



4 November 2014

Mr Trevor Ruthenberg MP
Chair
Health and Community Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Chair

Replies to Questions on Notice

I am writing to respond to two questions taken on notice by the Local Government Association of Queensland (LGAQ) during the Health and Community Services Committee's 29 October 2014 hearing on the Health Legislation Amendment Bill 2014.

In response to the question whether any other jurisdiction in Australia has established a standalone cost recovery fund for asbestos-related events and local government, I would draw the Committee's attention to the Illegally dumped asbestos clean up program (IDACUP) operated by the NSW Department of Environment and Heritage.

According to information on the Department's website, State agencies, including the NSW EPA, emergency service organisations and local councils, may become involved in clean up activities of illegally dumped asbestos and other hazardous orphan waste. In many cases a responsible party is identified and will be in a position to fund clean up. However, sometimes the responsible party is unknown, unavailable, unwilling (despite a legal obligation to do so) or unable to pay for clean up within the timeframe required to avoid or at least minimise harm to the environment or public health. Under these circumstances the organisation responsible for coordinating the clean up in the absence of the responsible party may apply for funding under the IDACUP. The budget for this program is \$0.5 million annually.

Furthermore, I would like to reiterate the suggestion made in our submission and at the hearing that the 'Reimbursement scheme for orphan incidents' administered by the Queensland Department of Environment and Heritage Protection be considered as a model for the standalone fund proposed by the LGAQ. The purpose of this scheme is to support local government in the clean up of incidents where material or serious environmental harm has occurred and the polluter cannot be pursued. An information sheet about the scheme sourced from the Department's website is at **Attachment 1**.

Notwithstanding the above information, it is important to remember that the relationship between the State Government and local government is governed by the Partners in Government Agreement. This agreement requires the Queensland Government to take into account the financial implications and other impacts on local government and consider the identification and availability of an ongoing revenue source in any devolution or delegation of new responsibilities.

I need to again stress that the establishment of a standalone fund initially provided by the State Government for asbestos-related situations where the owner/occupier cannot be pursued requires careful consideration. It is simply impossible for councils to absorb clean up costs of the magnitude incurred in those situations.

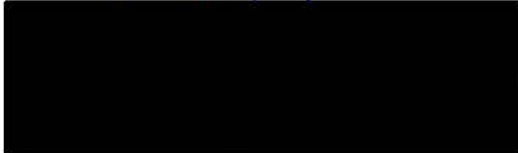


With regard to the question whether any person has been prosecuted in any local government area for breaching smoking bans in outdoor pedestrian malls or transport waiting points, there are three councils, to our knowledge, that have made local laws under this authority to date. The practice regarding prosecutions varies between these councils.

The first council's standard enforcement approach is not to issue infringements but to engage with any person smoking in these areas and issue a verbal warning to stop the practice and to move on. The second council has issued both warnings and infringements for smoking in outdoor areas. The third council has not yet issued any infringements because it has only recently introduced a local law regarding smoking in public places.

I trust this response satisfies the Committee's request for additional information.

Yours sincerely



Greg Hoffman PSM
A/G CHIEF EXECUTIVE OFFICER

Information sheet

Orphan incidents

Reimbursement scheme for orphan incidents

This information sheet is to provide information to local governments about the criteria that will be used to assess applications for reimbursement of costs associated with the clean-up of orphan incidents.

Background

The Queensland Department of Environment and Heritage Protection (EHP) administers a reimbursement scheme for orphan incidents to support local government in the clean-up of incidents where material or serious environmental harm has occurred and the polluter cannot be pursued (this will not apply where an incident results from fire fighting activities).

This reimbursement scheme, administered by EHP, aims to:

- encourage local government to manage orphan incidents
- prevent environmental harm from incidents that represent an immediate risk to the environment
- ensure a timely response to orphan incidents that are not trivial or minor in nature.

What funding is available?

The cost of the clean-up, excluding ordinary wages for Council staff, must be greater than \$5000 (this covers *material environmental harm* where clean-up costs are between \$5000 and \$50,000; and *serious environmental harm* where clean-up costs are more than \$50,000).

Local governments will be required to notify the project manager for orphan incidents if the costs are likely to be above \$50,000.

Where reimbursement has been paid and costs are subsequently recovered from the person who caused or allowed the incident, net costs recovered will be returned to EHP.

What is the process?

When an incident occurs:

- Council to contact the local EHP office with the incident details and clean-up action being undertaken to deal with the incident
- apply for reimbursement from EHP once clean-up has occurred and the person responsible for the incident was unable to be located.

What are the application requirements?

Before seeking reimbursement the applicant is required to ensure that:

- best endeavours were made to locate the person who caused or allowed the incident
- the person responsible for the incident cannot be pursued and it can be demonstrated that diligent efforts to locate and/or claim costs from such person have been made
- the reimbursement costs sought are reasonable
- the cost of providing the service is reasonable and do not include unnecessary or excessive costs
- the cost of providing the service has not included ordinary wages of local government officers (any expenses outside of ordinary wages will be reimbursed, e.g. overtime, allowances)
- the clean-up was safe, environmentally sound and cost effective
- the incident is **NOT** prior to the 1st July 2007 (being the commencement of the reimbursement scheme)
- the clean-up is **NOT** where a pollution incident results from fire fighting activities
- the Incident is **NOT** related to land recorded on the environmental management register and the contaminated land register
- the incident is **NOT** from a motor vehicle accident
- the clean-up is **NOT** a removal, transport, processing and disposal of tyres
- the clean-up is **NOT** part of a litter collection campaign or regular local government clean up activity, which includes a roadside clean-up program
- the incident is **NOT** part of a clean-up or disposal of materials voluntarily picked up in a situation not involving an orphan incident, e.g.:
 - local government kerbside collection programs
 - Clean-Up Australia Day activities
 - removal of car bodies from any location
 - waste facility acceptance of hazardous materials
 - maintenance of stormwater drains.

What information should be addressed in the application?

The application must include a description of:

- the incident, including time and place
- the clean-up action undertaken
- the costs associated with the clean-up (exclusive of GST), including the submission of a tax invoice and all relevant receipts
- action taken to recover costs from person responsible for the incident.

Further information

For further information contact your local regional EHP office (refer to White Pages or the information sheet *Contact details for environmental licensing including Council areas* (EM148) available on the EHP website www.ehp.qld.gov.au using the publication number EM148 as a search term) or contact Permit and Licence Management on 13 QGOV (13 74 68).

Disclaimer:

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Approved by:

Omar Ameer
Director, Environmental Regulatory Practice and Support
Department of Environment and Heritage Protection
Date: 15 April 2013

Enquiries:

Permit and Licence Management
Phone: 13 QGOV (13 74 68)
Fax: (07) 3330 5875
Email: palm@ehp.qld.gov.au