

Queensland Government response

Investigation into the transport of waste into Queensland

March 2018

Message from the Queensland Government

Former Supreme Court Judge Peter Lyons, QC was commissioned by the Queensland Government to lead the independent Investigation into the transport of waste into Queensland. This was in response to allegations raised about the movement of waste from New South Wales in an ABC TV Four Corners program in August 2017.

The investigation team was tasked with identifying financial, regulatory or other incentives for the movement of waste from other states to Queensland. The final report contained two recommendations:

Recommendation No. 1

The Government should consider implementing a general levy on all waste disposed of at landfill in Queensland.

Recommendation No. 2

The Minister for Environment and Heritage Protection and the Department of Environment and Heritage Protection should continue to engage with the corresponding Ministers and Agencies in other Australian States and Territories about the design and implementation of a national framework that would reduce or limit the unnecessary transportation of waste within Australia.

The Queensland Government supports both recommendations.

The Queensland Government accepts the evidence provided in the investigation's final report which identified that high performing Australian and international jurisdictions achieve positive results by adopting a comprehensive waste management and resource recovery strategy. The evidence from the international experience and other Australian states demonstrates that a waste levy should not be introduced in isolation of a comprehensive waste strategy. While this strategy will be underpinned by a waste levy, it will be designed to ensure that the cost of household waste disposal will not be impacted. The Government has made a commitment that it will not increase taxes for Queensland households.

A successful, comprehensive waste management and resource recovery strategy will require thorough consultation with industry and other stakeholders, leading to a detailed articulation of the goals and priorities for, and the targets to be achieved by, the strategy, including employment, market development, investment and environmental outcomes.

The investigation's final report also notes limitations on the data reported to the Queensland Government. The Government agrees that robust data is essential to underpin a comprehensive waste strategy and enhancing the existing data system will be an element the new waste strategy.

The Government's consideration of the outcomes from the investigation is timely and aligns with mandatory requirements under the *Waste Reduction and Recycling Act 2011* to review of the existing *Queensland Waste Avoidance and Resource Productivity Strategy (2014-2024)*.

The Queensland Government is committed to undertaking thorough consultation with stakeholders in the development and implementation of the waste strategy, and the waste disposal levy and other companion measures. This consultation process will be led by the Department of Environment and Science and be supported by the Queensland Treasury Corporation to ensure that the economic opportunities that will be created by a revitalised recycling and waste sector underpin the direction and design of the strategy.

The full recommendations and findings of the investigation are set out below, along with the Government's response.

Recommendations	Government Response
<p>Recommendation No. 1</p> <p>The Government should consider implementing a general levy on all waste disposed of at landfill in Queensland.</p>	<p>Supported</p> <p>The Queensland Government will introduce a waste disposal levy.</p> <p>The Government acknowledges that there are good and innovative practices within the waste industry; however it also recognises that Queensland is a poor performer in many respects.</p> <p>The Government recognises the findings of the investigation provide an opportunity to re-invigorate the resource recovery, recycling and waste management sector. A new strategy, underpinned by a waste disposal levy would provide industry with policy and investment certainty.</p> <p>The new strategy will support growing innovation and advanced processing as part of the Advance Queensland agenda, through the application of a price signal on disposal and other companion measures that will help divert valuable resources from landfill.</p> <p>Introduction of the waste disposal levy will be progressed as a central component of a comprehensive new strategy which will be developed in consultation with key stakeholders including local government, the business sector and the waste industry.</p> <p>Consultation with key stakeholders, business and the community will be fundamental to the design of the waste disposal levy model. The design will incorporate measures to avoid costs for households. Queensland families will not bear the cost of the levy.</p>
<p>Recommendation No. 2</p> <p>The Minister for Environment and Heritage Protection and the Department of Environment and Heritage Protection should continue to engage with the corresponding Ministers and Agencies in other Australian States and Territories about the design and implementation of a national framework that would reduce or limit the unnecessary transportation of waste within Australia.</p>	<p>Supported</p> <p>The Queensland Government will continue to work closely with other Australian jurisdictions on mutual issues related to disposal, recycling and reuse of waste resources including measures that will reduce or limit the unnecessary transport of waste within Australia and improve harmonisation between policy and regulatory frameworks.</p>

Summary response to Terms of Reference	Government Response
1(a) What are the financial, regulatory and other incentives for the movement of waste from other States to Queensland landfills?	
The significant incentive for the movement of waste from other States to Queensland is financial. The financial incentive results from the absence of a levy in Queensland, and the relatively low facility fees charged in this State.	Noted
1(b) Whether there are any regulatory frameworks in place that would inhibit or affect this movement of waste in state or national regulations?	
Section 71 of the Protection of the Environment Operations (Waste) Regulation 2014 (NSW), if effective and enforced, would inhibit the movement of waste from that State to Queensland. No other significant statutory inhibition has been identified.	Noted
1(c) Whether any other jurisdictions in Australia or internationally have dealt with similar movements of waste and, if so, what was the response?	
Only the United States has a constitutional limitation analogous to s 92 of the <i>Australian Constitution</i> . The limitation affects state legislatures in that country, whose attempts to inhibit the transport of waste across state borders by legislative means have been ineffective. The European Union has regulatory frameworks intended to limit the transportation of waste between member States; but these are not affected by any relevant constitutional limitation.	Noted
2 Examine whether regulatory and other reforms could limit or stop the cross-border movement of waste to Queensland landfills and make recommendations on these potential reforms including whether actions may be taken by:	
2(a) Queensland	
<p>A levy could be introduced in Queensland to achieve appropriate environmental and related outcomes. In time, and at a sufficiently high level, it could inhibit the flow of waste from other states to Queensland.</p> <p>It is possible that it would be subject to challenge, most likely under s 92, but possibly also under s 90, of the <i>Australian Constitution</i>. However, insofar as the levy is applied universally to all waste disposed of at Queensland landfills and does not discriminate in any way between intrastate and interstate waste, it is not immediately apparent how such a universal levy could interfere with interstate trade. As noted above, four other States already impose levies on waste disposed of at landfill. The State should seek specific legal advice on the design of any system for the imposition of levies that it proposes to implement.</p> <p>A ban on the disposal in landfills of C&D waste from all sources is likely to reduce significantly the flow of waste from other States. It would also have significant consequences for the waste disposal industry in Queensland.</p>	Best practice based on other Australian and international jurisdictions suggest that any waste levy should be applied universally to all waste disposed to landfill.

2(b) local governments in Queensland		
Local governments that own and operate landfills may be able to exercise their right not to accept waste from interstate. Their legislative powers are generally more constrained than those of the State, and it is difficult to see that the exercise of those powers could have any real effect on the quantities of waste transported from interstate.		Noted
2(c) the State where the waste was generated		
A reduction of the levy in New South Wales would make the transportation of waste to Queensland less financially attractive; and at a sufficiently low level, may make it not economically feasible. It is possible that joint action by other States and Queensland, for example, in relation to a “portable levy” or the legislative implementation of the proximity principle, might be constitutionally valid and affect the volume of waste coming to Queensland; but for reason given elsewhere, these options have not been examined. A levy imposed on the waste generator by New South Wales, which has some conceptual similarity a “portable levy”, would also reduce the incentive to transport waste from that State to Queensland.		Noted
2(d) the Australian Government		
The Australian Government’s powers are limited to those granted to it by the Australia Constitution and constrained by s 92. There is no reason to think it could take action which Queensland and the other States could not.		Noted
2(e) relevant jurisdictions under a cooperative arrangement		
Nil response provided.		Noted
Matters for consideration	Background to issue/comments	Government Response
Paragraph 45 – EHP’s processes for collecting and analysing data may need review.	The departmental waste data collection process is not consistent across annual surveys and quarterly summary returns. For example, it does not require recyclers to identify volume of waste from interstate sources.	DES acknowledges the benefit of improving data collection practices. Actions to increase accuracy and reliability of the data will be undertaken and implementation of a comprehensive resource recovery, recycling and waste strategy.