

Summary of submissions received on proposed changes to the *Environment Protection Act 1993* in the discussion paper *Reforming Waste Management – Creating Certainty for an Industry to Grow*

Consultation

The discussion paper *Reforming Waste Management – Creating Certainty for an Industry to Grow* was released for public comment between 20 August–2 October 2015.

The discussion paper outlined the issues and drivers influencing the waste industry and then described reform options aimed to create certainty for industry, address current challenges, unlock growth opportunities in the waste and resource recovery industry, and ensure the more unscrupulous operators of the sector do not undermine the viability and innovation of the majority. Some of the reform options include potential amendments to the *Environment Protection Act 1993* (EP Act) and several high-level concepts.

Key stakeholders were directly invited to make submissions, the discussion paper's availability was broadcast through the online newsletter *EPA Monitor*, *Local Government Association Circular* and Waste Management Association of Australia online notice. The discussion paper, together with summary information, was published on the EPA and YourSAy websites.

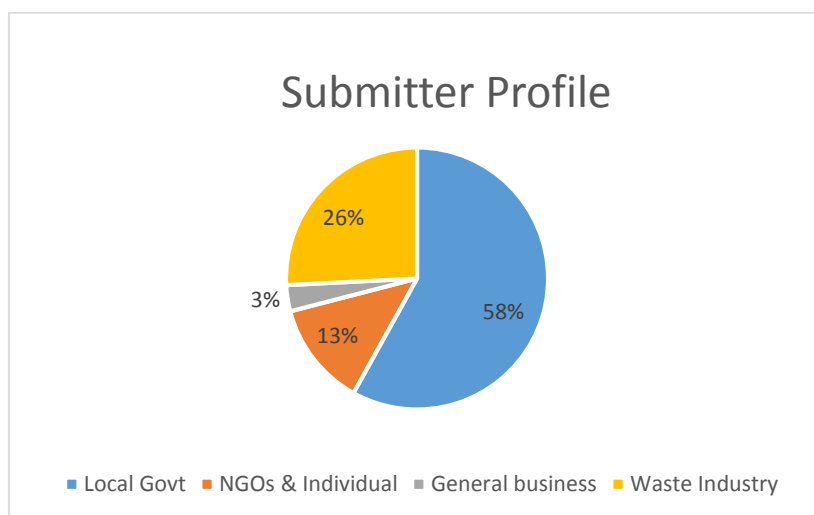
Throughout September 2015, the EPA held five regional consultation sessions in Port Lincoln, Mt Gambier, Port Pirie, Davoren Park (for Northern Areas) and Karoonda, and two metropolitan consultation sessions, as well as a number of meetings with key industry stakeholders. Over 110 people attended consultation sessions or meetings regarding the paper.

Submissions received during consultation on the proposed EP Act amendments

Attachment A shows a list of submitters.

Attachment B is the summary of the submissions received on all of the questions raised in the discussion paper about changes to the EP Act. It identifies the clause of the draft Environment Protection (Waste Reform) Amendment Bill 2016 after consideration of the issues raised in the discussion paper and submissions received is listed under each topic. Further information on clauses of the Bill and a copy of the Bill are contained in the *Environment Protection (Waste Reform) Amendment Bill 2016 explanatory paper* which contains an explanation of clauses.

Feedback received during the consultation sessions indicated active support for the EPA having increased powers to tackle illegal dumping and to expiate contraventions of breaches of licence conditions. Other proposed amendments attracted little discussion at meetings. Stakeholders also expressed support for EP Act changes to be made swiftly. Subsequently, out of a total of 59 submissions on the discussion paper, 31 submissions were received on the proposed EP Act changes and the remaining submissions commented on the broader range of reforms not requiring EP Act changes.

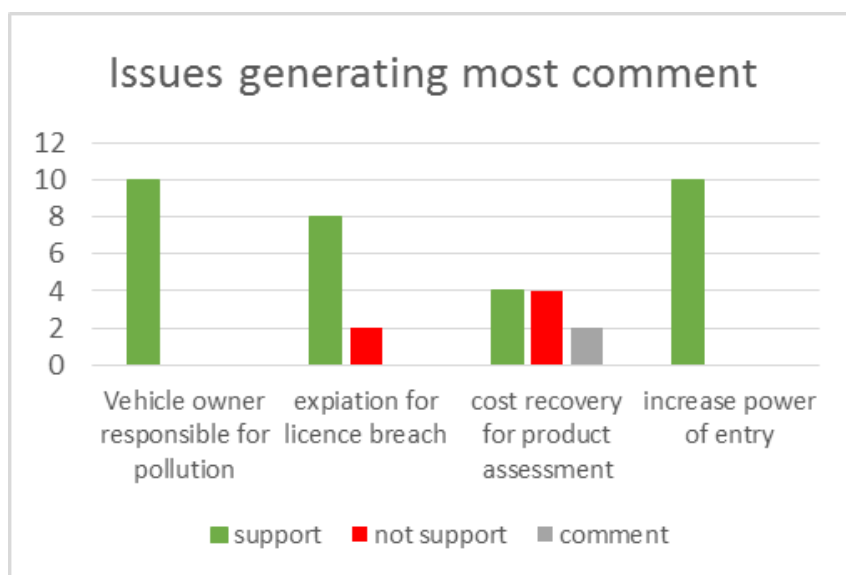


Pie chart showing submitter profile

Summary of key issues raised

The submissions on EP Act changes expressed general support for waste reforms and the need for better controls on illegal dumping and stockpiling. Issues of primary interest as expressed in the submissions were:

- registered owner responsibility for pollution – 100% support for the proposal
- new expiation for breaches of licence conditions – 80% agreed that an expiation is a suitable tool
- increased powers of entry for authorised officers – 100% support for the proposal.



Issues generating the most comments

Submitters held mixed views regarding the proposal for cost-recovery measures to support the efficient and thorough assessment by the EPA of proposals for waste as a new product. The assessment of whether a material can be safely used as a new product is often complex and time consuming. As other waste and resource recovery activities are potentially cross-subsidising the more complex aspects of new resource recovery proposals, the EPA intends to retain the ability to cost recover and to review its scope through regulatory impact assessment.

Additionally, 10 submissions responded to the request for information about the impacts of the proposal to require nominated waste transporters to install approved tracking devices. Some 90% commented on the increased cost impact

that a requirement to install GPS on vehicles would have on business, the remaining 10% were in support of the proposal. Separately, the majority of larger industry participants observed that they already used GPS on all vehicles.

Information provided in submissions about the impact of proposals will be considered in the development of the Regulatory Impact Statement to accompany the draft Bill seeking government approval to introduce in Parliament.

Attachment A

The EPA received 31 submissions regarding the proposed changes to the EP Act from the following sectors.

Local government

- 1 Adelaide City Council Administration
- 2 Adelaide Hills Council
- 3 Adelaide Hills Region Waste Management Authority (AHRWMA)
- 4 City of Campbelltown
- 5 City of Charles Sturt
- 6 City of Holdfast Bay Administration
- 7 City of Mount Gambier
- 8 City of Onkaparinga
- 9 City of Tea Tree Gully
- 10 City of West Torrens
- 11 District Council of Ceduna
- 12 District Council of Grant
- 13 East Waste
- 14 Local Government Association
- 15 Mount Barker District Council & Rural City of Murray Bridge
- 16 Tatiara District Council
- 17 Wattle Range Council
- 18 Whyalla City Council

Waste and resource recovery industry

- 1 Adelaide Resource Recovery
- 2 ResourceCo
- 3 Rodenburg Waste Solutions
- 4 SIMS Metal Management
- 5 SUEZ Recycling and Recovery Australia
- 6 Jeffries
- 7 Transpacific Cleanaway
- 8 Veolia

General business

Peregrine Corporation

Non-government organisations and individuals

- 1 Conservation Council of South Australia
- 2 KESAB
- 3 Individual
- 4 Individual

Attachment B

Summary of the submission received on the ‘Options for changes to the Environment Protection Act’ questions raised in the discussion paper.

Below are the questions asked about changes to the EP Act and a summary of the submission received on all of the questions raised in the discussion paper about changes to the EP Act. Reference is also made to clauses of the Bill that have been drafted to implement the proposed reforms.

Amendment to the Objects – section 10 of the Environment Protection Act

Question 64

Do you support amendment to the EP Act to clearly allow implementation of maximum stockpile limits and material flow controls to prevent excessive accumulation of material?

A total of nine submissions were received.

The majority of submissions (6) supported amendment to the EP Act to clearly allow implementation of maximum stockpile limits and material flow controls to prevent excessive accumulation of material. Only three submissions did not support this amendment.

The general comment received from another submitter was that more detail about the proposed changes to the objects were required.

Refer to:

- Clause 5: New section 4D – Unlawful disposal of waste etc
- Clause 6: Amendment of section 10 – Objects of Act
- Clause 15: Amendment of section 45 – Conditions

Detail of the proposed amendments to clearly allow implementation of maximum stockpile limits and material flow controls to prevent excessive accumulation of material has been prepared in draft Bill in the above clauses.

Definition of ‘waste’ – section 3

Question 65

What advantages or disadvantages do you consider could arise from amendment of the EP Act to clearly allow declaration of particular material as a ‘product’?

Five submissions were received.

All submissions commented on the advantages that could arise from amendment of the EP Act to clearly allow declaration of particular material as a ‘product’ and included:

- the consistency to classify a product being a waste
- ease of determination
- improves resource recovery outcomes
- increased adoption of source separation activity
- stronger more viable resource recovery industry
- provides certainty when dealing with waste for cost effective and efficiency.

A general comment was: ‘Care must be taken to ensure that such a declaration is clear and specific, allowing for a repeatable generation of such a product by the whole waste industry, rather than a single licensee’.

Refer to:

- Clause 4: Interpretation – amended definition of waste
- Clause 5: New section 4C – Approved recovered resources

The proposed section 4C of the EP Act sets out a process for an application to the EPA for a declaration that a specified matter constitutes an approved recovered resource and does not constitute waste for the purposes of the EP Act. The section contains new regulation making powers to further prescribe the process including the manner and forms of applications and to set an application fee. Future consultation will occur on the content of such regulations after any EP Act changes are made, including the amount of such an application fee.

New expiation for breaches of licence conditions – section 45

Question 66

Do you consider that an expiation is a suitable tool to punish an offender who contravenes a condition of licence?

A total of 10 submissions were received.

Eight submissions agreed that an expiation is a suitable tool to punish an offender who contravenes a condition of licence. One submission’s support was conditional upon adequate training of staff to ensure that licenced sites were treated equally regardless of size. Four submissions commented that expiations needed to be used as part of an escalating approach to compliance. One submission in support of expiations suggested prescribing a set of expiation fees for a proportionate expiation amount. One submission commented that the expiation amount would need to be sufficiently severe to serve as a credible deterrent.

A comment from a local government agency stated:

Allowing the EPA to issue expiation notices will make for more effective and prompt enforcement of breaches of licence conditions and improve compliance overall.

Two submissions disagreed that an expiation is a suitable tool to punish an offender who contravenes a condition of licence as it punishes licensees.

Refer to Clause 15: Amendment of section 45 – Conditions.

The Regulatory Spectrum (Figure 1) highlights how the EPA tailors its regulatory actions based on particular circumstances; from supporting/enabling and recognising those who demonstrate a commitment to good compliance and go beyond compliance, to enforcing the law for those who intentionally or recklessly fail to comply.

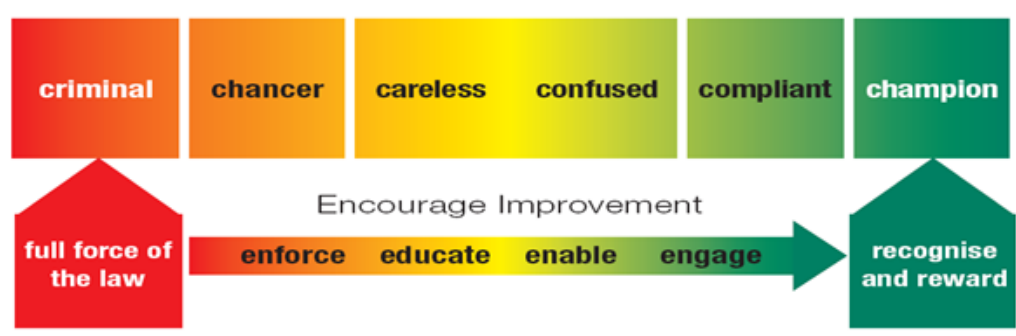


Figure 1. Regulatory Spectrum

A proposed amendment to section 45 of the EP Act has been drafted to add an expiation fee of \$1,000 as a penalty for the offence of contravention of a condition of environmental authorisation such as a licence. The amendment also provides regulation-making power such that a regulation may be made to prescribe conditions and corresponding expiation fees so that if there are conditions that warrant a different expiation amount, the government could make regulation prescribing this amount.

The proposed new subsections 45(6) and (7) provide for a default penalty notice to be issued for breach of reporting deadline licence condition. The amended section 45 will include a default penalty notice in the event that there is a breach of licence condition that has a reporting deadline. This is similar to section 48(4) of the EP Act that provides a default penalty where the holder of an authorisation fails to lodge the annual return or pay the annual authorisation fee.

The EPA recognise the importance of staff training in the use of such new expiations and this will form part of implementation.

Question 67

Do you think the application of expiations, as opposed to criminal prosecutions, will deter non-compliance with the conditions of a licence?

Eight submissions were received.

Five submissions agreed that the application of expiations, as opposed to criminal prosecutions, will deter non-compliance with the conditions of a licence. One of those submissions from a local government agency stated:

This could prove a useful option, for example, for the EPA to use where community complaints identify a breach that is of local concern, but does not warrant the dedication of EPA resources to take the matter before a court. It is noted that this mechanism could be used by the EPA on repeated visits to the same premises if required, and this could therefore become a significant deterrent to ongoing non-compliance with EPA licence conditions.

Three submissions commented that there was a need for a range of tools and for convictions for serious non-compliance.

As stated above the EPA will continue to apply the regulatory spectrum to tailor its regulatory approach. The approach to non-compliance is set out in the Compliance Plan 2015–16 that states:

If during our interventions or core business activities we find a non-compliance, the approach is to stop, sanction and treat the non-compliance. Our response is risk based, proportionate to the actual or potential impact on the environment, and considers the attitude and compliance history of the alleged offender. An EPA Executive subcommittee ensures the response will be fair and equitable.

Another submission asked the question: How do you apply an expiation notice to operators who do not have a licence? It is noted that there are offences in the EP Act, other than breach of licence condition that may be used to respond to non-licensed operations that create an offence and contain an expiation such as the offence of environmental nuisance with an expiation of \$300.

Question 68

Should an expiation be limited to administrative breaches of licence condition or be applied to all breaches of licence conditions?

Three submissions were received.

Two commented that expiations should be applied to all breaches of licence conditions and one commented that expiations should be applied to less serious offences.

The proposed expiation option for breaches of licence condition has been drafted to allow an expiation for any licence condition and the EPA will apply an escalating approach in deciding what licence conditions should be the subject of an expiation if there is a breach and which conditions should be the subject of criminal proceedings.

Question 69

What is an appropriate expiation amount for a person who contravenes a condition of licence?

Five submissions were received.

Two submissions supported a scale of expiations to reflect the seriousness of the offence, and another two supported a \$500 expiation.

One submission supported the NSW expiation fee amount. As stated in the discussion paper the NSW *Protection of the Environment Operations Act 1997* and regulations proscribe a penalty notice for failure to comply with a condition of licence in the amount of \$7,500 for a natural person or \$15,000 for a body corporate.

As stated above the proposed amendment to section 45 of the EP Act has been drafted to add an expiation fee of \$1,000 as a penalty for the offence of contravention of a condition of environmental authorisation such as a licence. The amendment also provides regulation-making power such that a regulation may be made to prescribe conditions and corresponding expiation fees so that if there are conditions that warranted a different expiation amount the government could prescribe this amount. It is noted that in South Australian the EP Act also provides for the out-of-court negotiation of civil penalties as an alternative to expiation or criminal prosecution and the maximum amount for breach of licence condition is \$120,000.

Question 70

Should there be a new requirement that before the EPA pursues an expiation for a breach of licence condition the EPA must have regard to the seriousness of the contravention, the previous record of the offender and any other relevant factors?

Seven submissions were received.

Six commented that there should be a new requirement that before the EPA pursues an expiation for a breach of licence condition the EPA must have regard to the seriousness of the contravention, the previous record of the offender and any other relevant factors. One submission commented that there should not be such a requirement.

The question of whether there should be such a requirement in the EP Act arose from consideration of section 104A of the EP Act that limits when the EPA may pursue a negotiated a civil penalty rather than criminal prosecution and states:

(2) The Authority may not recover an amount under this section in respect of a contravention if the relevant offence requires proof of intention or some other state of mind, and must, in respect of any other contravention, determine whether to initiate proceedings for an offence or take action under this section, having regard to the seriousness of the contravention, the previous record of the offender and any other relevant factors....

However as the proposed expiation amount is \$1,000 which is considerably lower than the maximum civil penalty that may be negotiated (\$120,000), and the breach of licence condition offence does not require proof of intention or other state of mind, it is not proposed that the same requirement be drafted in the Bill for breach of licence condition expiation. The EPA will continue to be guided by the compliance plan in its regulatory approach. It is noted that in the event that a person wishes to challenge an alleged offence they may choose not to pay the expiation and elect to be prosecuted.

Question 71

How would such a power impact on your community or business?

Four submissions were received.

Three submissions commented it would have minimal or little impact.

One submission from a waste operator identified the positive impact that the amendment would have on the waste industry stating:

It will decrease the incentive for operators to undertake inappropriate activities and therefore make the waste industry more stable with all players being confident they are playing on a level playing field.

Insurance requirement for a licence – section 45

Question 72

Do you consider that the EPA should require a licence-holder to take out insurance for the payment of costs for clean-up action, and for claims for compensation or damages, resulting from pollution in connection with the activity or work authorised or controlled by a licence?

Eight submissions were received.

Six supported the requirement that a licence-holder to take out insurance for the payment of costs for clean-up action, and for claims for compensation or damages, resulting from pollution in connection with the activity or work authorised or controlled by a licence.

One submission opposed the requirement on the basis that it is too costly.

One submission commented that local government and other statutory authorities should be exempt from any additional insurance requirements.

Refer to Clause 18: Substitution of section 51 – Conditions requiring financial assurance

Clause 18 provides for the substitution of section 51 of the EP Act that sets out the provisions around financial assurances that may be required as a condition of an environmental authorisation. The proposed new subsection 51(1)(c) specifies that a financial assurance may take the form of a policy of insurance and subsection 51(6) outline the provisions that apply to a policy of insurance.

The EPA will continue to engage on the details of the requirements for insurance through the development of a financial assurance policy detailing how financial assurance conditions should be applied.

Question 73

How would such a requirement impact on you?

Three submissions were received that provided comment on the impact that an insurance requirement would have on them. One was from a waste operator and two from Local Government.

The submission from the waste operator commented that while this would increase cost on industry the increase in cost would be proportional to the quality of the operation, providing an incentive for better operations: 'The better the operator the lower the cost of the premium'.

One of the submissions from local government commented on the impact would depend on the level of insurance required and questioned whether all sites would require insurance or only those of higher risk?

The other submission from local government commented on the impact that an insurance requirement would have: 'More cost for site, less money available to council to undertake real works and community projects.'

The EPA will continue to engage on the details of the requirements for insurance through the development of a financial assurance policy detailing how financial assurance conditions should be applied.

Question 74

Would there be insurers to insure such activities?

Three submissions were received that provided comment on whether there would be insurers to insure such activities.

One submission answered in the positive and two submissions advised they did not know.

Research on options for insurance will be undertaken as part of the project to develop a financial assurance policy.

Question 75

What costs would the requirement to hold such insurance place on operators?

Two submissions commented about the financial costs that the requirement to hold such insurance would place on operators that it would be passed on to the consumer and stated:

For a good and compliant operator, the cost would only be the premium. So long as this was applied uniformly to all operators then the operators would be able to pass these costs onto their customers. The key point is that it would have to be applied uniformly to ensure a level playing field.

Impact on operators would be a financial one and dependent on cost, which would most likely be passed on to customers.

The cost impact on the imposition of an insurance requirement on operators will be considered further in the development of the financial assurance policy in determining when it is appropriate to require insurance as a financial assurance.

Question 76

Should insurance requirement be imposed as a financial assurance?

Three submissions were received.

Two submissions answered in the positive that insurance requirement should be imposed as a financial assurance, and the last commented not for council-owned sites.

The requirement for insurance will be considered on a case-by-case basis and relevant factors will be considered further in the development of the financial assurance policy in determining when it is appropriate to require insurance.

Question 77

Do you think that many operators would already be insured for the clean-up costs or compensation resulting from an activity of environmental significance controlled by a licence, under their current insurance policies?

Two submissions commented that many operators would already be insured for the clean-up costs or compensation resulting from an activity of environmental significance controlled by a licence, under their current insurance policies. One submission from the waste industry did not agree, and another from local government advised: 'Council does have limited liability insurance to cover its transfer station operations'.

Question 78

Are there other methods that you would prefer to be used to insure for the clean-up costs or compensation resulting from an activity of environmental significance controlled by a licence?

Five submissions were received.

One commented that there were no better options to insurance, while commented that this is not an issue for council-owned sites.

Three submissions nominated the following alternatives to insurance:

- a financial assurance that was linked to Directors' guarantees if enforceable
- an industry fund established by the EPA expropriations, licence fees sector by operators contributions proportioned with tonnage handled annually as part of licence renewal annual payment
- an effective financial assurance scheme.

The proposed amendments to the EP Act will enable the EPA, in accordance with the principles developed in the financial assurance policy, to apply the relevant insurance or financial assurance requirements as a licence condition.

Application of financial assurances – section 51 of the Environment Protection Act

Question 41

Should the EP Act be amended to prescribe the different types of financial assurances that may be used?

One submission was received that stated that the existing financial assurances need to prescribe the various types that are available.

Refer to:

Clause 17: Amendment of section 47 – criteria for grant and conditions of environmental authorisations.

Clause 18: Substitution of section 51 – Conditions requiring financial assurance

In particular see clause 18 and the proposed new subsection 51(1) of the EP Act that identifies the forms of financial assurance.

Question 79

Should the EP Act be amended to clarify that the EPA may impose conditions requiring the lodgement of a financial assurance where remediation work may be required because of activities under the licence irrespective of the potential for environmental harm (including in the event of abandonment of a site)?

Seven submissions were received that commented on the preference for financial assurances.

Two of these submissions qualified their support as not applying to local councils.

Refer to:

- Clause 18 and the proposed new section 51, in particular the proposed new subsection 51(3) of the EP Act that identifies what the EPA must have regard to when determining whether to impose a financial assurance condition of licence.
- Clause 17: Amendment of section 47 – Criteria for grant and conditions of environmental authorisation.

Question 80

Are there any other methods that could be applied to licence-holders to ensure there are adequate funds available for necessary remediation of a polluted site?

Two submissions were received that provided comment of directors guarantee and insurance.

One submission asked for the number of business that abandon sites questioning whether the problem is real or a fear?

In the development of the regulatory impact assessment the EPA is researching the extent of the problem of licensees abandoning sites. The proposed changes are responding to the potential risk of abandonment.

Improve evidentiary provisions for waste – section 139

Question 81

Should the burden of proving a material is not a waste be on the alleged offender?

Six submissions were received.

Three submissions supported placing the burden of proving a material is not a waste on the alleged offender. One submission was unsure.

Two opposed the proposal and one of these included a comment on the impact of the proposal stating:

For small and medium operators, acting in good faith, a change in the evidentiary provisions would add yet another financial and administrative burden.

Refer to Clause 63: Amendment of section 139 – Evidentiary

Question 82

What impact would this change have on your business or community?

Five submissions were received that provided an explanation of the impact of the proposed amendment to the burden of proving a material is not a waste including the following comments:

- will reduce the incentive to try and 'get away with' downgrading the classification of waste
- little impact for council community
- any impact to the local community can be dealt with through active community education programs
- probably just add more cost to the operation
- this appears to be a positive proposed reform, however would be best limited in scope to illegal disposal.

The issues identified will assist to inform the regulatory impact assessment being prepared for the draft Bill to be considered by the government before introduction of the Bill in Parliament.

Potential ability to charge for the assessment of new product proposals – new section

Question 83

Do you have any objections or comments to cost-recovery measures being adopted to support the efficient and thorough assessment of new product proposals by the EPA?

A total of 10 submissions were received.

Four submissions supported the cost-recovery measures being adopted to support the efficient and thorough assessment of new product proposals by the EPA. One of these submissions qualified their support if the costs are transparently estimated and reasonable, another submission qualified their support only if 'backed by reduced license fees for highly

compliant organisations'. One submission proposed the following action: 'Potential ability to charge for the assessment of new product proposals ... where extra funding generated is directly used to improve the capabilities and deliverables of this team'.

Four submissions did not support the proposal with one commenting that: 'To introduce fees for this service could be construed as indirect taxation to provide a basic EPA service'.

Two other submissions provided general comments about the proposal:

- We believe that industry should be asked to provide assessment of new product rather than EPA.
- If the EPA could access the waste levy revenue there would be no need.

Refer to Clause 5: New section 4C – Approved recovered resources

The assessment of whether a material can be safely used as a new product is often complex and time consuming. As other waste and resource recovery activities are potentially cross subsidising the more complex aspects of new resource recovery proposals, the EPA intends to retain the ability to cost recover and to review its scope through regulatory impact assessment.

A proposed new section 4C of the EP Act has been drafted to set out a process for an application to the EPA for a declaration that a specified matter constitutes an approved recovered resource and does not constitute waste for the purposes of the EP Act. The section contains new regulation-making powers to further prescribe the process including the manner and forms of applications and to set an application fee. Future consultation will occur on the content of such regulations after any EP Act changes are made, including an application fee based on cost-recovery principles.

The benefit of the proposed new approved recovered resources process for applicants is a formal process established (requirements of applicant clearly defined) and provide certainty to applicants (cost is transparent, upfront, time to assess and processes formalised). The fee would be established using government cost-recovery principles, and include time taken to process application and expert review by EPA staff and Crown Solicitors Office. Initial calculation of an application fee is approximately \$7,000.

Registered owner responsibility for pollution

Question 84

Should the EPA have the power to hold the registered owner of a vehicle responsible for the offence of pollution from their vehicles unless they can establish that they were not the driver?

A total of 12 submissions were received and all supported the proposal for the EPA to have the power to hold the registered owner of a vehicle responsible for the offence of pollution from their vehicles unless they can establish that they were not the driver. Submitters commented on the impact of the proposal on local government and stated:

Difficulties with establishing the person responsible for illegal dumping has resulted in low prosecution rates and subsequently has led to low levels of councils investigating incidences of illegal dumping for prosecution.

The proposed amendment to the EP Act to make the offence of pollution from a vehicle rest with the registered owner of the vehicle unless the owner can establish that they were not a driver, is a necessary measure for compliance on illegal dumping and is supported.

One of the supporting submissions advised that 'consideration needs to be given to the application as it relates to hired vehicles'.

Refer to Clause 5: New section 4A – Liability for offences from vehicles

Section 4A creates a new section to address the difficulty faced by the EPA and relevant authorities in establishing the person responsible for pollution from a vehicle by holding the registered owner responsible for the pollution unless they can establish they were not the person in charge of the vehicle at the time of the alleged offence.

It is noted that this proposed provision provides for an owner, via statutory declaration, to state that someone else was responsible for the offence as is the case with speed and red-light camera offences. There are also defence provisions should the vehicle have been stolen or otherwise was not in the possession or control of the owner through some unlawful act at the time of the alleged offence and to ensure that the driver of hired vehicle is responsible, not the owner.

Question 85

What other methods could be applied to ensure that the person responsible for the offence is identified?

Three submissions commented on other methods that could be applied to ensure that the person responsible for the offence is identified and included suggestions:

- the same methodology as traffic cameras
- owner to undertake fitness checks for any vehicle over 10 years old
- target vehicle owners unless statutory declaration is provided naming drivers.

It is noted that the same methodology as traffic cameras will apply and it is proposed that the EPA will target vehicle owners unless statutory declarations are provided that name drivers.

Clarifying that illegal dumping includes the illegal disposing of waste – section 4

Question 86

Should section 4 of the EP Act be amended such that the wording ‘discharged, emitted or deposited’ specifically includes all instances of disposing of waste, to ensure that it covers illegal dumping occurring from the disposing of waste?

Eight submissions were received all of which supported the amendment to the wording to include all instances of disposal of waste.

Refer to Clause 5: Amendment of section 4 – Liability for pollution from places

This amendment ensures that the offence of illegal dumping includes the illegal disposing of waste.

Require nominated waste transporters to install approved tracking devices

Question 87

What impact would a requirement to install GPS on vehicles have on business?

A total of 10 submissions were received

Nine commented on the increased cost impact that a requirement to install GPS on vehicles would have on business and one advised they could not support the proposal due to “adding cost to business without any tangible benefit. Another commented: ‘The reform identifies that this requirement is not proposed for all waste transporters but only those identified by the EPA that impose a risk and the likelihood of illegal dumping. This should therefore exclude councils’.

One submission commented in support of the proposal commenting:

The use of tracking devices on waste transport vehicles is considered to be a very effective tool to enable the EPA to gain a knowledge base of where waste is going, and where illegal dumping or stockpiling may be occurring.

Refer to Clause 5: New section 4E — Use of surveillance devices

The new section 4E provides regulation making powers regulating the use of surveillance devices for identifying, tracking or monitoring the source, location, movement, receipt, storage, transfer or disposal of waste or other matter for the purposes of the EP Act.

The issues identified will assist to inform the regulatory impact assessment being prepared for the draft Bill to be considered by the government before introduction in Parliament.

Question 88

Who should bear the cost of installing GPS tracking units?

Four submissions were received on who should bear the cost of installing GPS tracking units, three commented that business should bear the cost and one said that the EPA should bear the cost out of the waste levy.

The issues identified will assist to inform the regulatory impact assessment being prepared for the draft Bill to be considered by the Government before its introduction in Parliament.

Question 89

Should the proposed system of tracking devices be extended to all waste transporter vehicles?

Eight submissions were received.

Five commented that the proposed system of tracking devices should not be extended to all waste transporter vehicles, two of those submissions recommended a threshold apply to determine who should be required to install the GPS devices and one commented that they should not be applied to councils.

Three submissions supported the proposed system of tracking devices should be extended to all waste transporter vehicles, to promote a level playing field.

General comments received about the proposal include:

- The use of ETags (or a GPS tracker) on waste carrying vehicles will also go a long way towards the reduction in illegal dumping as vehicles that generally go to a depot would need to have the tags.
- If those same vehicles stopped in an area that is not within Metro Adelaide or a registered waste depot the Tag would register that stop, and this information would be automatically downloaded to the EPA next time the vehicle enters a weigh bridge that reference could be held for as long as the EPA chooses if an illegal dumping activity is reported at that spot or area EPA can trace back to that particular vehicle. They may only be able to talk their way out of it once as being an unfortunate coincidence; once is unlucky, twice now that is just too much of a coincidence.
- Tags could be made such that if they are removed for a period and re-attached that data would be transmitted to EPA next time they pass through the reader at the landfill or waste recycling depot.
- Illegal dumping costs Local Government in excess of \$4M per annum.

The proposed section 4E provides regulation-making powers such that regulations may require the owner of a vehicle used for transporting waste to install and use a tracking device to manage the risk imposed by the transport of waste and the likelihood of illegal dumping of waste. A tracking device such as a GPS installed on a vehicle could assist the EPA to track illegal dumping.

The regulation would prescribe the class of vehicles that would require the installation of tracking devices and would be developed on advice from the EPA based on vehicles identified as required to manage the risk imposed by the transport of waste and the likelihood of illegal dumping of waste. It would be the responsibility of the relevant transporter to ensure the approved vehicle tracking device in the vehicle was operating.

Increased powers of entry for authorised officers – section 87

Question 90

Should authorised officers have the power of entry on a premises at any time if something may be found in the premises that is intended to be used in a contravention of the EP Act?

A total of 10 submissions were received all of which supported authorised officers having the power of entry on a premises at any time if something may be found in the premises that is intended to be used in a contravention of the EP Act.

A comment made in one of the submission stated:

Yes, however with a proviso around the liability under *Work Health and Safety Regulations 2012*. Should the officer suffer from an injury when on site unbeknown to the operator, the operator should not be held liable unless the authorised officer has previously been fully inducted onto site as someone that may operate independently within the site.

Refer to:

- Clause 37: Amendment of section 87 – Powers of authorised officers
- Clause 38: Amendment of section 88 – Issue of warrants

Clause 37 provides for the amendment of the authorised office powers of entry in section 87 of the EP Act.

Amendment of section 87 expands the circumstances when an authorised officer may enter a premises where there is construction, demolition, excavation or other earthworks and the activity may have disturbed, uncovered or produced waste or a potentially contaminating activity has previously taken place.

Clause 38 provides for the amendment of section 88 of the EP Act that explains the circumstances for the issuing of warrants authorising an authorised officer to break into or open a vehicle or place.

The liability under Work Health and Safety legislation is not proposed to be amended.

Question 91

Should authorised officers have the power to allow the marking of something that an authorised officer reasonably suspects is intended to be used in a contravention of the EP Act?

Nine submissions were received all of which supported authorised officers having the power to allow the marking of something that an authorised officer reasonably suspects is intended to be used in a contravention of the EP Act.