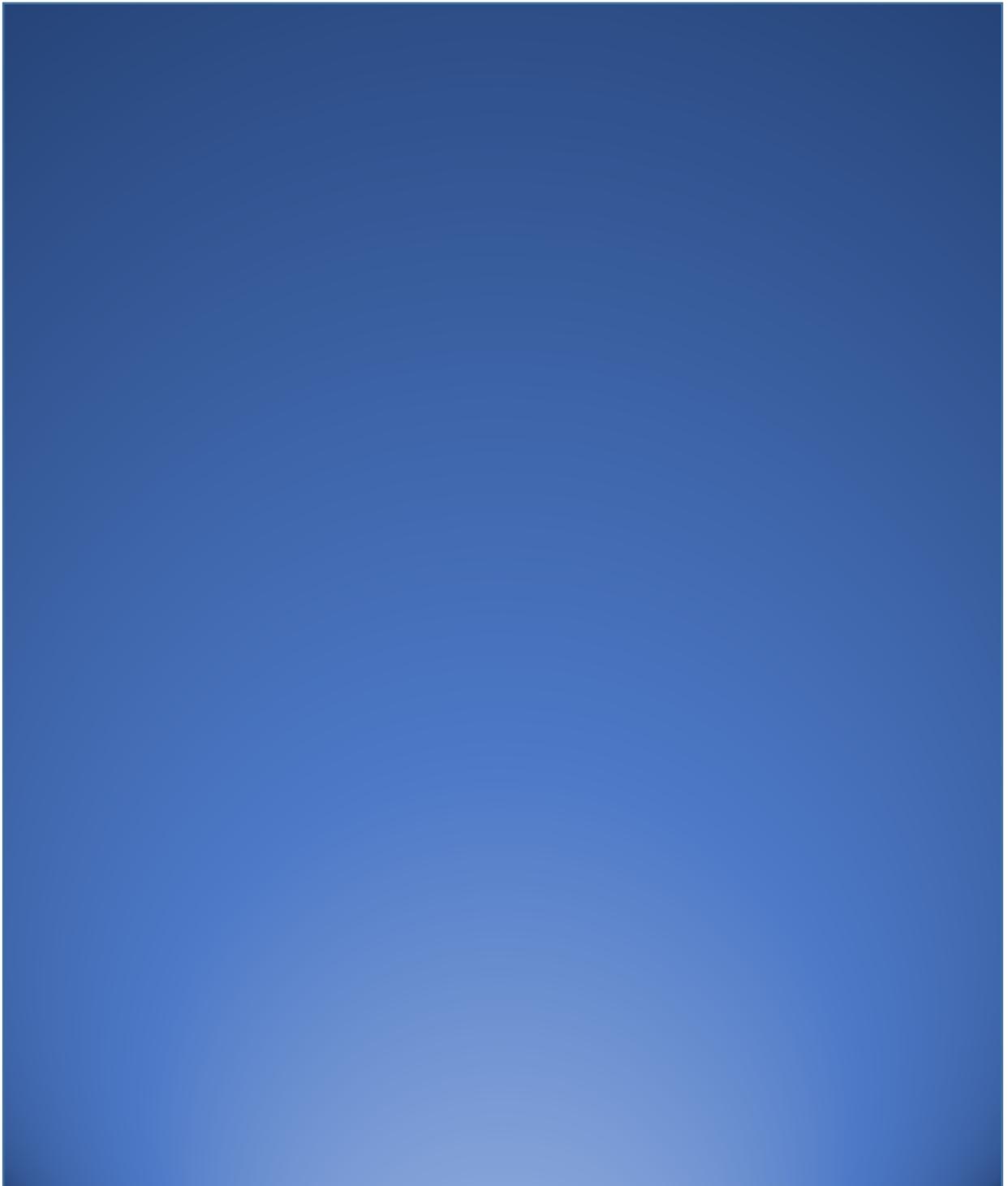


Investigation into the transport of waste
into Queensland
Final Report – 17 November 2017



Investigation into the Transport of Waste into Queensland

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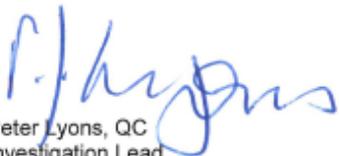
17 November 2017

The Honourable Dr Steven Miles MP
Minister for Environment and Heritage Protection and
Minister for National Parks and the Great Barrier Reef
GPO Box 2454
BRISBANE QLD 4000

Dear Minister

I am pleased to present the final report for the independent Investigation into the Transport of Waste into Queensland in accordance with the Terms of Reference.

Yours faithfully,



Peter Lyons, QC
Investigation Lead
Investigation into the Transport of
Waste into Queensland

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Table of Abbreviations

C&D waste	Construction and Demolition waste
C&I waste	Commercial and Industrial waste
EHP	Department of Environment and Heritage Protection (QLD)
EMA	Extended Regulated Area (one of the previous NSW areas for the NSW waste levy)
EPA Victoria	Environment Protection Authority Victoria
Facility fee	The commercial charge set by the operator of a disposal facility for use of its facility.
MLA	Metropolitan Levy Area (one of the two current NSW areas for the NSW general waste levy)
MSW	Municipal Solid Waste
NSW EPA	New South Wales Environment Protection Authority
NWRIC	National Waste and Recycling Industry Council
QTC	Queensland Treasury Corporation
RLA	Regional Levy Area (one of the two current NSW areas for the NSW general waste levy and previously the Regional Regulated Area)
SEQ	South East Queensland
SMA	Sydney Metropolitan Area (one of the previous NSW areas for the NSW waste levy)
WMAA	Waste Management Association of Australia

Introduction and summary

1. On 29 August 2017, the Honourable Dr Steven Miles MP, Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef appointed the Honourable Peter Lyons QC to lead an investigation into the transport of waste from other States into Queensland.
2. In addition to Mr Lyons, the investigation team has been comprised of:
 - (a) Sylvie Garner, Acting Director of the Secretariat for the investigation;
 - (b) Cat Hargraves, Project Support Officer to the investigation;
 - (c) Michael Hodge, barrister;
 - (d) Jeff Lassen, Principal at MMI Economics;
 - (e) Joyanne Manning, Associate Principal and Resource and Waste Leader for Australia at Arup.
3. This Final Report of the investigation explains:
 - (a) the information that has been gathered to address the questions raised in the Terms of Reference;
 - (b) the limitations on the data that has been available to the investigation;
 - (c) the incentives that have been identified for the movement of waste from other States to Queensland landfills;
 - (d) the possible options that have been identified that would or might reduce the movement of interstate waste to Queensland.
4. Based on the data available, almost all of the waste being transported from other States into Queensland originates in New South Wales. The incentive for the transport of that waste to Queensland is that the cost of disposing of the waste in Queensland is lower than the cost of disposing of the waste in the origin State. As discussed below, this explanation appears to extend to waste transported into Queensland for recovery and recycling.
5. Various forms of legislative intervention might lead to a reduction in the amount of waste being transported from New South Wales into Queensland. However, two important considerations ought to be borne in mind.
6. *First*, section 92 of the *Australian Constitution* requires that interstate trade be “absolutely free”. This report is not intended to be a legal advice but nevertheless it is apparent that there would be an obvious and significant risk to any Queensland legislation that sought only to restrict the movement of waste from other States to Queensland or to discriminate between Queensland waste and waste that originated outside of Queensland.

7. *Secondly*, it follows from the first consideration that any permissible change to the legislative framework in relation to the disposal of waste will also affect intrastate movements of waste. Therefore, any legislative change must be considered from the broader perspective of Queensland's strategy for waste. That broader perspective is beyond the scope of this report.
8. One concern raised about the movement of interstate waste into Queensland is that finite landfill space in Queensland is being consumed more quickly than would otherwise be the case. There is also a concern that waste generated in Queensland is going to landfill because that is cheaper than subjecting it to recovery and recycling processes. The Queensland Government no doubt has a strong interest in discouraging the utilisation of landfill, particularly where recovery or recycling is possible¹.
9. The obvious way to further that interest would be by the re-imposition of a landfill levy. So long as that levy applied to all waste, regardless of type or source, it would appear to be unlikely to fall foul of section 92 of the *Australian Constitution* although advice should be sought from Crown Law at the time that any levy scheme is being designed. The introduction of a levy would bring Queensland into line with New South Wales, Victoria, South Australia and Western Australia and many overseas jurisdictions.
10. The introduction of a levy is also likely to discourage the movement of interstate waste to Queensland.
11. For these reasons, the first recommendation made by the investigation team is that the Government should consider implementing a general levy on all waste disposed of at landfill in Queensland.
12. The Department of Environment and Heritage Protection (**EHP**) has been engaged in discussions at a national level as to changes to the waste framework for the whole of Australia that might also reduce the transportation of waste.
13. The second recommendation made by the investigation is that the Minister and EHP 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 transportation of waste within Australia.

¹ See *Waste Recycling and Reduction Act 2011*, s 3; see also *Waste – Everyone's Responsibility: Queensland Waste Avoidance and Resource Productivity Strategy (2014-2024)* EHP 2014 p 2; p 8 Principle 3, Objective 3; p 11; pp 12-13.

Terms of Reference

14. The Terms of Reference for the investigation provide as follows.

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 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:
 - (a) Queensland
 - (b) local governments in Queensland
 - (c) the State where the waste was generated
 - (d) the Australian Government
 - (e) 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.

Summary of investigation

15. Before the investigation commenced, the Premier together with the Minister for Environment and Heritage Protection conducted a roundtable on 14 August 2017 with industry, environment and local government stakeholders. The investigation team have been provided with feedback from that roundtable which has been of assistance in guiding the investigation.
16. A second roundtable was conducted as part of the investigation on 21 September 2017. Key stakeholders from a range of backgrounds were invited to participate. The focus of the roundtable was to confirm the incentives for the movement of interstate waste to Queensland and to canvas stakeholder views as to options for the Queensland Government to address the transport of waste into Queensland.
17. A call for public submissions was made in early September 2017 with a closing date of 26 September 2017. The investigation team have received 27 written submissions, some of which are confidential either in whole or in part. The submissions have come from a range of interested companies and bodies, including local governments, facility operators (including recyclers), peak industry bodies and environmental and community groups.
18. It should be noted that this is an administrative investigation. It has therefore had to rely on publicly available information, and information provided voluntarily, usually from industry sources. The assistance which has been provided to the investigation is appreciated.
19. The investigation team has made requests for data from a number of commercial operators and the New South Wales Environment Protection Authority (**NSW EPA**) and the Environment Protection Authority Victoria (**EPA Victoria**). EPA Victoria has provided the information sought from it. No formal response has been received from the NSW EPA. Some data and other information has been provided by a number of commercial operators.
20. The investigation team has also been provided with assistance in a number of respects by EHP. This has included responses to data requests.
21. However, there are important limitations on the data that the investigation team has been provided with. These limitations are explained later in this report.
22. Arup has conducted an extensive review of the relevant regulatory frameworks in Australia and overseas, and has provided other specialist assistance. MMI Economics, has undertaken modelling work in relation to transport costs and provided economic advice on various matters relevant to the review. The investigation team has also consulted as to the effect of section 92 of the *Australian Constitution* on some options.

Queensland Waste Disposal and Resource Recovery Industry: an Overview

23. Waste disposal and resource recovery infrastructure in Queensland was examined in the *Queensland Waste & Resource Recovery Infrastructure Report* dated 7 February 2017 prepared by Arcadis for EHP (*Arcadis Report*). It is convenient to identify some of the information recorded in this report. The report generally reflects information available up to and including FY 2015 (in the investigation's report FY 2015 means the year ended 30 June 2015; with other years similarly described).
24. There were 226 landfills in Queensland, although about two thirds of these disposed of less than 2,000 tonnes per annum. Twenty landfills were located in South East Queensland (SEQ - defined as the local government areas from Noosa to Gold Coast, and extending west to Somerset and Lockyer Valley and south-west to Scenic Rim; and including some 68% of the State's population)². Major landfills included the TiTree Landfill at Willowbank and Remondis' Swanbank Landfill, each accepting putrescible waste and disposing of in excess of half a million tonnes per annum, and together accounting for around one quarter of the total waste landfilled in Queensland. Two other significant landfills (for inert waste), Cleanaway's New Chum, and Lantrak's Swanbank landfill, together also accounted for one quarter of the waste disposed of to landfills in Queensland. The Bromelton Central Waste Management Facility, owned by the Scenic Rim Regional Council, was regarded as being potentially of regional significance. The total remaining capacity in landfills in SEQ was assessed as exceeding 70 million cubic metres. Inert landfill capacity in this part of the State was expected to start to run out in 2022, and putrescible landfill airspace was projected to run out in 2034³; although there were potential sites for new landfills, and some activity was being undertaken to expand capacity.
25. Also of interest to the investigation are some of the State's recovery and reprocessing facilities, particularly in SEQ. Arcadis recorded 22 C&D waste recycling facilities in this part of the State, processing a total of 1,575,050 tonnes in FY 2015, and with an approximate annual capacity of a little under 3.2 million tonnes.
26. To provide some context, it should be noted that 9.2 million tonnes of "headline waste" (MSW, C&I waste, and C&D waste) was elsewhere reported⁴ as disposed of in Queensland in FY 2016, an increase of 8.6% from the previous year. C&D waste in FY 2016 accounted for 3.8 million tonnes⁵, of which 89% went to landfills in SEQ⁶. In the same year, 566,000 tonnes was reportedly sent to Queensland landfills from interstate sources, 494,000 tonnes of which was C&D waste⁷. The EHP *Recycling and Waste in Queensland 2016* report notes that some of this material was put through a recovery process⁸. The reduced recovery rate for C&D waste was in part attributed to the significant increase in such waste from interstate sources as against the previous

² See Arcadis Report p 66.

³ These projections reflect Arcadis' "business-as-usual" case, some description of which appears in the Arcadis Report at pp 208ff.

⁴ *Recycling and Waste in Queensland 2016* published by the Department of Environment and Heritage Protection, pp 5, 27.

⁵ *Recycling and Waste in Queensland 2016* published by the Department of Environment and Heritage Protection p 6.

⁶ *Recycling and Waste in Queensland 2016* published by the Department of Environment and Heritage Protection p 12.

⁷ *Recycling and Waste in Queensland 2016* published by the Department of Environment and Heritage Protection p 23.

⁸ *Recycling and Waste in Queensland 2016* published by the Department of Environment and Heritage Protection p 23.

year (93%)⁹, suggesting that a substantial proportion of this waste was not suitable for recovery; or, perhaps, transported directly to a landfill without any attempt at recovery. It should also be noted that another source records the generation of this type of waste in New South Wales in the same year as totalling 6,104,000 tonnes, resulting in the disposal after recovery and recycling of 1,594,000 tonnes¹⁰.

Some sources of data relevant to the interstate transport of waste

27. Data for EHP's annual Recycling and Waste in Queensland Report is collected through both detailed annual 'surveys' and quarterly 'summary returns'.
28. Annual reporting is required under the *Waste Reduction and Recycling Act 2011*. It is intended that the data distinguish clean earthen material, contaminated and acid sulphate soils, and construction and demolition materials which come within the definition of regulated waste in Schedule 7 of the Environmental Protection Regulation 1998 (Qld), from other C&D waste. Hence the reported quantities of C&D waste should not include materials which come within the other classes just mentioned.
29. Private sector waste disposal facilities (primarily landfills) are required to report waste from interstate sources separately, and to identify the waste by type; but these requirements do not apply to local government facilities. Household waste (which is assumed to equate to MSW) and C&D waste are specifically identified. Other classes of waste from interstate sources which are reported are at most of marginal relevance to this investigation.
30. For the annual reporting, operators of private waste recovery facilities are not asked to identify incoming interstate waste.
31. Private waste disposal facilities, and waste disposal facilities operated by local governments, (as identified in Schedule 5 of the Waste Reduction and Recycling Regulation 2011), are required under the *Waste Reduction and Recycling Act 2011* to provide quarterly reports, which include the total volume of waste received at each facility from interstate sources, but are not asked to identify quantities for individual waste streams.
32. Although NSW EPA has not responded to the investigation's requests for information, some relevant data has been found in responses provided to questions on notice to the NSW Parliament inquiry into 'Energy from waste technology' (Legislative Council Portfolio Committee No. 6 – Planning and Environment). This data is discussed later in this report.

⁹ *Recycling and Waste in Queensland 2016* published by the Department of Environment and Heritage Protection p 6; see also p 23.

¹⁰ Blue Environment Pty Ltd, *Australian National Waste Report 2016 (2017)*, for the Department of the Environment and Energy p 41.

33. EHP also has records of permits granted for the transport of contaminated soil, from contaminated land outside the State, into Queensland for treatment or disposal¹¹. The term “contaminated soil” is not defined in the legislation however, the term “contaminated land” is defined to mean land contaminated by a hazardous contaminant¹². Some soils from interstate which do not require a permit may nevertheless be trackable waste under the *National Environmental Protection (Movement of Controlled Waste) Measure*, and accordingly require consignment authorities to record the quantities of such soils being transported into Queensland.
34. EPA Victoria has advised that some contaminated soils, being Category B regulated waste, and some Category C regulated waste, were vulnerable to transport interstate, usually to Queensland. It considered that quantities of Category B soils transported to Queensland were unlikely to exceed 5,000 tonnes per annum, notwithstanding industry claims that the annual quantity may be up to 10,000 tonnes.

Limitations on data

35. A number of limitations have been identified in the data available to the investigation. The significant limitations are as follows.
36. *First*, it has been difficult to obtain reliable information regarding the facility fees charged by private operators of landfills (and other facilities) in New South Wales and in Queensland. The term “facility fee” is used in this report to refer to the commercial charge set by the operator of a disposal facility for use of its facility, as distinct from any levy imposed by government. The facility fee forms part of the income of the operator of the disposal facility (unlike a levy) and, presumably (for a landfill), would also cover the costs of operating the facility.
37. Various industry sources have provided estimates of ranges for facility fees that are based either on anecdotal information or limited commercial experience. There are two reasons for the difficulty in better information about facility fees: although some published rates are available, actual rates appear, unsurprisingly, to vary as a consequence of commercial negotiations. In addition, non-published rates are considered commercially sensitive and publication of them is likely to have an adverse effect on the operator’s business.
38. *Secondly*, a similar difficulty arises with respect to the cost of moving waste from New South Wales and Victoria into Queensland. The investigation team was provided with limited information from primary sources regarding the cost of transporting waste from Victoria to Queensland. Some submissions contained estimates of the cost of transporting waste from New South Wales to Queensland. MMI Economics relied on the various sources of information to undertake preliminary modelling of those transport costs.

¹¹ See s 424 of the *Environmental Protection Act 1994* as it stood prior to 30 September 2015, preserved in force by s 739 of that Act.

¹² See the definition in Schedule 4 to the Act, current as at 10 July 2015.

39. *Thirdly*, there have been challenges in obtaining reliable data as to the volume of material being transported from other States into Queensland landfills.
40. EHP has only been collecting data on the volume of waste transported from interstate into Queensland since FY 2014. The figures provided to the investigation team for the FY 2017 reflect its assessment of the data up to 7 November 2017, and while they are thought to be correct, are not final figures; those will be published in EHP's *Recycling and Waste in Queensland 2017* report.
41. The collected data does not identify the State from which the waste originated. Hence, it is not possible to verify what proportion of the waste is coming from New South Wales, Victoria or some other State.
42. EHP also informed the investigation team that the data as to interstate waste may be an underestimate because the data-gathering process does not require recycling businesses to provide this data. Moreover, local governments not included in Schedule 5 of the Waste Reduction and Recycling Regulation 2011 are not required to report quantities of waste received from interstate sources. The Arcadis Report also expressed a number of concerns about such data, though speaking specifically of the FY 2015¹³. These issues are discussed later in this report.
43. EPA Victoria provided some information from an audit undertaken in 2014 regarding the volume of hazardous and non-hazardous waste being transported from Victoria to Queensland. As already noted, NSW EPA did not respond to the investigation team's request for information.
44. *Fourthly*, the data for contaminated soil raises some questions. EHP's provisional data for FY 2017 shows a significant increase in the volume of contaminated soil received into Queensland from other States when compared with the preceding three financial years.¹⁴ However, EHP has informed the investigation team that volumes of contaminated soil disposal "can vary greatly from year to year depending on activity in the building sector and even development of individual contaminated sites." There are discrepancies between the reported quantities and information available from permits and consignment authorities. These matters are also discussed later in this report.
45. The reliability of the available data for the interstate movement of C&D waste and contaminated soil has been questioned in this report; and a number of limitations on the available information have been identified. While some of the limitations relate specifically to this investigation, others are of a more systemic nature. The investigation team has not thoroughly examined the adequacy of EHP's processes for collecting and analysing data, as it would be outside the Terms of Reference to do so. Nevertheless, the difficulties which have been encountered suggest that these processes may need review; and that it may be appropriate to engage with the other States and the Territories to develop a consistent approach to tracking the movement of waste, at least interstate; and the resultant collection of data.

¹³ See the Arcadis Report, p 37.

¹⁴ Department of Environment and Heritage Protection, *Unpublished data* (2017).

Incentives for the transport of waste from other States to Queensland

Summary

46. The significant incentive identified for participants in the waste industry to transport waste from other States into Queensland is financial; in certain cases, it is cheaper to dispose of waste in Queensland rather than disposing of the waste in the originating State. All stakeholders that responded to the question of incentives agreed that the driver of interstate transportation of waste to Queensland is cost. There was unanimous agreement at the roundtable conducted on 21 September 2017 that cost was the underlying reason for the transportation of waste to Queensland.
47. This cost incentive has been confirmed in interviews with transport operators bringing waste from NSW. It is also inherently likely that the incentive for commercial operators to dispose of waste in Queensland rather than elsewhere is the lower cost of doing so. The additional benefit of accessing a convenient and reliable all-in-one disposal and transport service gained by engaging a third party to manage the regulatory and logistics associated with disposal of the waste (by transporting it to Queensland) was also identified as an incentive.
48. There are a number of factors that affect whether it is cheaper to dispose of waste in Queensland landfills than in the State of origin of the waste:
 - (a) the comparable facility fees charged by the operators of disposal facilities in Queensland and the State of origin;
 - (b) any levy imposed by the State of origin (there is no levy imposed in Queensland);
 - (c) the difference in costs that would be incurred in complying with any regulations (e.g. recycling or treatment of materials) in the State of origin in comparison to Queensland;
 - (d) the cost of transporting the waste from its source to Queensland.
49. For example, if the levy imposed in New South Wales together with the facility fee charged by private facilities is greater than the cost of transporting the waste to Queensland plus the facility fee charged in Queensland, then it would be expected that a rational operator would transport the waste to Queensland.
50. Most of the public focus concerning the interstate transportation of waste has been on the transport of C&D waste from New South Wales into Queensland. Whilst New South Wales accounts for the majority of interstate waste coming into Queensland, it appears that it may also be economically beneficial to transport some contaminated soil from Victoria.
51. EPA Victoria has suggested that differences in landfill acceptance criteria may be a consideration underlying the transport of soil from Victoria to Queensland. These acceptance criteria determine the facility at which the soil is to be disposed of, and the

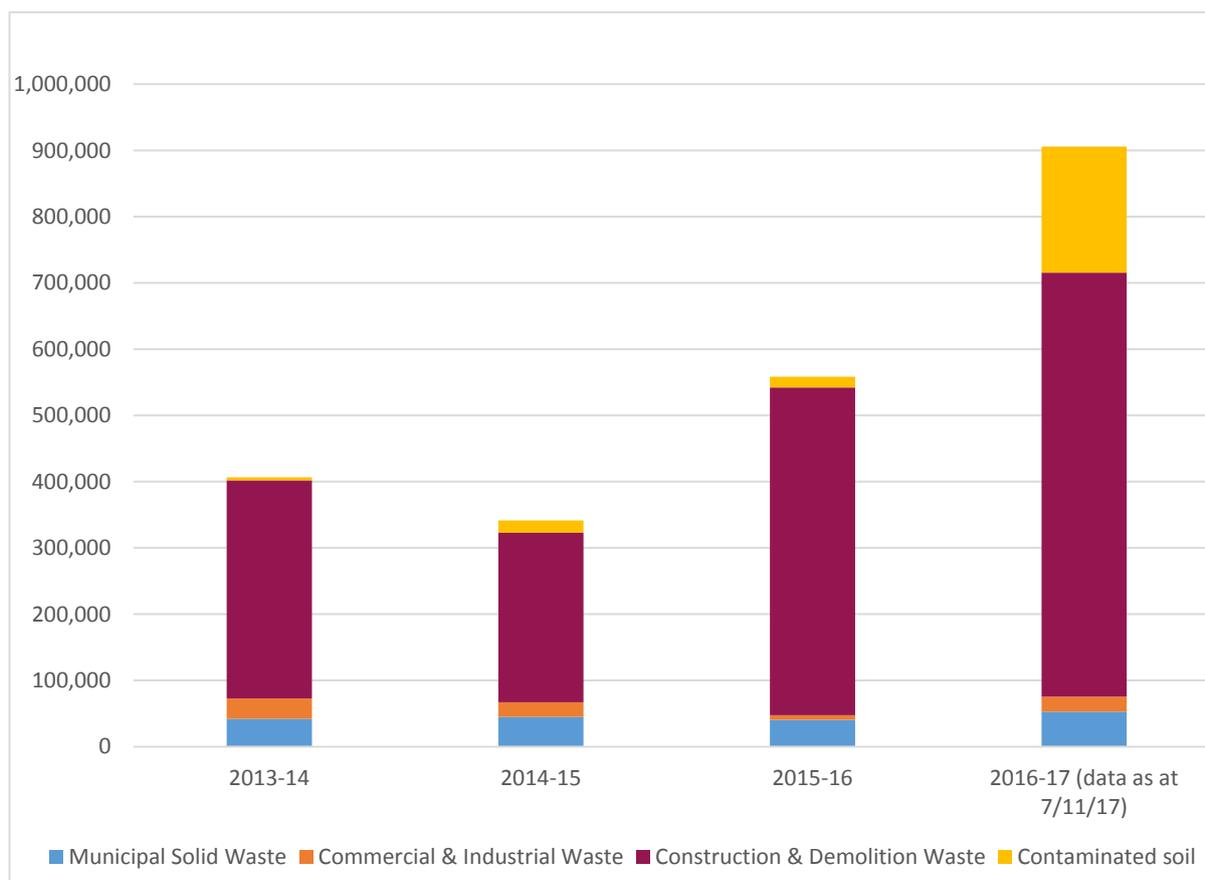
applicable levy rate, in Victoria. These matters in turn affect the differences in disposal costs between Victoria and Queensland for these soils. However, the overall quantity of waste being transported from Victoria to Queensland appears to be insignificant in comparison with the total volume of interstate waste coming to Queensland.

52. The lower cost of disposal in a landfill in Queensland, when compared with New South Wales, may also explain the transport of waste from New South Wales to recycling and recovery facilities in Queensland. If the residual waste was disposed of at a landfill in New South Wales it would incur the high cost of the New South Wales levy and facility fee. By transporting the waste to a recycling facility in Queensland, the New South Wales levy is avoided and the transport operator does not commit an offence (under current New South Wales legislation) by transporting the waste more than 150km for disposal.

Available data as to the volume of waste being transported into Queensland

53. As noted above, EHP does not collect data that identifies the State of origin of waste transported into Queensland. Its collected data, which appears in Figure 1, shows that the volume of waste being transported into Queensland has increased substantially since FY 2014.

Figure 1: Change in volume of waste from other States transported into Queensland since the year ending 30 June 2014¹⁵



54. The investigation team has compared this data with other available information.
55. As mentioned earlier, the NSW EPA reported to a NSW Legislative Council Committee quantities of waste transported from the MLA (which is the area of Sydney and its near surrounds)¹⁶ in FY 2016 and FY 2017. The information has been summarised by the investigation team in Table 1. The investigation has been advised that the information is highly likely to be reliable. There is no data available to the investigation which contradicts it. Although it has not been tested, in the circumstances it seems appropriate to rely on this information. Given that C&D waste constitutes a high proportion of waste from interstate sources¹⁷, it is likely that most of the waste reported in Table 1 is C&D waste. That is consistent with the results of the investigation’s own enquiries.

¹⁵ Figure derived from Department of Environment and Heritage Protection, *Unpublished data* (2017).

¹⁶ This is further explained below at [82].

¹⁷ Department of Environment and Heritage Protection, *Recycling and waste in Queensland 2016* (2016), p 23.

Table 1: NSW EPA estimates given to Portfolio Committee No. 6 of the NSW Legislative Council of waste transported from MLA to Queensland¹⁸

Financial Year	Landfill and Other	Recycling	Total
2015-16	240,000	170,000	410,000
2016-17	380,000 ¹⁹	310,000	690,000

56. As has been previously noted, operators of recycling facilities in Queensland are not required to report separately the quantities of materials received from interstate sources. The data in Table 1 raises the prospect that the quantities of waste from interstate sources recorded in Figure 1 are understated by at least 170,000 tonnes in FY 2016; and 310,000 tonnes in FY 2017.
57. EHP has advised that some of the materials which come from interstate for recycling are reported as such by the Queensland facility operator. That would occur where the operator has (presumably at the same location) both a recycling facility and a landfill. The investigation's independent enquiries with industry sources supports EHP's view for substantial volumes of material coming from interstate.
58. Nevertheless, this approach to reporting by recycling facility operators does not appear to reflect a natural reading of the waste data collection forms issued by EHP. Further, reporting in this fashion would not occur where materials are delivered for recycling to a facility not associated with a landfill. The proportion of such materials which goes to a location where there is both a recycling facility and a landfill is not known. Moreover, the total waste coming to Queensland from the MLA in FY 2017 (likely to be C&D waste) exceeds the total of such waste from interstate sources recorded in Figure 1 for that year. The comparable data for FY 2016 demonstrates that in that year, an unknown quantity, but more than 80,000 tonnes, of C&D waste came from outside the MLA. Bearing these considerations in mind, it remains likely that the quantities recorded in Figure 1 understate the volumes of waste from interstate sources. With that qualification, it may be said that the information given by the New South Wales EPA to the Legislative Council Committee provides some support for the quantities recorded in Figure 1, including the increase in FY 2017.

¹⁸ Source of the information contained in this table is: Responses to Questions on Notice from the Portfolio Committee No. 6 – Planning and Environment – 'Energy from Waste Technology', Legislative Council of the Parliament of New South Wales, Sydney, 13 September 2017, p.8, Question on Notice No.15 (NSW Environment Protection Authority); Response to Questions on Notice from the Portfolio Committee No. 6 – Planning and Environment – 'Energy from Waste Technology', Legislative Council of the Parliament of New South Wales, Sydney, 27 July 2017, p.2, Question on Notice No.4 (NSW Environment Protection Authority).

¹⁹ Note that the NSW EPA gave an estimate of 370,000 tonnes in Responses to Questions on Notice from the Portfolio Committee No. 6 – Planning and Environment – 'Energy from Waste Technology', Legislative Council of the Parliament of New South Wales, Sydney, 13 September 2017, p.8, Question on Notice No.16 (NSW Environment Protection Authority).

59. It should also be noted that enquiries made on behalf of the investigation indicate that some materials which come from New South Wales sources to Queensland recycling facilities have already been the subject of some resource recovery in New South Wales. Thus, the proportion of the waste from which recyclable material can be further extracted is low and the majority of that waste is disposed of in a landfill. The waste involved appears to be primarily C&D waste. It seems likely that such materials would be recorded in New South Wales as transported to Queensland for recycling, rather than for landfill disposal.
60. Interviews with industry participants have offered a number of possible explanations for the transport of waste from New South Wales to Queensland recovery and recycling facilities. Industry participants who engaged in the transport of waste from New South Wales to Queensland indicated that they considered it necessary that waste transported by road to Queensland go to a recovery facility (rather than a landfill) because otherwise there would be a potential offence under New South Wales legislation because of the prohibition on transporting waste more than 150km by road for disposal. Thus, both the NSW levy and the NSW offence are avoided by such transport. Other explanations given were that strict stockpile limits in New South Wales at times prevented New South Wales facilities from receiving material; and entry delays at such facilities made it more attractive to deliver the material to an operator who would ultimately transport it to Queensland. It has not been possible to test these explanations and some caution is necessary in considering them.
61. Figure 1 shows a very large increase in the quantity of contaminated soils received from interstate sources in FY 2016. An attempt has been made to check the quantities of such materials from interstate sources, against information from permits and consignment authorities (for convenience, these will together be referred to as transport approvals). A comparison appears in Table 2 below.

Table 2: Inter-state movement of contaminated soil into Queensland#

Year	2014-15	2015-16	2016-17	2017-to date
Soil disposal permits (volume approved for disposal)				
NSW Tonnes	39,710	199,692	65,950	19,282
VIC Tonnes	7,425	2,003	0	750
NT Tonnes	80	0	0	0
<i>Sub totals</i>	<i>47,215</i>	<i>201,695</i>	<i>65,950</i>	<i>20,032</i>
Interstate waste tracking data under code N120 (soil with contamination)				
NSW Tonnes	614	8,893	26,827	9,945
VIC Tonnes	0	1,229	0	0
NT Tonnes	2	0	0	0
SA Tonnes	0	0	0	10
Sub totals	616	10,122	26,827	9,955
Combined total (soil disposal permits & inter-state waste tracking data)	47,831	211,817	92,777	29,987
Annual Queensland Waste Report (contaminated soils)				
Reported Quantities in QLD Annual Waste Report (tonnes)	19,000	16,000	190,000	No data

1.5tonnes/m³ is the density conversation rate assumed for this table.

62. There is a very great discrepancy between the quantities shown by the transport approvals and the quantity reported by disposal facility operators in FY 2016. There is also a large discrepancy in the following year. EHP has suggested that this discrepancy may reflect the fact that permits are valid for 12 months; so that permits might issue for the transport of a large quantity of soil in one year, with landfill disposal occurring in the following year. In principle, there is no reason to doubt that this occurs.
63. Even with this explanation, there is a very marked upswing in the quantity of interstate contaminated soil disposed of in Queensland in FY 2017. EHP has advised that factors which drive demand for such disposal can fluctuate significantly, as mentioned earlier. Again, in principle, it may be said that this provides some explanation for the upswing.
64. The quantities recorded in Table 2 show that for the three years from 2014 to 2017, transport authorities were issued for a total of 352,425 tonnes of contaminated soil; while the quantity reported as disposed of in this period was 225,000 tonnes. EHP has indicated that applicants are encouraged to take a generous view of the quantities to be transported, for administrative reasons; so that it is likely that the quantities shown by transport authorities will exceed the quantities actually disposed of. Arup has conducted a sensitivity test, for the purpose of assessing this explanation of the discrepancy. The quantities shown in Table 2 are in tonnes; while the quantities

authorised are often expressed in cubic metres. Arup used a more conservative conversion factor (1.2 cubic meters per tonne) for its test, than that used for Table 2. The quantities for which transport authorities were issued in the three year period exceeded the quantities reported as disposed of by between about one third and one half. Arup expressed the view that this significant disparity indicated “a misalignment in the system”, presumably in the way soil is classified for the purposes of a transport authority, and on disposal.

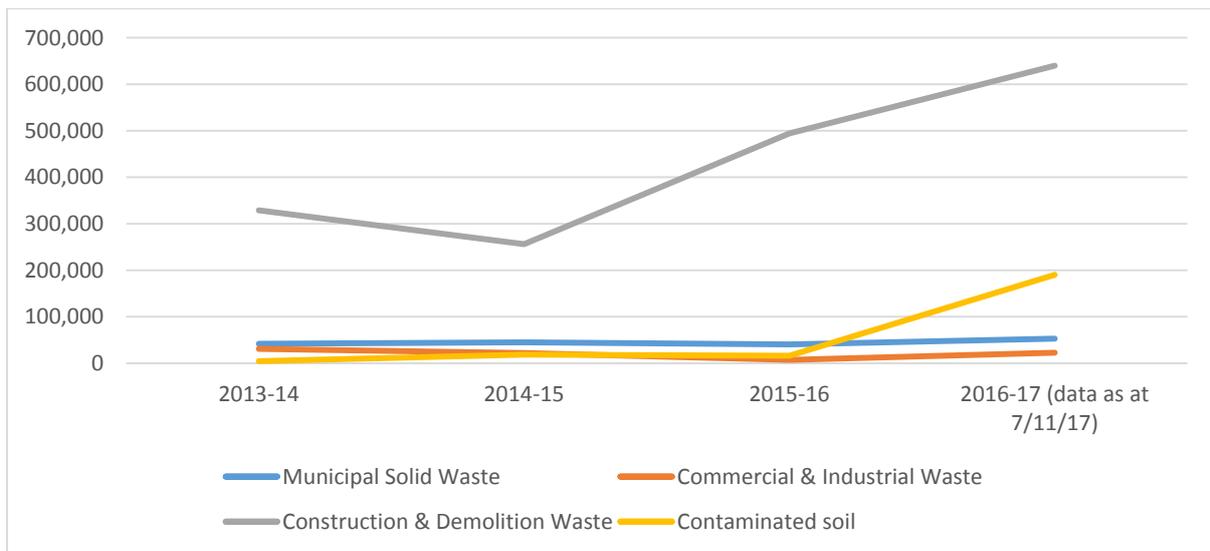
65. The discrepancies are concerning. While it may be accepted that the quantities for which transport authorities are sought will exceed the amount actually disposed of, this seems unlikely to account for the large discrepancies. Moreover, EHP has pointed out that there is a risk that, at times, the amount disposed of will exceed the amount authorised for transport, as no cross-checking is required.
66. For present purposes, the only conclusion which may safely be drawn is that the quantities of contaminated soil reported as having come from interstate and having been disposed of in Queensland may perhaps understate the position. It is not possible to infer the extent to which this may be so.
67. Of some interest is the significant increase in such materials in FY 2017. Quantities reported by disposal facility operators for the current year are not yet available. As Table 2 shows, the quantities for which transport authorities have been sought in the first quarter of this year are not insignificant. Mention has been made of EHP's explanation for the upswing last year. This explanation has not been tested, and there may be other explanations relating to cost, and different regulatory regimes in other States. It would be unwise to assume that there will be any significant reduction in the quantity of contaminated soils likely to come to Queensland for disposal in current circumstances.
68. The information provided by EPA Victoria does not provide a basis for querying the reported information shown in Figure 1.
69. In summary, it may be concluded that the information available to the investigation does not suggest that quantities recorded in Figure 1 overstate the quantities of waste in fact transported to Queensland for disposal. In fact, there may be some understatement (and possibly a significant understatement) of the quantities, at least because of the quantities which come to recycling facilities in Queensland.
70. In the absence of better information, it is proposed to rely on the quantities recorded in Figure 1, bearing in mind the limitations just discussed.
71. As can also be observed from Figure 1, based on the data for FY 2017:
 - (a) the volume of interstate waste transported into Queensland has significantly increased (by more than 50%) in each of the last two years (subject to some remaining uncertainty about the total volume for C & D waste);
 - (b) the volume of C&D waste from interstate sources has also increased significantly in the last two years (approximately doubling in FY 2016, then

increasing by about a further 30% in the following year, though the volume of waste from the MLA increased by about 70% in that year);

- (c) the quantity of soil classed as contaminated soil increased substantially between FY 2016 and FY 2017. It rose to 190,319 tonnes in FY 2017. (The volume of such soil from Queensland sources also rose substantially in this year.)

72. The quantities over time in each category of waste is depicted in Figure 2.

Figure 2: Quantities over time of waste from other states by category of waste



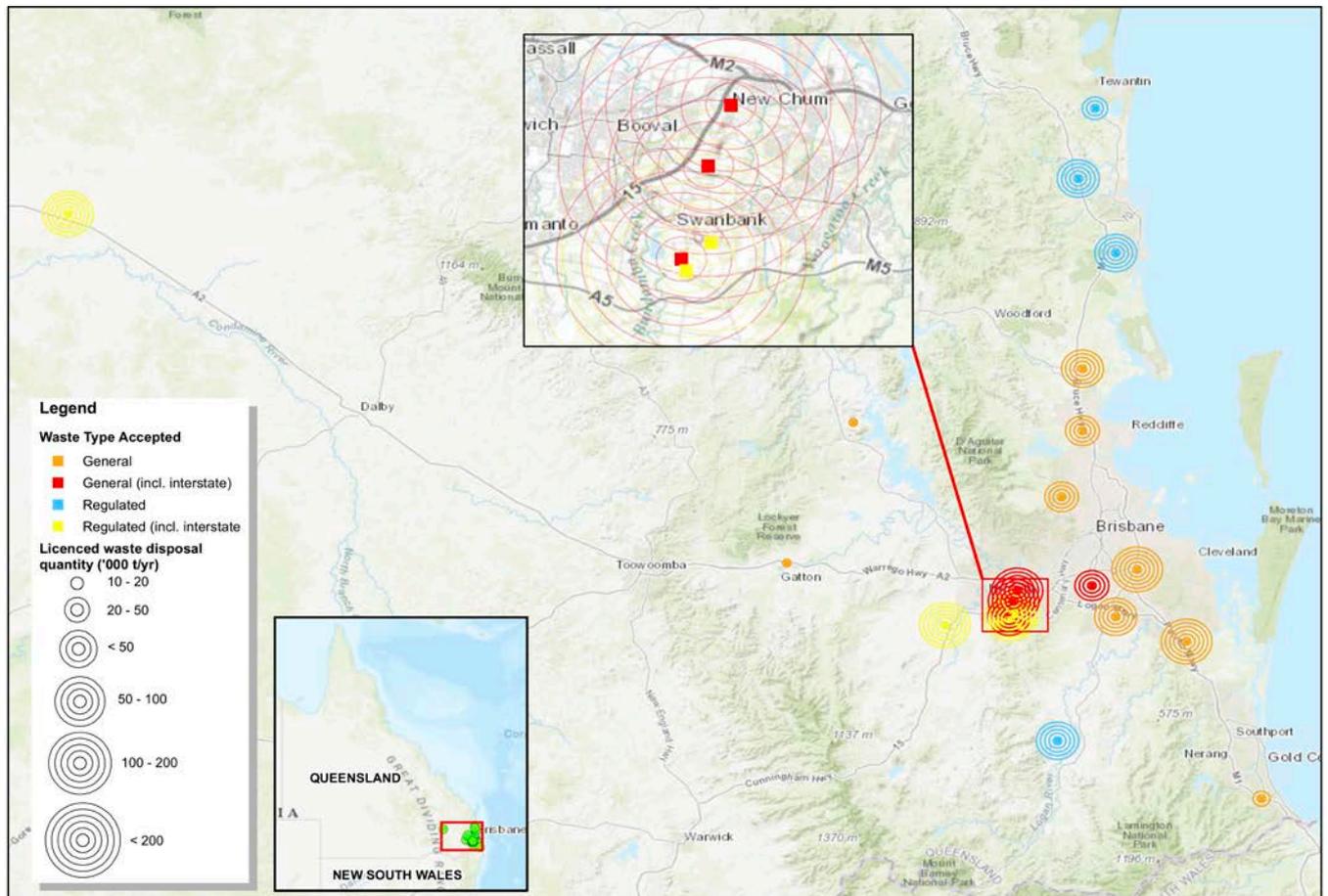
73. As is apparent from Figure 1, in all years for which records are available, most of the interstate waste has been C&D waste. The volumes of such waste have increased significantly in the last two years. There has also been a significant increase in the volume of contaminated soils transported into Queensland in FY 2017.

74. The quantity of C&D waste from interstate sources recorded in Figure 1 for FY 2016 was 494,419 tonnes, and the total quantity of waste from interstate sources for that year was approximately 566,000 tonnes. It will be recalled that the quantity of C&D waste reportedly generated in New South Wales in this year was 6,104,000 tonnes; resulting after recycling and recovery activities in a quantity of 1,594,000 tonnes. A question arises as to why more of this waste was not disposed of by transport to Queensland. It is theoretically possible that some other incentive explains the transport of such waste to Queensland, an understanding of which would account for the data. However, as has been stated, no other incentive has been identified, and financial advantage seems by far the most likely explanation. Other explanations might be suggested. For example, there may have been delay in recognising the financial advantage; or the proximity principle regulation may have been influential. These suggestions are somewhat speculative, and the investigation does not have information which would enable any reliable conclusion to be reached as to the explanation for the data. It does indicate, however, that there is a real prospect that

the quantity of C&D waste from New South Wales might increase significantly in the future.

75. The quantity of contaminated soils from interstate in FY 2016 was 16,322 tonnes (not markedly different from the preceding two years); and in FY 2017 was 190,319 tonnes. Accepting that the quantity of contaminated soil disposed of in any year may vary in accordance with variations in activity in the building sector and even by reason of the development of individual contaminated sites, the increase in FY 2016 was dramatic. Again, it has not been possible for the investigation to identify the explanation for the increase with any confidence. It may reflect financial (and perhaps other) advantages, not appreciated earlier, and which may result in similar or greater quantities of such waste being disposed of in Queensland in the future.
76. The quantity of MSW has been fairly constant. It seems likely to reflect municipal waste collections for local government areas in northern New South Wales. The quantity of C&I waste has also been reasonably steady over the four year period. The quantities of these forms of waste from interstate sources are relatively small, and are not considered to be of great significance for this investigation.
77. EHP has informed the investigation team that all but 2,000 tonnes of the waste coming into Queensland from outside of the State is being transported into SEQ. Data collected by EHP and industry information indicate that the majority of waste from interstate sources is going into facilities near Ipswich. Figure 3 is a map of key waste disposal facilities that has been prepared by Arup based on an analysis of a number of sources.

Figure 3: Key Waste Disposal Facilities in Queensland²⁰



Regulatory frameworks

78. Understanding the drivers for the transport of interstate waste into Queensland depends upon understanding some aspects the different regulatory frameworks in Queensland, New South Wales and Victoria.

Queensland Regulatory Framework

79. At present, no waste levy is imposed in Queensland.
80. In 2011, a waste levy was imposed in Queensland on certain types of waste deposited in facilities within a designated levy zone. The levy did not apply to MSW. The levy was, relevantly, \$35 per tonne for C&D waste, C&I waste and contaminated soil.²¹ The levy was in effect from 1 December 2011. It ceased to apply on 1 July 2012.

²⁰ Prepared by Arup. Data for mapping from Department of Environment and Heritage Protection, *Unpublished data* (2017).

²¹ Schedule 4, Part 1, *Waste Reduction and Recycling Regulation 2011* (Qld) as in effect on 1 December 2011.

81. The *Waste Reduction and Recycling Act 2011* (Qld) refers to the “proximity principle” and provides for it to be taken into account in the achievement of the objects of the Act.²² The “proximity principle” is defined in the Act as “the principle that waste and recovered resources should be managed as close to the source of generation as possible.”²³ However, the Act imposes no specific restrictions on the transport of waste.

NSW Regulatory Framework

82. New South Wales imposes a general levy on waste disposed of in New South Wales except for trackable liquid wastes and coal washery rejects (for which separate levies are imposed). The State is divided into three types of areas for the purpose of the levy:
- (a) the Metropolitan Levy Area (MLA);
 - (b) the Regional Levy Area (RLA);
 - (c) rest of NSW.²⁴
83. The levy for the MLA for the year commencing 1 July 2017 is \$138.20 per tonne. The levy for the RLA for the year commencing 1 July 2017 is \$79.60.²⁵ The MLA levy applies to waste generated or received in the MLA. The RLA applies to waste generated in the RLA (unless it is received in the MLA) and waste received in the RLA that was generated in the RLA or the rest of NSW.²⁶
84. Before the financial year 2013-14, the MLA was divided into two areas: the Sydney Metropolitan Area (**SMA**) and the Extended Regulated Area (**EMA**). As from 2013-14, the levy that applied to both of those areas (now together constituting the MLA) was identical. Arup has compiled the information available as to the levy structure in New South Wales since 2009-10 and that information is set out in Table 3.

²² Section 4 *Waste Reduction and Recycling Act 2011* (Qld).

²³ Section 12 *Waste Reduction and Recycling Act 2011* (Qld).

²⁴ Regulation 7, *Protection of the Environment Operations (Waste) Regulation 2014* (NSW).

²⁵ Calculation in accordance with Regulation 11, *Protection of the Environment Operations (Waste) Regulation 2014* (NSW).

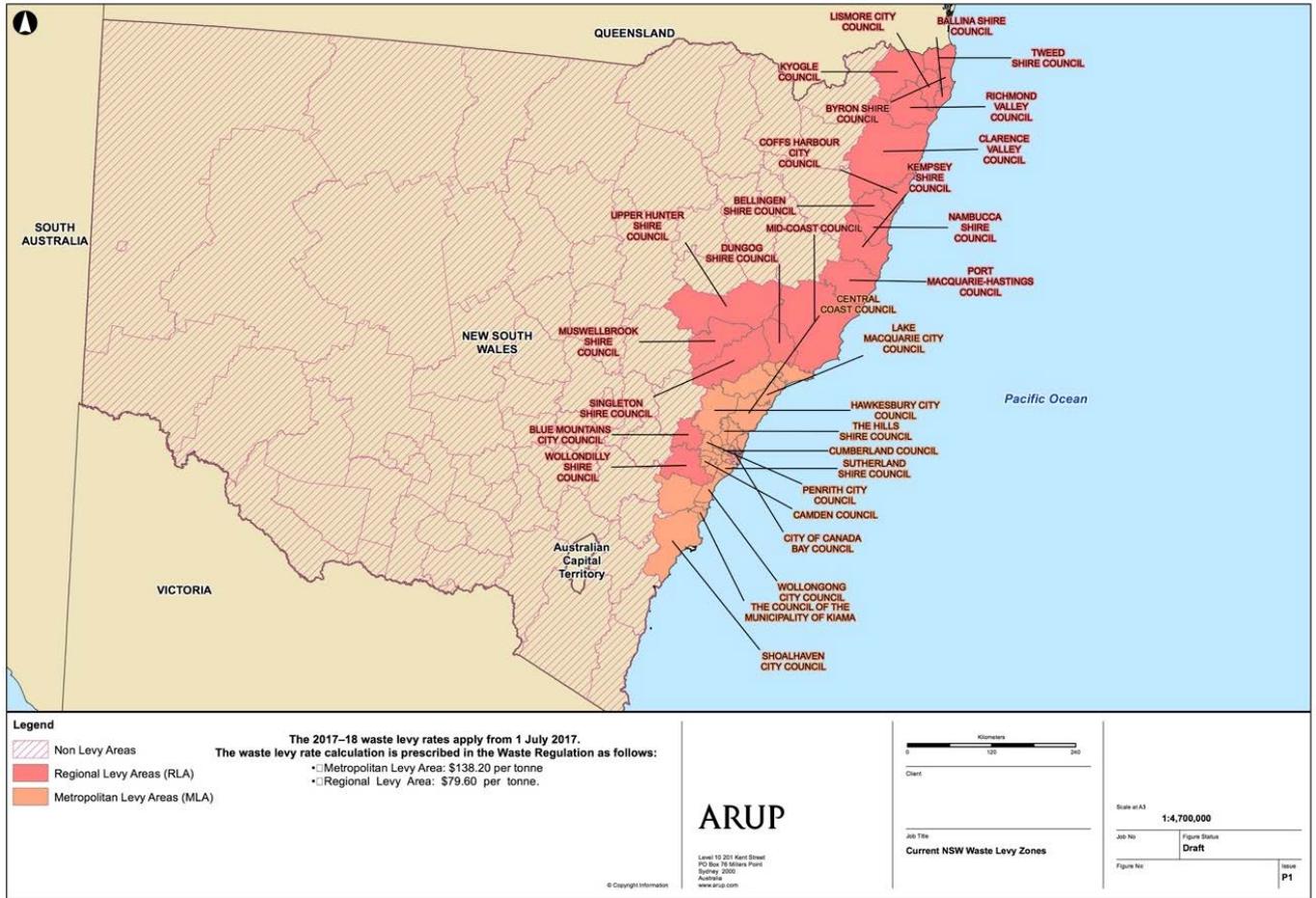
²⁶ Regulation 12, *Protection of the Environment Operations (Waste) Regulation 2014* (NSW).

Table 3: Levy in \$ per tonne in New South Wales since 2009-10

	09-10	10-11	11-12	12-13	13-14	14-15	15-16	16-17	17-18
Sydney Metropolitan Area (now part of the MLA)	\$58.80	\$70.30	\$82.20	\$95.20	\$107.80	\$120.90	\$133.10	\$135.70	\$138.20
Extended Regulated Area (now part of the MLA)	\$52.40	\$65.30	\$78.60	\$93.00	\$107.80	\$120.90	\$133.10	\$135.70	\$138.20
Regional Levy Area (originally called Regional Regulated Area)	\$10.00	\$20.40	\$31.10	\$42.40	\$53.70	\$65.40	\$76.70	\$78.20	\$79.60

85. Figure 4 is a map prepared by Arup that shows the current MLA and RLA in New South Wales.

Figure 4: Map of MLA, RLA and rest of NSW



86. As noted above, the NSW EPA has recently informed a Committee of the New South Wales Legislative Council that 690,000 tonnes of waste has been transported into Queensland in FY 2017 from the “Metro Levy Area” and that, of this total, 370,000 or 380,000 tonnes was for disposal.²⁷ The balance was for recycling. If the waste designated for recycling had been recycled in New South Wales then only that quantity that ultimately went to landfill after recycling would attract the levy.
87. As noted earlier, since 2014, section 71 of the *Protection of the Environment Operations (Waste) Regulation 2014* (NSW) has prohibited the transport of waste by motor vehicle more than 150 kilometres from the premises of origin of the waste.²⁸ A person was permitted to transport “waste to another State or Territory if a border crossing to that State or Territory ... is 150 kilometres or less from the premises of origin”.²⁹
88. However, in 2015, a proceeding was commenced in the Federal Court of Australia against the State of New South Wales in which it was alleged that section 71 of the *Protection of the Environment Operations (Waste) Regulation 2014* (NSW) offended section 92 of the *Australian Constitution*. The NSW EPA formed the view that the challenge was correct. It has informed the waste industry in New South Wales that it will not be enforcing section 71.³⁰ In 2016, the NSW EPA proposed repealing the proximity principle offence in section 71.³¹

Victorian regulatory framework

89. Victoria imposes a general landfill levy on the holder of a licence for a waste facility.³² The rates as published by EPA Victoria and compiled by Arup are set out in Table 4.

Table 4: Victorian landfill levy rates in \$/tonne published by EPA Victoria³³

		11–12	12–13	13–14	14–15	15–16	16–17	17–18
Rural	Municipal	\$22	\$24.20	\$26.60	\$29.30	\$30.33	\$31.09	\$31.71
	Industrial	\$38.50	\$42.40	\$46.60	\$51.30	\$53.04	\$54.37	\$55.46
Metro and provincial	Municipal	\$44	\$48.40	53.20	\$58.50	\$60.52	\$62.03	\$63.28
	Industrial	\$44	\$48.40	53.20	\$58.50	\$60.52	\$62.03	\$63.28

²⁷ Responses to Questions on Notice from the Portfolio Committee No. 6 – Planning and Environment – ‘Energy from Waste’ Technology, Legislative Council of the Parliament of New South Wales, Sydney, 13 September 2017, p.8, Question on Notice No.16 (NSW Environment Protection Authority). See also Response to Questions on Notice from the Portfolio Committee No. 6 – Planning and Environment – ‘Energy from Waste’ Technology, Legislative Council of the Parliament of New South Wales, Sydney, 27 July 2017, p.2, Question on Notice No.4 (NSW Environment Protection Authority).

²⁸ Section 71 *Protection of the Environment Operations (Waste) Regulation 2014* (NSW).

²⁹ Section 71(2) *Protection of the Environment Operations (Waste) Regulation 2014* (NSW).

³⁰ Evidence to Portfolio Committee No. 6 – Planning and Environment – ‘Energy from Waste’ Technology, Parliament of New South Wales, Sydney, 17 August 2017, p.63 (Barry Buffier, Chair and Chief Executive, NSW Environment Protection Authority).

³¹ NSW Environment Protection Authority, *Consultation Paper: New minimum standards for managing construction and demolition waste in NSW* (2016), p.17.

³² Section 50S *Environment Protection Act 1970* (Vic).

³³ Environment Protection Authority Victoria, <http://www.epa.vic.gov.au/business-and-industry/guidelines/landfills-guidance/landfill-and-prescribed-waste-levies> last accessed on 11 October 2017.

90. However, Victoria also has separate legislative prescriptions governing industrial waste, which includes contaminated soil. Industrial waste is divided into Categories A, B and C. Category A is prohibited from disposal to landfill. The levy for Category B waste is \$250 per tonne. The levy for Category C waste is \$70 per tonne.³⁴ There is only one facility in Victoria that is licensed to accept Category B waste.³⁵
91. EPA Victoria has said in the information it has provided to the investigation team that:
- Analysis of the known movements and industry intelligence done in 2014 showed that Category B soil and Category C stabilised or immobilised waste were most vulnerable to interstate transport, usually, but not limited to South East Queensland.*³⁶
92. Whilst not directly relevant to the subject matter of the investigation, a recent Victorian experience with legislation that might have curtailed the transport of interstate waste (from Victoria to South Australia) should be noted in considering the potential options available to reduce the transport of interstate waste to Queensland. The relevant Victorian provision was regulation 26 of the *Environment Protection (Industrial Waste Resource) Amendment (Performance Standard) Interim Regulations 2016* (Vic). An effect of regulation 26(3)(b), as it was before amendment on 20 December 2016, was to prohibit the transport of “non-liquid prescribed industrial waste” to an interstate facility unless that facility had better environmental performance than a licensed Victorian facility. ResourceCo Material Solutions Pty Ltd challenged the regulation in the High Court as contrary to section 92 *Australian Constitution*.³⁷ On 20 December 2016, Victoria amended regulation 26(3)(b) to provide that the performance needed to be “equal or better” than a licensed Victorian facility.

Facility fees

93. Some estimates have been made in submissions as to the facility fees charged by private operators in New South Wales and Queensland.
94. The Waste Management Association of Australia (**WMAA**) advised that in SEQ, “waste can be disposed of for as little as \$10 - \$30/tonne” whereas at landfill sites near metropolitan Sydney, “the gate fee cost ... vary from \$200 to \$350/tonne (inclusive of levy)”.³⁸ Arcadis reported (presumably for FY 2015) that gate fees in SEQ were very low, “starting from around \$15 per tonne...”³⁹. On the other hand, Queensland Treasury Corporation (**QTC**) says that “on average the gate fee per tonne for large amounts of unregulated waste is between \$35 to \$60 in private SEQ landfills”.⁴⁰ As to New South Wales, QTC says that there is “on average [a] \$250 per tonne gate fee for landfill in Sydney metropolitan area, which includes the landfill levy amount of \$136 per tonne”.

³⁴ Schedule E, *Environment Protection Act 1970* (Vic).

³⁵ Environment Protection Authority Victoria, *Movement of waste between Victoria and Queensland* (September 2017) [6].

³⁶ Environment Protection Authority Victoria, *Movement of waste between Victoria and Queensland* (September 2017) [7].

³⁷ Case No. M32/2016, High Court of Australia.

³⁸ Waste Management Association of Australia, *Submission to the Investigation into the Transport of Waste into Queensland* (2017), Annexure A, p.1.

³⁹ Arcadis Report p 66.

⁴⁰ Queensland Treasury Corporation, *Submission to the Investigation into the Transport of Waste into Queensland* (2017), p.4.

95. Notwithstanding these discrepancies, the cost of disposal at a landfill in New South Wales is significantly greater than in Queensland.

Transport costs

96. Some estimates have also been made in submissions as to the cost of transporting waste from New South Wales into Queensland.
97. The WMAA estimates that transportation costs to SEQ are “in the vicinity of \$40/tonne”.⁴¹ That figure is substantially lower than other estimates.
98. QTC estimates the transport cost from New South Wales (presumably metropolitan Sydney) to Queensland as \$100 per tonne.⁴²
99. Some confidential feedback from a commercial operator transporting waste from the metropolitan Sydney area to Queensland suggests that the cost of road transportation is in the order of \$120 per tonne depending upon the quantity of waste being transported in each vehicle. Another confidential source has provided similar information.
100. MMI Economics has undertaken some preliminary modelling of vehicle operating costs to estimate the cost per tonne of transporting waste from Sydney to Ipswich. His modelled estimates, depending upon the type of vehicle and route taken, vary between \$95.20 and \$119.73 per tonne. MMI Economics has also modelled the cost of transporting waste from Tweed Heads to Ipswich as \$13.91 per tonne.

Concluding observations as to incentives

101. As a number of submissions observe, there is an arbitrage opportunity for the transport of waste from metropolitan Sydney to SEQ so as to avoid both the high facility fees and high levy for waste generated in the MLA. The NSW EPA’s figures disclosed to the committee of the NSW Parliament suggest that in the financial year ending 30 June 2017, on any view of the correct treatment of materials for recycling, more than 50% of the C&D waste coming into Queensland, and perhaps most of it, came from the MLA.
102. Similarly, for waste generated in New South Wales close to the border with Queensland, the low cost of transportation would appear to make it economically beneficial to dispose of waste in SEQ and avoid the levy in the RLA. The data available suggests that there is likely to have been waste coming from New South Wales into Queensland from outside the MLA. That may, in part, be explained by arrangements made by local councils in northern New South Wales for their MSW to be disposed of in Queensland. But it is possible that a substantial part of the volume is driven by the economic incentive of avoiding paying the NSW levy in the RLA.

⁴¹ Waste Management Association of Australia, *Submission to the Investigation into the Transport of Waste into Queensland* (2017), Annexure A, p.1.

⁴² Queensland Treasury Corporation, *Submission to the Investigation into the Transport of Waste into Queensland* (2017), p.7.

103. There is not sufficient information available to enable a reliable conclusion to be drawn about the quantities of waste transported from Victoria to Queensland. The available information does not suggest that significant quantities of C&D waste come from Victoria to Queensland.

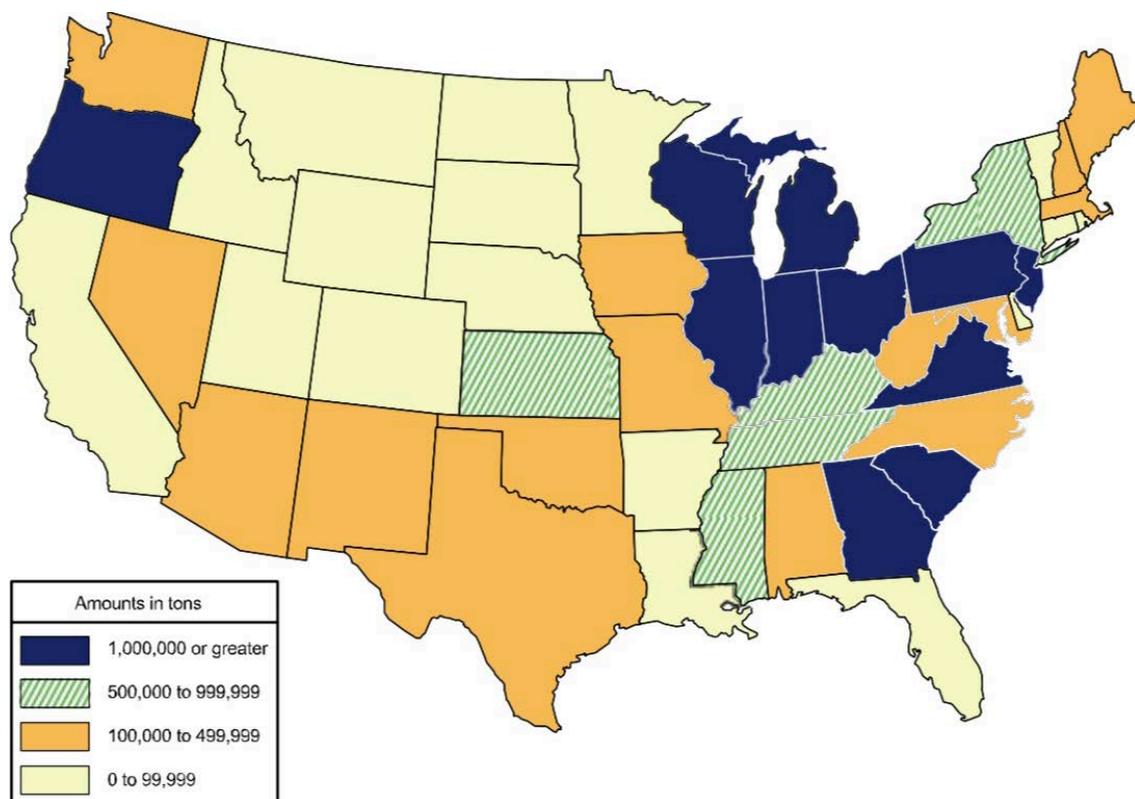
International jurisdictions that have dealt with movements of waste

104. The United States of America is the only jurisdiction which the investigation team has identified as having dealt with similar movements of waste to that from New South Wales to Queensland. In addition, the European Union has regulatory frameworks intended to limit the transportation of waste between member States.

United States of America

105. As illustrated in Figure 5, which is extracted from a 2007 report of the United States Congressional Research Service, there is a substantial volume of Municipal Solid Waste that is transported interstate in the USA.

Figure 5: Figure extracted from Congressional Research Service Report described as “Imports of Municipal Solid Waste, 2005 or Latest Year, in Tons”⁴³



Source: Map resources. Adapted by CRS Graphics 5/24/2007

⁴³ U.S. Congressional Research Service, Interstate Shipment of Municipal Solid Waste: 2007 Update (RL34043, June 13, 2007), by James E. McCarthy.

Legislative attempts to restrict the movement of waste into States in the United States of America

106. On several occasions, attempts by State legislatures in the United States of America to restrict the movement of interstate waste have been struck down by the Supreme Court.
107. Article 1, Section 8, Clause 3 of the Constitution of the United States of America is referred to as “The Commerce Clause”. It provides:

[The Congress shall have Power] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes...
108. The Commerce Clause has been interpreted by the Supreme Court of the United States of America as imposing a limit on the power of States to legislate to discriminate against interstate commerce.
109. In *City of Philadelphia v. New Jersey* 437 U.S. 617 (1978), the Supreme Court considered “[a] New Jersey law prohibits the importation of most “solid or liquid waste which originated or was collected outside the territorial limits of the State. . . .”⁴⁴ The Court held that the law violated the Commerce Clause. The Court observed that:

*...New Jersey has every right to protect its residents' pocketbooks, as well as their environment. And it may be assumed as well that New Jersey may pursue those ends by slowing the flow of all waste into the State's remaining landfills, even though interstate commerce may incidentally be affected. But whatever New Jersey's ultimate purpose, it may not be accomplished by discriminating against articles of commerce coming from outside the State unless there is some reason, apart from their origin, to treat them differently.*⁴⁵
110. In 1992, the Supreme Court struck down two further State laws that imposed restrictions on the movement of interstate waste in *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources* 504 U.S. 353 (1992) and *Chemical Waste Management, Inc. v. Hunt* 504 U.S. 334 (1992).
111. *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources* 504 U.S. 353 (1992) concerned Michigan legislation that relevantly provided that “[a] person shall not accept for disposal solid waste ... that is not generated in the county in which the disposal area is located unless the acceptance of solid waste ... that is not generated in the county is explicitly authorized in the approved county solid waste management plan”.⁴⁶ In the majority opinion delivered by Justice Stevens, the Court said that a State “may not avoid the strictures of the Commerce Clause by curtailing the movement of

⁴⁴ *City of Philadelphia v. New Jersey* 437 U.S. 617 (1978) at 618.

⁴⁵ *City of Philadelphia v. New Jersey* 437 U.S. 617 (1978) at 626-627.

⁴⁶ *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources* 504 U.S. 353 (1992) at 357.

articles of commerce through subdivisions of the State, rather than through the State itself."⁴⁷

112. The Alabama legislation that was the subject of *Chemical Waste Management, Inc. v. Hunt* 504 U.S. 334 (1992) imposed "a hazardous waste disposal fee on hazardous wastes generated outside the State and disposed of at a commercial facility in Alabama".⁴⁸ Justice White, in the majority opinion observed that:

*....only rhetoric, and not explanation, emerges as to why Alabama targets only interstate hazardous waste to meet these goals. As found by the trial court, "[a]lthough the Legislature imposed an additional fee of \$72.00 per ton on waste generated outside Alabama, there is absolutely no evidence before this Court that waste generated outside Alabama is more dangerous than waste generated in Alabama. The Court finds under the facts of this case that the only basis for the additional fee is the origin of the waste."*⁴⁹

113. The High Court of Australia has observed that the interpretation of the United States Commerce Clause does not provide "any assistance in the elucidation of the meaning of s. 92 [of the *Australian Constitution*]"⁵⁰ For this reason, the investigation team emphasises that it refers to these decisions of the United States Supreme Court to explain the legal context in which the interstate movement of waste has been considered in the USA and as raising a practical consideration but not as guidance to Australian law. The practical consideration is that if the Queensland Government is considering implementing legislation that would limit the movement of waste from New South Wales to Queensland, it would be relevant to consider (amongst other things), whether the legislation treats waste generated out-of-State differently from waste generated in Queensland and, if so, what public policy justification there could be for such differentiation.

Imports of waste from Ontario, Canada to Michigan, USA

114. In about 2003, a significant public controversy arose in Michigan because of the importation of waste from Ontario, Canada.⁵¹ The controversy was resolved (or at least partly resolved) by commitments made in 2006 by "the Ontario Minister of Environment and Canadian municipal authorities to phase out municipal solid waste shipments to Michigan."⁵² At the time, a Bill had been introduced in the United States Congress to allow States to restrict the receipt of foreign municipal solid waste.⁵³ The Bill passed the House of Representatives but was not enacted.

⁴⁷ *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources* 504 U.S. 353 (1992) at 361.

⁴⁸ *Chemical Waste Management, Inc. v. Hunt* 504 U.S. 334 (1992) at 336.

⁴⁹ *Chemical Waste Management, Inc. v. Hunt* 504 U.S. 334 (1992) at 343-344.

⁵⁰ *Cole v Whitfield* (1988) 165 CLR 360 at 405.

⁵¹ Hakim, D., 'Surge in Trash From Toronto Upsets Tiny Michigan Town', *The New York Times* (online), 19 January 2003 <http://www.nytimes.com/2003/01/19/us/surge-in-trash-from-toronto-upsets-tiny-michigan-town.html>.

⁵² State of Michigan, 'Granolm Welcomes Senators' Announcement Phasing Out Canadian Municipal Waste Shipments' (Media Release, 31 August 2006).

⁵³ International Solid Waste Importation and Management Act, HR 2491, 109th Congress (2005-2006).

European Union

115. In the European Union, Directive 2008/98/EC⁵⁴ on Waste provides that member States should, amongst other things, take measures to encourage options that deliver the best overall environmental outcome and develop a network of waste disposal installations that will enable waste to be disposed of, or recovered, “in one of the nearest appropriate installations”.
116. Directive 2008/98/EC repealed and replaced Directive 2006/12/EC which had provided, in Article 5, that Member States are to move individually towards self-sufficiency in waste disposal.
117. Regulation (EC) No 1013/2006 of the European Parliament and of the Council on Shipments of Waste (**EU Waste Regulation**) provides for procedure and control regimes for the shipment of waste. The EU Waste Regulation provides for a process of notification and consent where waste moved from one country to another is destined for disposal.
118. Article 11 of the EU Waste Regulation provides for grounds of objection which include, “that the planned shipment or disposal would not be in accordance with measures taken to implement the principles of proximity, priority for recovery and self-sufficiency at Community and national levels in accordance with Directive 2006/12/EC, to prohibit generally or partially or to object systematically to shipments of waste”. If there is no satisfactory solution to the objection, a member State may refer the matter to the European Commission. The investigation team has been unable to determine whether any objection has been referred to the European Commission on the basis that a shipment of waste would violate the proximity principle or the principle of self-sufficiency.

Possible reform options that have been identified

119. As will be apparent from observations that have been made above, any regulatory measure that, on its face, is designed to halt the transport of waste from other States into Queensland is likely to be subject to challenge on the basis that it offends section 92 of the *Australian Constitution*. For example, a prohibition on the reception of waste generated outside of Queensland by waste facilities in Queensland would interfere with trade or commerce among the States and protect users of Queensland waste facilities from out-of-State competition for those facilities, and is highly unlikely to survive challenge under s 92. Other options may well face a similar challenge. It follows that the Government should obtain specific advice about the effect of section 92 (and also section 90, given that it has been raised by some industry participants) of the *Australian Constitution* on any proposed legislation.

⁵⁴ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives. *Official Journal of the European Union* L 312, 22.11.2008, pp. 3–30.

120. Once any direct restriction on the movement of waste into Queensland is discarded (such as a ban or a levy that only applies to interstate waste), the range of options fall into four categories:
- (a) a levy (or something akin to a levy such as a voucher system);
 - (b) a disposal ban on particular types of waste;
 - (c) the implementation of levy 'portability';
 - (d) the imposition of a proximity principle (or reverse proximity principle).

A levy

Submissions received

121. A number of the submissions received by the investigation team support the introduction of a levy in some form. As is apparent from the summary set out above, the introduction of a levy would be consistent with what has occurred in all Australian States and Territories other than Tasmania and the Northern Territory; and in major developed countries. As QTC explains in its submission, citing the NSW EPA's waste avoidance strategy:

*A waste levy provides a strong economic signal by reflecting some of the external environmental costs of waste disposal and making waste avoidance, reduction and recycling more financially attractive than disposal to landfill. It is a key policy tool for driving waste diversion from landfill.*⁵⁵

122. This reflects the views of government and related bodies throughout Australia, collected for the investigation by Arup⁵⁶.

123. QTC also notes that:

*According to the 2016 Australian National Waste Report ... Queensland's waste recovery rate of 48 per cent is the second lowest of the eight states and territories. ... The disposal of waste into landfill represent a lost opportunity. It is estimated that 10,000 tonnes of waste going into landfill supports 2.8 full-time equivalent (FTE) jobs. Recycling that same waste is estimated to generate 9.2 FTE jobs*⁵⁷

124. A confidential submission notes that the application of substantial landfill levies has not stalled economic growth in New South Wales.

⁵⁵ Queensland Treasury Corporation, *Submission to the Investigation into the Transport of Waste into Queensland* (2017), p.3.

⁵⁶ See in particular EPA Victoria, *Calculating the landfill levy and recycling rebates*, Publication 332.7, November 2016; NSW EPA *Waste levy 2017* published on the EPA website; press release by Tom Loutsantonis, Treasurer, South Australia, on 4 July 2016, relating to increased levies; explanatory notes on the Waste Avoidance and Resource Recovery Levy Bill 2007, Western Australia. A number of similar statements are collected in the Municipal Government Advisory Council's *WALGA Background Paper Landfill Levy* February 2012.

⁵⁷ Queensland Treasury Corporation, *Submission to the Investigation into the Transport of Waste into Queensland* (2017), p.1.

125. Professor John Quiggin, an economist, has suggested a voucher-based system.⁵⁸ That type of system would function in a similar way to a levy in that it would impose a cost per tonne on waste disposed into landfill. Trading for vouchers would likely ultimately set a market price for such waste. Some further investigation of this proposal may be appropriate. However the current form of the proposal might effectively discriminate against those disposing of waste from sources outside Queensland. It would therefore be likely to encounter significant difficulties in view of s 92 of the *Australian Constitution*.
126. No submission that has been received to date entirely opposed the imposition of a levy. However, some submissions raised concerns as to the categories of waste to which a levy would apply. The Local Government Association of Queensland submitted that a levy should not apply to kerbside collection so as to not put Queensland councils at a financial disadvantage.⁵⁹ The investigation team notes that other Australian jurisdictions do not have such exclusions on the application of their waste levies. A confidential submission suggested that recyclers and re-manufacturers should be exempt from any waste levy.

Levies in other Australian jurisdictions and overseas

127. In addition to New South Wales and Victoria, South Australia and Western Australia also each impose a waste levy.
128. South Australia imposes a “Waste depot levy” on the holder of a waste depot licence in respect of waste received at the depot.⁶⁰ For solid waste, the levy is currently \$87 per tonne for waste generated in metropolitan Adelaide and \$43.50 per tonne for waste generated outside of metropolitan Adelaide.⁶¹ The Government of South Australia has announced that by the financial year ending 30 June 2020, the levy will increase to \$103 per tonne for solid waste generated in metropolitan Adelaide and half that for waste generated outside of the metropolitan area.⁶²
129. Western Australia imposes a liability on the “holder of a licence in respect of disposal premises” to pay the “Waste Avoidance and Resource Recovery Levy”.⁶³ The levy applies to “all waste received at landfill premises in the metropolitan region” and “all waste collected within the metropolitan region”.⁶⁴ The levy (subject to certain permissible deductions) is presently \$90 per cubic metre of waste and will rise to \$105 per cubic metre of waste on 1 July 2018.⁶⁵
130. Arup has undertaken a review of regulatory frameworks in other international jurisdictions. Some aspects of regulatory frameworks in the European Union and the United States of America have been considered above in the section dealing with how

⁵⁸ John Quiggin, *Towards a voucher-based waste management and recycling system for Queensland* (September 2017).

⁵⁹ Local Government Association of Queensland, *Submission to the Investigation into the Transport of Waste into Queensland* (2017), p.6.

⁶⁰ Regulation 70(1)(a), *Environment Protection Regulations 2009* (SA).

⁶¹ Regulations 4 and 70(1)(a), *Environment Protection Regulations 2009* (SA).

⁶² Tom Koutsantonis, Treasurer of South Australia, *State Budget 2016/17: Solid Waste Reform to grow jobs and increase recycling* (4 July 2016).

⁶³ Section 6, *Waste Avoidance and Resource Recovery Levy Act 2007* (WA).

⁶⁴ Regulation 4, *Waste Avoidance and Resource Recovery Levy Regulations 2008* (WA).

⁶⁵ Regulation 12, *Waste Avoidance and Resource Recovery Levy Regulations 2008* (WA).

international jurisdictions have addressed the movement of waste. The investigation team notes that a levy (or the equivalent of a levy) has been implemented in many other jurisdictions to encourage recycling and recovery of waste and discourage landfill:

- (a) In the European Union, many member States have imposed landfill taxes.⁶⁶
- (b) In the United States of America, a number of States have imposed a tax or surcharge on solid waste disposal.⁶⁷
- (c) In the United Kingdom, a national landfill tax has been imposed since 1 October 1996.⁶⁸
- (d) In the Republic of Ireland, a landfill levy is imposed in respect of the disposal of waste at a landfill.⁶⁹
- (e) In New Zealand, a waste disposal levy applies to all waste sent to landfill.⁷⁰

Commentary on the effectiveness of a levy

- 131. Depending on the amount of the levy, it could be expected that a levy would make it uncommercial to undertake at least some transportation of waste into Queensland from other States. However, it may be that for waste produced in metropolitan Sydney, the total cost of disposing in the metropolitan area, including facility fees, is so high that it remains profitable to transport the waste to Queensland even with a levy. Moreover, levy rates and facility fees in other States may continue to rise over time.
- 132. As MMI Economics has noted in its economic commentary for the purposes of assisting the investigation, the imposition of a levy increases the cost of disposing of waste and the higher cost can provide an incentive to recover recyclable material from the waste before disposal. However, ultimately, the levy will affect building construction activity and be passed on to consumers. As a matter of economic theory, and depending upon the amount of the levy, “[h]ouseholds will adjust their consumption substituting the now higher priced housing (thereby reducing building industry demand) for other goods and services and reducing other goods and services”.
- 133. Such Government interventions are not uncommon. In this case, the purpose of the levy would be to encourage recycling and reduce the use of landfill. A levy would be expected to generate economic activity in the recycling and recovery industries in Queensland. Several industry participants, either in submissions, during the roundtable or in confidential interviews, indicated that the removal of the levy in 2012 had resulted in a loss of jobs at recycling plants. It would also be expected that a levy would reduce the unnecessary movement of waste from interstate to Queensland because it would no longer be cost-effective to incur the substantial costs of

⁶⁶ European Commission, *Use of Economic Instruments and Waste Management Performances – Final Report (2012)*, Table 2, pp.44-50.

⁶⁷ United States Environmental Protection Agency, *State Funding Mechanisms for Solid Waste Disposal and Recycling Programs* (June 2014), Publication No. 905Q14001. See also California Department of Resources Recycling and Recovery, *Landfill Tipping Fees in California* (2015).

⁶⁸ HM Revenue & Customs, *Excise Notice LFT1: a general guide to Landfill Tax* (1 April 2017).

⁶⁹ *Waste Management (Landfill Levy) Regulations 2015* (Ireland) S.I. No. 189/2015.

⁷⁰ *Waste Minimisation Act 2008* (NZ).

transportation of waste over long distances so as to avoid levies and landfills fees in other States.

134. All of these factors are matters that will need to be considered by the Queensland Government in determining whether to introduce a levy. The investigation team has not sought to design any levy in this report. As EHP has noted in feedback to the investigation team, the implementation of any levy would need to be accompanied by, and form part of, a waste and recycling strategy that encourages resource recovery and recycling over landfill. Industry would need to be provided with proper notification of the implementation of a levy and it is likely that a phased implementation with staged price increases (as has occurred in other States) would be the preferable approach. EHP has noted that a number of “policy settings” will be required:

- *Partial hypothecation of levy revenue back into the Department with a view to:*
 - *Funding programs to stimulate and grow industry and markets for recycled and recovered products;*
 - *Research & development of new and novel techniques to recycle and recover waste;*
 - *Streamlining the development of specifications for products derived from recycling or waste recovery processes.*
 - *Improved waste tracking, compliance and data management processes.*
- *Application of levy to all sectors including municipal solid waste.*
- *Evaluation and monitoring of existing regulatory requirements and alignment with the objectives and targets within the waste and recycling strategy.*
- *Application of levy to all sectors including local government.*
- *Levy concessions for ‘residual’ waste resulting from recycling processes.*

135. These are matters beyond the scope of this review and the necessary analysis and consideration will be a matter for the Queensland Government and EHP.

A disposal ban on particular types of waste

136. Given that the majority of interstate waste coming into Queensland is C&D waste, a ban on such waste would very materially reduce the amount of waste being transported into Queensland. The ban would need to apply to all waste of that type; it is very unlikely, having regard to section 92 *Australian Constitution*, that a ban of only C&D waste generated in another State would be effective.

137. Obviously, such a ban would have profound effects on the waste industry more generally in Queensland. It may well involve significant net economic costs⁷¹. Because of the profound and wide-ranging effects of a ban, and the lack of precedent for such a ban in other Australian States, this report has not recommended a ban. It would not be a proportional response simply to the unnecessary transport of waste from interstate. However, it may be that landfill bans are a matter that EHP would wish to consider as part of an evaluation of a waste strategy for the State. Nothing in this report should be understood as suggesting that such consideration is inappropriate.

Levy 'portability'

138. Some submissions advocated levy portability. The National Waste and Recycling Industry Council (**NWRIC**) submitted that the introduction of "levy portability" would "prevent further unnecessary interstate waste transport". The NWRIC explains that "Levy portability means that landfill levies will be determined by where the waste is generated, rather than where it is landfilled."⁷²
139. Levy portability between States would require substantial co-operation between the States and the development of a national method for tracking and certifying the origin of waste. It would also raise practical questions as to who was to collect the levy, whether it would go to the receiving State or State of origin of the waste and, if the levy was to be returned to the State of Origin of the waste, how that was to practically occur.
140. Levy portability is likely to be consistent with the "proximity principle" in the *Waste Reduction and Recycling Act 2011* (Qld) because it will provide an incentive for waste to be "managed as close to the source of generation as possible"⁷³; or, more accurately, reduce the financial incentive to do otherwise.
141. New South Wales, South Australia and Western Australia will already have experience with the practical implementation of levy portability because their respective State levies are determined by reference to the location of the source of generation and destination for disposal.
142. The investigation team understands that levy portability is a matter that is under current consideration by the National Waste Working Group of the Heads of EPAs; and that such consideration will extend to constitutional issues. There is therefore little utility in considering this option further in this report.
143. Dial A Dump Industries Pty Ltd has made a submission suggesting legislative changes that could be made in New South Wales to introduce a "Waste Responsibility Levy" in place of the existing "Waste Contributions Levy".⁷⁴ The new levy proposed by Dial A Dump would explicitly place responsibility for the cost of disposing of, or recycling, waste upon the generator of the waste. The model is somewhat akin to levy 'portability'

⁷¹ See Synergies Economic Consulting, *Cost-benefit analysis of the implementation of landfill disposal bans in Queensland*, draft final report to EHP November 2014; particularly in relation to concrete (mixed).

⁷² National Waste and Recycling Industry Council, *Submission to the Investigation into the Transport of Waste into Queensland* (2017), p.1.

⁷³ Section 12 *Waste Reduction and Recycling Act 2011* (Qld).

⁷⁴ Dial a Dump Industries Pty Ltd, *Submission to the Investigation into the Transport of Waste into Queensland* (2017), p.7.

although it appears to be premised on the idea of forcing a generator of waste in New South Wales to insist upon the waste being disposed of within New South Wales; or at least to make the generator of the waste directly liable for the levy if that does not occur. Whilst very significant effort has gone into the design of the system, it will not be further pursued because it is a proposal for legislative change in New South Wales.

Proximity principle

144. Another option is the implementation of a 'proximity principle'. More accurately, this means a legislative prohibition on a person transporting waste more than a certain distance or, alternatively, a waste facility operator accepting waste that does not originate within a certain distance of the facility (the 'reverse proximity principle').
145. The proximity principle has received a mixed response in submissions. On the one hand, WMAA suggests that each State "includes the proximity principle (or something similar) in the statutory mix".⁷⁵ A commercial-in-confidence submission made the point that, whilst the proximity principle should guide public policy, it should not be the basis for legislative restrictions on free movement of goods.
146. With the exception of New South Wales' implementation, the investigation team has not been able to identify any other jurisdiction in which the proximity principle has been implemented as a legislative prohibition on general waste (as distinct from hazardous waste) moving further than a prescribed distance. Generally, the proximity principle is referred to as a guide for the achievement of stated objects, as is the case in Queensland.
147. As noted above, the NSW EPA appears to have formed the view that the proximity principle as implemented in New South Wales would fall foul of section 92 of the *Australian Constitution*. It may be that a proximity principle implemented at a national level would be capable of withstanding constitutional scrutiny. The investigation team understand that this is a matter that is under consideration by the Heads of EPAs. Again, there seems to be little utility in considering this option further in this report.

Actions by other governmental bodies

Actions by Local Governments

148. Gold Coast City Council operates a very large landfill at Stapylton (and some other facilities). It has recently charged a higher facility fee for waste from outside its local government area, apparently explicitly to restrict waste importation⁷⁶. It remains to be seen whether this action will be effectively challenged.

⁷⁵ Waste Management Association of Australia, *Submission to the Investigation into the Transport of Waste into Queensland* (2017), Annexure A, p.6.

⁷⁶ See QTC's submission to this investigation, p 4; LGAQ submission to this investigation, p 5; Gold Coast City Council submission to this investigation, p 3 (although much of this submission is confidential, this is obviously a matter of public knowledge).

149. Arcadis reports that waste generators from interstate are disposing of their waste in the Ipswich area⁷⁷. Responses to the investigation's enquiries and other confidential information tend to confirm that waste from interstate that goes to landfills is disposed of in that area. Any action by Gold Coast does not seem likely to affect the volume of interstate waste disposed of in landfills in Queensland. None of the significant landfills in the Ipswich local government area are owned by the local government⁷⁸. It is unlikely that actions taken by any local government as a landfill operator would affect the flow of waste from interstate, to any significant degree.
150. Local governments have extensive powers, generally under the *Local Government Act 2009* (Qld)⁷⁹. However, that Act provides that a local government "can only do something that the State can validly do"⁸⁰. If only for that reason, it seems unlikely that a local government could exercise a legislative or an administrative power contrary to s 92 of the *Australian Constitution*. Moreover, the powers are generally exercisable only within the relevant local government area⁸¹.
151. It is difficult to see that a local government could take any effective action which the State could not take. There is little utility in pursuing this question further.

Actions by the Australian Government

152. While the Commonwealth has power to make laws with respect to trade and commerce among the States⁸², it appears to be well accepted that this power is subject to s 92 of the *Australian Constitution*⁸³. Limitations on legislative (and administrative) power referred to elsewhere in this report would apply to it.
153. There may be some prospect that the Commonwealth would provide support, if necessary, for joint actions agreed upon by the States. Such actions are currently being considered by the National Waste Working Group, discussed elsewhere in this report.
154. There has been no other suggestion of action which the Commonwealth might, and could, take in relation to the transport of waste from other States to Queensland. It is therefore not proposed to discuss this topic further.

⁷⁷ See p 63.

⁷⁸ Arcadis report, pp 64-65.

⁷⁹ See in particular s 9.

⁸⁰ See s 9(2) of the *Local Government Act*.

⁸¹ See s 9(4) of the *Local Government Act*.

⁸² See s 51(i) of the *Australian Constitution*.

⁸³ See Stellios, *Zines's The High Court and the Constitution* (6th ed) Federation Press, p 164.

Summary response to Terms of Reference

Response to paragraph 1(a) of the Terms of Reference

155. 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.

Response to paragraph 1(b) of the Terms of Reference

156. 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.

Response to paragraph 1(c) of the Terms of Reference

157. Only the United States has a constitutional limitation analogous to s 92 of the *Australian Constitution*. 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.

Response to paragraph 2(a) of the Terms of Reference

158. 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.
159. It is possible that it would be subject to challenge, most likely under s 92, but possibly also under s 90, of the *Australian Constitution*. 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.
160. 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.

Response to paragraph 2(b) of the Terms of Reference

161. 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.

Response to paragraph 2(c) of the Terms of Reference

162. 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 reasons 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.

Response to paragraph 2(d) of the Terms of Reference

163. The Australian Government’s powers are limited to those granted to it by the *Australian Constitution* and constrained by s 92. There is no reason to think it could take action which Queensland and the other States could not.

Additional observations

Lawfulness of transport of waste from other States to Queensland landfills

164. Some industry participants have raised concerns about a perception in the community that any transport of waste from interstate into Queensland is unlawful. If there is such a perception then it is incorrect, under Queensland law. There is nothing unlawful under Queensland law regarding the transporting of unregulated waste from another State to Queensland.
165. Since 1 November 2014 there has been a statutory prohibition in New South Wales on the transport of waste by motor vehicle more than 150 kilometres from the premises of origin of the waste for disposal.⁸⁴ However, this ‘proximity principle’ is no longer being enforced by the NSW EPA because the NSW EPA formed the view that the prohibition offended section 92 of the *Australian Constitution*.⁸⁵ If that view is correct, then the statutory prohibition is of no effect. The proximity principle is addressed in more detail below.

Is there a problem?

166. The terms of reference assume that transport of waste from other States into Queensland is a problem. Many of the submissions express a different view.

⁸⁴ Section 71 *Protection of the Environment Operations (Waste) Regulation 2014* (NSW).

⁸⁵ Evidence to Portfolio Committee No. 6 – Planning and Environment – ‘Energy from Waste’ Technology, Parliament of New South Wales, Sydney, 17 August 2017, p.63 (Barry Buffier, Chair and Chief Executive, NSW Environment Protection Authority).

167. The data supplied by EHP to the investigation team indicates that approximately 900,000 tonnes of interstate waste was transported into Queensland in FY 2017.⁸⁶ Even if private operators of waste disposal facilities in Queensland charged only \$10 per tonne (and as explained below, that is the lowest estimate put forward by any party as to the cost per tonne of disposal in Queensland), then the transport of interstate waste contributed at least \$9 million in revenue to the waste industry in Queensland. If the transport of waste from New South Wales to Queensland only reflected the disparity in facility fees, with much higher prices near Sydney because of the scarcity of landfill, then this transport would, on its face, be economically efficient.
168. However, the economic reason for transporting waste into Queensland is not simply a reflection of the difference between facility fees charged by private operators in other States. The principal driver for interstate transport of waste is that New South Wales, like every other Australian State and Territory except Queensland, Tasmania and the Northern Territory, imposes a levy on the disposal of waste into landfills.⁸⁷ Amongst other things, a levy encourages recycling and resource recovery and might be used to support the development of new infrastructure and technology to improve diversion rates from landfill and encourage recycling and resource recovery alternatives. As there is no levy in Queensland, it seems to follow that substantial volumes of waste are being transported from New South Wales into Queensland, consuming available void space in Queensland and without the incentive of a Queensland levy to encourage recycling or resource recovery.
169. EHP, in its publication *Recycling and waste in Queensland 2016*, has reported that for FY 2016 the overall recovery rate of headline wastes was 44.1% with recovery rates from C&D waste rate at 50%.⁸⁸ The Queensland recovery rate is the second lowest of any Australian State or Territory, behind only the Northern Territory.⁸⁹ The *National Waste Report 2016* reports that in FY 2015, recovery rate for the whole of Australia from waste generally (excluding fly ash and hazardous waste) was 61%.⁹⁰ For C&D waste, the national recovery rate in that year was 64%.⁹¹ The two jurisdictions with the lowest recovery rates do not have a levy.
170. In addition, as the Ipswich City Council has noted in a submission to the investigation, “the movement and disposal of waste from southern states to privately owned landfills in Ipswich is considered to have a negative impact on the Ipswich community by creating a perception that Ipswich has become ‘a dumping ground’ for other state’s waste.”⁹²
171. Having made these observations, it is important to emphasise that the Terms of Reference do not require the investigation team to make an evaluative judgment as to

⁸⁶ Department of Environment and Heritage Protection, *Unpublished data* (2017).

⁸⁷ Strictly, the Australian Capital Territory (**ACT**) does not apply a levy to the disposal of waste. However, the ACT Government sets the landfill fees for waste in the ACT: see *Waste Management and Resource Recovery (Fees) Determination 2017 (No 1)* (ACT).

⁸⁸ Department of Environment and Heritage Protection, *Recycling and waste in Queensland 2016* (2016), p. 5.

⁸⁹ Blue Environment Pty Ltd, *Australian National Waste Report 2016* (2017), for the Department of the Environment and Energy, pp.10-11.

⁹⁰ Blue Environment Pty Ltd, *Australian National Waste Report 2016* (2017), for the Department of the Environment and Energy p.9.

⁹¹ Blue Environment Pty Ltd, *Australian National Waste Report 2016* (2017), for the Department of the Environment and Energy p.15.

⁹² Ipswich City Council, *Submission to the Investigation into the Transport of Waste into Queensland* (2017), p.1.

whether the transport of waste from other States into Queensland should be discouraged. Rather, the Terms of Reference require an identification of the drivers for the interstate transport of waste and the reforms that could reduce such transport.

Recommendations

172. The investigation team makes 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.