAND WASTE INVESTIGATION

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TERMS OF REFERENCE

The *Investigation into the Transport of Waste into Queensland* will be undertaken in accordance with the terms of reference set out below.

The investigation will examine the following questions:

1. Identify:
 - a. what are the financial, regulatory and other incentives for the movement of waste from other States to Queensland landfills?
 - b. whether there are any regulatory frameworks in place that would inhibit or affect this movement of waste in state or national regulations?
 - c. whether any other jurisdictions in Australia or internationally have dealt with similar movements of waste and, if so, what was the response?
2. Examine:
 - a. whether regulatory and other reforms could limit or stop the cross-border movement of waste to Queensland landfills; and
 - b. make recommendations on these potential reforms including whether actions may be taken by:
 - (i) Queensland
 - (ii) local governments in Queensland
 - (iii) the State where the waste was generated
 - (iv) the Australian Government
 - (v) relevant jurisdictions under a cooperative arrangement.

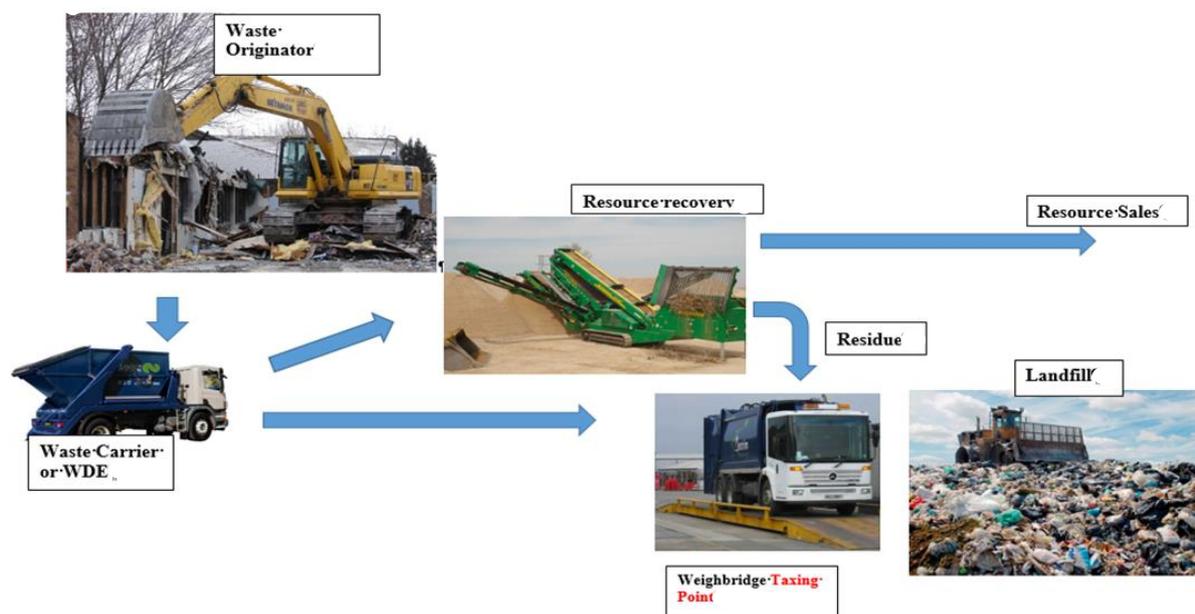
The investigation is not a regulatory or criminal investigation, and is not expected to detect or investigate criminal conduct. It is expected that the investigation would refer any unlawful activity to appropriate Queensland or interstate authorities.

INTERSTATE TRANSPORTATION AND DISPOSAL OF WASTE

Recent trends for landfill in NSW (i.e. 2012 – 2017) have been hugely influenced by policy changes in Queensland in 2012 that abolished landfill levies that saw significant volumes of waste transported interstate for disposal, further artificially skewing local data on landfill trends and rates over this period.

The extent of this has not been fully disclosed by the NSW EPA

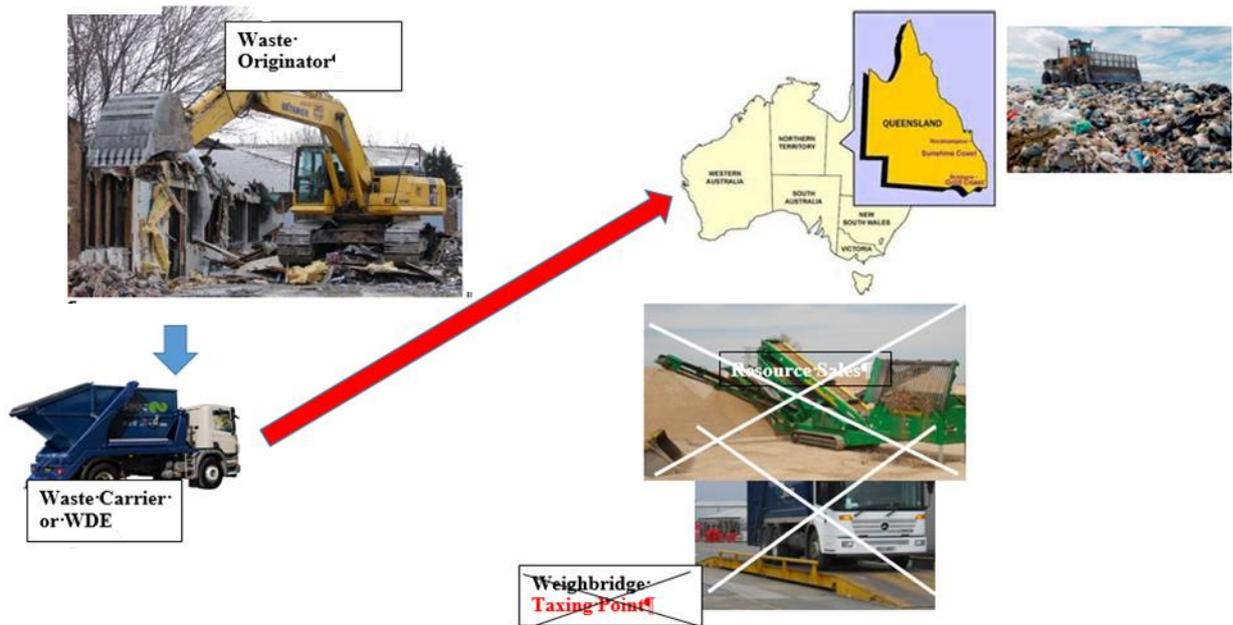
This is how the system worked in NSW prior to the abandonment of landfill levy in Queensland



Although significantly lower than the NSW s88 Protection Of the Environment Operations Act (POEO) Levy, the abolition of the Queensland levy was sufficient to create a favourable arbitrage which has commercially affected the NSW policy to incentivise and aid resource recovery.

This has added to the equation of waste disposal and resource recovery a third destination for NSW generated waste which is interstate [Queensland].

Currently, because there is no levy in Queensland, the cost of transportation of waste to that state, when added to the cost of its disposal by landfilling [without resource recovery] are lower than the cost of resource recovery and landfilling in NSW [inclusive of the NSW s88 POEO levy]. It is therefore commercially advantageous for a Waste Disposal Enterprise (**WDE**) and Carrier to transport waste and dispose of it in Queensland.



The Reasoning

In the absence of an exercise of a valid legislative power in the NSW state Government to *prohibit* transfer of waste interstate, the levy arbitrage between states remains, then economics dictate that if the cost of transport and disposal interstate is less than the disposal or recycling cost in NSW the waste will be transported and disposed of without recycling.

Until or unless Queensland re-institutes a landfilling levy which neutralises the arbitrage, or NSW reduces the NSW levy rate the practice of interstate transportation can be expected to continue.

The market for recycled products is poor and the products are sold cheaply. If the cost of resource recovery and processing is added to an interstate transport cost, the inescapable conclusion must be that waste transfer interstate can only be for the purpose of landfilling.

The Effects

1. a significant haemorrhage of revenue from NSW Environment Protection Authority (EPA) as the payment of levy is avoided [estimated as exceeding \$100 million per annum];
2. effective avoidance of all recycling strategies pursued by the NSW EPA for the past 20 years;
3. increased road traffic;
4. increased fuel usage;
5. increased greenhouse gas generation this time from landfills in Queensland as transported bio-degradable material is landfilled with little or no resource recovery; and
6. evidence of fraud and counterfeiting of records so as to falsely show the destination of particular waste.

Policy Response

In many cases, the perceived problem can be addressed by regulating that a particular activity or behaviour shall not be permitted, or is only permitted if licensed, or by making that activity a criminal offence.

Those solutions appear not to be available to the NSW State Government on this occasion because of the overriding effect of the Commonwealth Constitution [s92 discussed below].

Policy reform by the NSW EPA introduced a "Proximity Principle" which made it an offence to transport any waste by road more than 150 km from where it was generated in NSW. This has since been abandoned due to constitutional difficulties discussed later.

Constitutional Impediments

The general view in the waste Industry is that the NSW State Government is effectively prevented by s92 of the Commonwealth Constitution from imposing any effective statutory inhibition on interstate trade whether by regulation or by the imposition of a tax [s90].

On previous occasions the High Court of Australia has certainly found that various taxation measures applied to goods are in the nature of an excise which is a power which the Constitution limits to the Federal Government.

In addition to this restriction, state government regulations which touch upon trade commerce and intercourse among the states [even though expressed to be enacted to address some perceived and serious community harm] have been found to breach s92 and therefore to be invalid.¹

Given the result in Victoria, it is highly likely that the foreshadowed regulations² in relation to the management of waste which are currently proposed at licensed facilities in NSW will be insufficient to overcome the interstate trade freedom protected by s92.

Neither is it permissible for the NSW State Government to tax a commodity in a manner which would have an unfair or discriminatory effect for those persons trading that commodity interstate [the excise question].

It is important to look to the commercial drivers underpinning the actions complained of.

¹ *ResourceCo Material Solutions Pty Ltd & Anor v State of Victoria* [2016] HCATrans 124.

² *New minimum standards for managing construction and demolition waste in NSW* (EPA, 2016).

The answer to this conundrum we believe, lies in identifying the components of the commercial drivers and then examining whether any action is available using existing levers to bring about changes to the behaviour complained of.

We believe there is.

The main commercial driver of course is that it is less expensive for a Carrier to transport waste to Queensland and there dispose of it by landfilling, rather than to engage in resource recovery in NSW and dispose of residue waste in this state and pay the NSW levy.

Commercial Transactions involved in waste disposal

There are a number of commercial transactions involved in waste disposal process

1. Mixed Waste is originated or generated.
2. The Originator or generator of the waste then contracts a recycler or waste Carrier to dispose of the waste.
3. The Carrier charges a fee which generally includes the projected cost of the *s88 POEO* levy.
4. The NSW policy has been that the Carrier is supposed to dispose of the Mixed Waste at a Licenced Facility either for resource recovery or for landfilling [depending upon the waste characterisation].
5. Residue waste, after resource recovery and General Solid Waste (**GSW**) is then disposed of by landfilling.
6. *S88* POEO levy is imposed on the residue waste (GSW) at the point of entry of the waste into a Licensed Landfill Facility. In effect, the Licensed Facility acts as a collector of the tax from the Carrier.
7. The Landfill Facility as the ultimate receiver of the waste then has the responsibility to remit the collected levy to the NSW EPA.

Proposed Solutions to the interstate trade in waste

One so called "easy" solution would be for the Queensland State Government to re-impose its landfill levy, or for the NSW State Government to reduce its rate of tax. The former is unlikely to happen in the short term due to election commitments given in that state, and the latter runs counter to the longstanding NSW policy of discouraging landfilling and encouraging resource recovery.

Another solution which has been canvassed is for a so called homogenisation of environmental regulation including landfill levies.

Yet another suggestion is that by using mutual recognition legislation, one state could [in effect] collect another state's tax on the first state's behalf and remit it to the first state.

Quite apart from the logistical difficulties involved, one might have thought that the question of the extra territorial effect of state legislation would be called into question.

In effect, a state legislating an entitlement to impose a tax resulting from an activity carried out beyond its borders and a tax collected on its behalf by another state.

Anything more calculated to enliven either *s90* or *s92* of the *Commonwealth Constitution* is hard to imagine.

We believe that the answer to the problem lies in the chain of responsibility for the waste which is generated in NSW.

Currently, the Waste Generator or originator contracts with the Carrier who simply takes away the waste originator's problem.

The Waste Originator perhaps assumes and expects that the waste will be responsibly disposed of and pays for that service. Most of the time, the Waste Originator doesn't care what happens to the waste after it leaves his care and control.

We believe that this is not compatible with a proper chain of responsibility.

In the case of Mixed Waste or soil type waste, the Waste Originator is charged by the Carrier an amount for disposal of the Mixed Waste. Typically, this amount includes a provision for the *s88 POEO* levy which the Waste Originator expects and assumes will be payable.

Having recovered from the Waste Originator an amount of money including the full rate of *s88 POEO* levy, it is in the commercial interests of the WDE to then minimise the levy which the Carrier may actually have to pay by disposing of the waste at NSW Licensed Facility.

In the past, this has been done by engaging in resource recovery to reduce the bulk and weight of the residue waste destined for landfill, now that reduction in disposal cost is being achieved by transporting and disposing the material interstate.

The commercial reality is that in Queensland the waste can be landfilled more cheaply than in NSW and more cheaply than recycling.

RECOMMENDATIONS TO RESOLVE ISSUES

Below we set out our recommendations to resolve the issues associated with the transport of and disposal of interstate waste.

In the event that landfill levy is not reintroduced into Queensland we believe that reliance upon either the Proximity Principle or the *Mutual Recognition Act 1992*³ is also unlikely to overcome the effect of the *Commonwealth Constitution*. We believe that the issue can instead be addressed in NSW and almost immediately by relatively minor regulatory changes.

The existing tax of *s88 POEO* levy can be refocussed exerting a primary liability for payment of it upon the generator of the waste. In turn, this liability can be passed along the chain of responsibility in a manner similar to GST. Precedents already exist within the *POEO Act* for such an action.

Constitutional and legal aspects of this proposal are discussed in greater depth by the advice given by _____ who was asked to examine the issue and to advise in relation to it.

A copy of that advice accompanies this submission [**Annexure A**].

THE REGULATIONS GUIDE TO THE WASTE RESPONSIBILITY LEVY

The Waste Responsibility Levy [**WRL**] we propose is not a new tax. It replaces the Waste Contributions Levy authorised by *s88* of the *Protection of the Environment Operations Act* and changes how and from whom the levy can be collected.

The *s88* WCL was previously only collected at a Licensed Landfill premises in NSW although the market priced in the cost of the levy into the price which was charged for waste known to be required to be disposed of by landfilling.

The WRL explicitly places responsibility for the disposal or recycling of waste upon the person who generates the waste or from whose land the waste was generated rather than leaving it to pricing and market forces to optimize resource recovery.

As is presently the case; if resource recovery is maximized, in accordance with the *POEO Act* in practice, the WRL will only apply to waste which is to be landfilled.

Some categories of waste will not be subject to WRL provided that the waste is dealt with in accordance with the *POEO Act*.

³ *Act No. 198 of 1992* as amended, taking into account amendments up to *SLI 2010 No. 41*.

An Act to provide for the recognition within each State and Territory of the Commonwealth of regulatory standards adopted elsewhere in Australia regarding goods and occupations.

Administered by: Industry, Innovation, Climate Change, Science, Research and Tertiary Education.

The below is a list of materials considered to be completely segregated single stream materials:

- VENM;
- paper;
- timber/ wood waste
- cardboard;
- concrete;
- plastic;
- uncontaminated soil
- tile;
- metals;
- sandstone;
- asphalt;
- sand;
- brick,
- glass

Below is a list of Mingled materials [formerly General Soil Waste] consisting of the following mixes:

- paper, cardboard, plastic, polystyrene in any combination or proportions but excluding all other materials;
- soil, sand, rock, sandstone, concrete brick in any combination or proportions but excluding all other materials;
- timber, wood waste, lopping's in any combination or proportions but excluding all other materials; and
- brick, concrete, steel in any combination or proportions excluding all other materials;
- glass, plastic, beverage containers in any combination or proportions excluding all other materials.

The WRL will apply to **all skip bin waste and all other waste streams** exceeding 1 tonne in weight or 2 cubic metres in volume except waste in the specified WRL exemption categories.

The WRL provisions establish a chain of responsibility for waste generated in NSW and places primary liability for the payment of the WRL upon the Waste Generator.

The Waste Generator will be primarily liable to pay the WRL on any waste for which he is responsible or which is transported from his or the land which he occupies.

A Waste Generator may only contract with an Authorised Transporter to transport and dispose of waste.

The Waste Generator must follow the procedures established in the *POEO Act* and if he does so then the liability for any WRL will be met by the Authorised Transporter.

Are you a Waste Generator?

Waste Generation the creation of waste resulting from or associated with any activity carried out upon any site or premises owned or occupied by that person or by any other person.

Waste generator includes

- (i) Any person who owns or occupies a site or premises upon which waste is generated as a result of any activity.
- (ii) Any person who authorises, arranges, causes or permits the transportation of any waste from any site or premises to any other place.

If you carry on a business on a site, or if you lease or licence your site or otherwise permit another person to carry on a business or an activity on that site, and as a result of a process of manufacture or any activity on that site waste is generated, you will **not** be liable for WRL - provided that you use or re-use the waste on that site.

If you or another person carry on a business on a site and as a result of a process of manufacture, business or any activity on that site waste is generated then if:

- (i) the waste is transported from that site to another place; and
- (ii) the waste is waste to which WRL applies.

Then the person who owns the land where the waste is located and the person who authorised the transportation of that waste will be jointly and severally liable to pay WRL.

Who qualifies as an Authorised Transporter?

Authorised Transporter (AT) means a person or corporation who, pursuant to any contract, arrangement, undertaking or understanding agrees to transport waste from its place of origin to another place.

In order to qualify to be an Authorised Transporter the Waste Transporter must at all relevant times either:

- (i) hold a current EPL for the recycling or landfilling of waste; or
- (ii) have a current contractual agreement with the holder of a current EPL for the recycling or landfilling of waste in NSW.

In either case the Authorised Transporter must have fulfilled all prior obligations in relation to WRL.

Only an Authorised Transporter may contractually indemnify a Waste Generator [using an approved form] against a liability to pay WRL.

Transfer of primary liability for payment of WRL

A Waste Generator may be the owner occupier or lessee of a premises where waste is generated.

Alternatively, there may be another person who is contractually empowered to authorise the transportation of waste from those premises.

Regardless, both the site owner and the person who authorised the transportation of the waste will be jointly and severally liable to pay any WRL.

The Waste Generator can transfer ownership of the waste to a Waste Transporter for the purposes of transport and disposal, nonetheless the Generator and the person who authorised the transportation will both remain primarily liable for payment of the WRL unless:

- (i) the waste is listed in the exempt categories and does not attract WRL; or
- (ii) the Waste Generator has been indemnified by the Waste Transporter in the way permitted by the Act; or
- (iii) the Waste Generator is otherwise exempted from paying WRL under the provisions of the *POEO Act*.

The site owner **and** any other person who authorised the transportation of waste in respect of which there is a WRL liability may be indemnified against the WRL liability provided that the procedure set out in the regulations is followed.

Unpaid WRL can be recovered from any Party liable to pay it by the State Debt Recovery Office on behalf of the NSW EPA [subject to the provisions outlined below].

Contracts for the Transportation of Waste

All contracts for the transportation of any waste exceeding in aggregate 100 tonnes [whether or not WRL applies to that waste] must adopt the following written Notice procedure.

Prior to entering into a contract for the transportation of waste an Authorised Transporter [AT] must give to the person authorising the transportation and the site owner [if that is a different person] a **WRL Notice No 1**.

A **WRL Notice No 1** must have all of the details completed upon it and be signed by both parties. Each Party must keep a signed copy.

Within three days of the signing of the **WRL Notice No 1** the AT must also electronically send a copy of the **WRL Notice No 1** to the NSW EPA.

It is an offence for an AT to enter into a contract for the transportation of waste exceeding in aggregate 100 tonnes without adopting this written Notice procedure.

Repeated offences may lead to disqualification.

The Legal Effect of WRL Notice No 1

The **WRL Notice No 1** must specify the expected quantity of waste to be transported and identify if it is a type of waste to which WRL applies.

If WRL applies to the waste being transported, the giving of a **WRL Notice No 1** by the AT operates to indemnify the Waste Generator and any other person who is liable to pay WRL against their primary liability to pay the WRL.

That **WRL Notice No 1** protects the Waste Generator and any person who authorised the transportation of the waste against any subsequent action by the NSW EPA to recover the WRL from either of them except under limited circumstances.

Circumstances where WRL Notice No 1 provides no protection

The circumstances in which the Waste Generator and a person who authorized the transportation of the waste will remain liable for the WRL are where:

- (i) the person primarily liable for payment of the WRL is an entity which is associated with the Waste Transporter within the meaning of the *Corporations Act 2001* (Cth);
- (ii) any person primarily liable for payment of the WRL has contracted with a waste transporter who at the time of the contract is not an AT within the meaning of the regulations;
- (iii) any person primarily liable for payment of the WRL has not received a **WRL Notice No 1** signed by an AT;
- (iv) The Waste Generator has knowingly entered into an arrangement agreement or understanding for the transportation of waste of which the NSW EPA reasonably concludes

was intended to or has the effect of avoiding payment of WRL which would otherwise, but for the arrangement agreement or understanding have been payable.

Waste Responsibility Levy Liability Notice No 1

WARNING: This notice constitutes formal notification that you are liable to pay the Waste Responsibility Levy pursuant to Section XX Protection of the *Environment Operations Act 1997*

It is an offence to provide false or misleading information about waste (section 144AA)

Name of Authorised Transporter	
ABN of Authorised Transporter	
Registered Office of Authorised Transporter	
Name of Authorised Person	
Telephone Number	
Email Address	
EPA Authorisation Number	
Name of Waste Generator	
ABN of Waste Generator	
Registered office of Waste Generator	
Authorised person name	
Telephone Number	
Email Address	
Name of Person Authorising Transportation of Waste	
ABN	
Registered office	
Authorised person name	
Telephone Number	
Email Address	
Collection Address of waste to be transported	
Description of Waste to be transported	
Classification of Waste	
Estimated Volume of waste	
Date upon which Notice is given	

Directions and Information

Section XX of *POEO Act* provides that unless exempted, all waste attracts Waste Responsibility Levy (WRL).

Each Party must sign, date and retain a copy of this Notice and at the time of the Contract the Authorised Transporter must give you a copy of the EPA Guide to the Waste Responsibility Levy. Within 3 business days of entering the contract for Transport the Authorised Transporter must electronically forward a copy of this Notice and the WRL indemnity (if applicable) to the NSW EPA.

To the Waste Generator.

Section XX of *POEO Act* provides that the person who generates waste or who authorizes the transportation of waste [unless that Waste is exempt] acquires primary liability for payment of any Waste Responsibility Levy.

Under the *POEO Act*, the amount of WRL payable is calculated in accordance with the type, classification and amount of waste being transported from your premises. The booklet entitled EPA Guide to the Waste Responsibility Levy will allow you to know if your waste is liable to WRL.

You will be provided with notification by the approved Waste Facility of any WRL liability within one business day of the waste being weighed.

Authorised Transporter Indemnity

By signing this Notice and transporting the waste from your premises the Authorised Transporter accepts responsibility for the payment on your behalf of the Waste Responsibility Levy for which you may be otherwise be primarily liable.

Name of Authorised Person for Waste Generator	Name of Authorised Person for Authorised Transporter
Signed	Signed
Date	Date

General Obligation to Weigh all Waste

There is a new obligation upon ATs to weigh all transported waste at a NSW Approved Waste facility regardless of whether it is subject to WRL.

The only exception from this obligation is when:

1. the waste is generated as the result of manufacturing process; and
2. is exempt from WRL; and
3. is being transported from one premises to another premises owned or occupied by the waste generator for the purposes of a manufacturing process or resource recovery.

The Approved Waste Facility must in all other cases [regardless of whether or not the waste is left at the facility]:

- (i) Inspect the waste being weighed and classify and record the same.
- (ii) Issue a certificate stating the weight of the waste.
- (iii) Maintain records for up to three years.
- (iv) Electronically notify the NSW EPA of the details.

Within 1 business day of the weighing, where waste is NOT left at the facility, the Approved Waste facility must electronically notify the NSW EPA of details in each case of:

- (i) the waste weighed at the facility and its origin;
- (ii) the waste classification;
- (iii) the Waste Transporter; and
- (iv) the time and date.

Transporting waste to a landfill for disposal

When transporting hazardous or special wastes to which WRL applies an AT must proceed directly to a NSW Approved Landfill.

Upon payment to it, the Landfill Operator will issue a **WRL Payment Certificate No 2**.

WRL Payment Certificate No 2 operates to protect the Waste Generator and the AT against all liability for WRL in respect of the waste referred to in the Certificate.

In every case the Waste Generator will also be notified of the WRL applicable to its waste and whether or not the WRL has been paid.

If the waste is not delivered to an approved Waste Facility [landfill] the AT will nevertheless remain liable to pay the WRL on that waste.

Waste Responsibility Levy Liability Payment Certificate No 2

WARNING: It is an offence to provide false or misleading information about waste (section 144AA of the *Environment Operations Act 1997*).

Name of Facility	NSW Landfill Facility
Address of Facility	
EPL No:	
Date	
Quantity	
Waste Classification	
Address of Premises from which waste was transported	
Authorised Transporter	
WRL Paid	
Issued BY	

Transportation of Mixed Waste-Resource recovery

When transporting mixed waste [of more than 100 tonnes in aggregate] to which WRL applies an AT must proceed by the nearest most practicable route to an approved weighbridge and provide certain details regarding the waste being transported.

If the AT elects to transport the mixed waste to an Approved Recycling Facility the Approved Recycling Facility will, upon payment to it by the AT issue a **WRL Exemption Certificate No 3** in respect of that waste.

The **WRL Exemption Certificate No 3** will represent the same percentage of the applicable WRL as the recycling percentage achieved by that Approved Recycling facility.

The **WRL Exemption Certificate No 3** issued by an Approved Recycling Facility operates to protect the Waste Generator and the AT against all further liability for WRL in respect of the waste referred to in the Certificate.

Waste Responsibility Levy Liability Exception Certificate No 3

WARNING: It is an offence to provide false or misleading information about waste (section 144AA of the *Environment Operations Act 1997*).

Name of Facility	NSW Landfill Facility
Address of Facility	
EPL No:	
Date	
Quantity	
Waste Classification	
Address of Premises from which waste was transported	
Authorised Transporter	
WRL Paid	
Issued BY	

All Approved Recycling Facilities must provide to the NSW EPA each calendar month a WRL liability report.

The WRL liability report must show:

- (i) the quantities by weight of mixed waste received by the facility and the WRL applicable to that waste;
- (ii) the quantities by weight of all unrecoverable portions of waste disposed of at an Approved Landfill and the WRL applicable to that waste;
- (iii) the quantities by weight of recovered materials from the mixed waste and the WRL applicable to that waste; and

- (iv) details of all **WRL Exemption Certificates No 3** issued by the Approved Recycling Facility during that month.

The WRL which the Approved Recycling Facility must remit to the NSW EPA is given by:

WRL x number of tonnes of mixed waste received for that reporting month

less

WRL x number of tonnes recovered materials for that reporting months

= **unrecoverable** portion landfilled in tonnes x WRL.

The Approved Recycling Facility must dispose of any unrecoverable portion of the mixed waste at the nearest NSW Approved Landfill and must at that time pay the WRL applicable to the unrecoverable portion to the Landfill Operator.

Failure to do so will mean that the Recycling Facility will remain liable for that portion of the WRL.

The AT is not obliged to leave the mixed waste at an Approved Recycling Facility but if it does not do so:

- (a) the Waste Generator may remain primarily liable for WRL; or
- (b) the AT will remain primarily liable for WRL.

In both cases the WRL will be calculated on the full weight of that mixed waste.

The WRL may be recovered by the NSW EPA from either party.

Mixed Bin Waste

Mixed Bin Waste is liable to WRL.

The person primarily liable to pay the WRL is the Waste Generator or the person who authorized the transportation of the waste.

Short Form Disclosure Requirement - Bin waste & small clean up Contractors

This is a requirement where mixed waste, to be transported or disposed of, is more than 1 tonne but less than 100 tonnes.

Before a Waste Disposal Contract for the disposal of **less than** 100 tonnes of mixed waste commences, the Waste Transporter must at the time of taking the first order for waste transportation or removal, inform the Waste Generator that the primary liability for payment of the WRL lies with the Waste Generator.

It will be a statutorily implied term into any contract or contracts for the carriage and disposal of mixed waste which cumulatively account for more than 1 tonne and **less than** 100 tonnes of mixed C & D waste from any one site or premises that liability for payment of the WRL will be met by the Waste Transporter.

The Waste Transporter must demonstrate that it engages standard operating procedures to communicate this information to the Waste Generator.

Failure by the Waste Transporter to engage standard procedures to inform the Waste Generator of the existence of and statutory transfer of WRL liability will be an offence.

When transporting mixed waste [of **less than** 100 tonnes in aggregate] to which WRL applies the AT must proceed by the nearest most practicable route to an approved weighbridge and provide certain details regarding the waste being transported.

If the AT elects to transport the mixed waste to an Approved Recycling Facility the Approved Recycling [Waste] Facility will, [upon payment to it by the AT] issue a **WRL Exemption Certificate No 3** in respect of that waste.

The **WRL Exemption Certificate No 3** will represent the same percentage of the applicable WRL as the recycling percentage achieved by that Approved Recycling facility.

The **WRL Exemption Certificate No 3** issued by an Approved Recycling Facility operates to protect the Waste Generator and the AT against **all further** liability for WRL in respect of the waste referred to in the Certificate.

CASE EXAMPLES

Scenario 1 I am a developer and I am preparing a site for building. I have excavated clean soil for removal.

- In this scenario, we are dealing with uncontaminated soil which is capable of being processed and substantially recovered. Given the recovery opportunity with segregated wastes the pricing structure does not provide incentive for landfilling in NSW or interstate. Therefore, this waste currently attracts no WRL and that will continue to be the case.
- You must contract with an Authorised Transporter [AT] who must give you a **WRL Certificate No 1**.
- The AT is obliged to weigh the waste and report it to the NSW EPA.
- The clean soil waste will be taken by the Waste Transporter to an Approved NSW Recycling [Resource recovery] Facility.

Scenario 2 I am a developer demolishing a factory I have approximately 2000 tonnes of bulk soil mixed with brick and concrete.

- Uncontaminated soil, brick and concrete which has no other material in it is capable of being processed and substantially recovered.
- You must contract with an Authorised Transporter [AT] who must give you a **WRL Certificate No 1**.
- The AT is obliged to weigh the waste and report it to the NSW EPA.
- This type of waste is WRL exempt.

Scenario 3 I am a developer demolishing a factory and I have mixed waste materials comprised of soil, timber tree lopping's stumps, gyprock, glass, cardboard, plastic, concrete, and brick. I am having it removed in bins and there is more than 100 tonnes.

- These mixed wastes did not previously attract the *s88* levy they do attract WRL on the full weight of the waste.
- As a developer who authorises the transportation of waste you will be primarily liable for payment of the WRL.
- You must contract with an Authorised Transporter [AT] who must give you a **WRL Certificate No 1** before commencement of the contract.
- By giving you a WRL the AT takes over your liability for WRL.
- The AT is obliged to weigh the waste and report it to the NSW EPA.

Scenario 4 I am a developer demolishing a factory and I have 600 tonnes of petrochemical contaminated soil, and asbestos contaminated soil.

These wastes are required to be landfilled under the *POEO Act*.

- As a developer who authorises the transportation of waste you will be primarily liable for payment of the WRL.
- You must contract with an Authorised Transporter [AT] who must give you a **WRL Certificate No 1** before commencement of the contract.
- By giving you a **WRL Certificate No 1** the AT takes over your liability for WRL.
- The AT is obliged to weigh the waste and report it to the NSW EPA.
- You will receive notification that the WRL has been paid when the waste is landfilled at a NSW approved facility.

Scenario 5 I am a home owner cleaning up the yard I have about 3 tonnes of mixed waste and will require skip bins.

- When you telephone the skip company the transporter must tell you that there is a liability for the waste responsibility tax and that is included in the price of the bins.
- If the bins are ordered the skip company/ Authorised Transporter takes over liability for the WRL.
- The AT is obliged to weigh the waste and report it to the NSW EPA.
- You will receive notification that the WRL has been paid when the waste is landfilled at a NSW Approved Facility.

ANNEXURE A