



**The Hon Gabrielle Upton MP**  
Minister for the Environment  
Minister for Local Government  
Minister for Heritage

MD17/2311

The Hon Reginald Blanch AM QC  
Acting Commissioner  
Independent Commission Against Corruption NSW  
Level 7, 255 Elizabeth Street  
SYDNEY NSW 2000



**E-MAILED**

21/9/17

By email: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)

Dear Mr Blanch *Reg*

Thank you for your letter and the Commission's report on its *Investigation into the conduct of a Regional Illegal Dumping Squad officer and others* (Operation Scania).

I am pleased to advise the Environment Protection Authority (EPA) has accepted the recommendations proposed by the Commission, and incorporated them into a draft revised 2017–18 funding agreement for the entire RID squad program. The draft funding agreement also requires host councils to develop a fraud and corruption risk assessment and independent audits of financial expenditure, governance and probity procedures every two years. The EPA intends to implement these actions across all five squads.

I attach the EPA's action plan in response to each of the Commission's recommendations.

The NSW Government is considering the NSW Ombudsman's April 2017 special report *Asbestos – How NSW Government agencies deal with the problem*. It makes several of recommendations for asbestos management which closely reflect the Commission's report, including the establishment a single coordinating authority. The NSW Government will respond to this matter as part of its reply to the Ombudsman, which is due in October 2017.

I note that the Report states that Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the following persons:

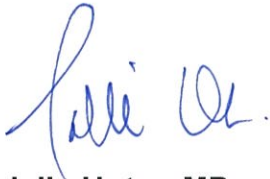
- Mr Izzard for offences under s 249B(1)(a) of the *Crimes Act 1900* ("the Crimes Act") (chapters 4 and 5) and the common law offence of misconduct in public office (chapter 5)

- Mr Kabite for offences under s 249B(2)(a) of the Crimes Act (chapters 4 and 5) and an offence of aiding and abetting a common law offence of misconduct in public office (chapter 5)
- Mr Beydoun for an offence under s 249B(2)(a) of the Crimes Act (chapter 4).

I understand that the Commission will be referring these matters to the DPP.

If you have any further questions about this matter, please contact Mrs Sarah Gardner, Executive Director Waste and Resource Recovery, EPA, on 9995 5210 or at [sarah.gardner@epa.nsw.gov.au](mailto:sarah.gardner@epa.nsw.gov.au).

Yours sincerely



**Gabrielle Upton MP**  
Minister for the Environment  
Minister for Local Government  
Minister for Heritage

Attachment

21.9.17

# **Environment Protection Authority plan of action in response to recommendations made in *Investigation into the conduct of a Regional Illegal Dumping Squad officer and others***

## **PART A: Environment Protection Authority's response to corruption prevention recommendations**

Firstly please indicate the response to be taken for each recommendation made.

**Recommendation 3: That the Environment Protection Authority (EPA) strengthens its involvement in the WS RIDS Management Committee to ensure it properly directs and oversees the WS RIDS's strategic and operational performance.**

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action Environment Protection Authority intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

### **Implement the intent of the recommendation in an alternative way**

All RID squad and RID program funding agreements have been amended to include specific conditions relating to the RID management committee. Specific detail is provided in the Part B- Action Plan.

EPA will chair matters relating to strategic and operational performance at RID squad management committee meetings.

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

EPA co-contributes 50% of funding with member councils contributing the remaining 50%. EPA is a member of the RID committee and has a role in providing direction and contributing to decisions associated with the RID squad. EPA does not have the authority to direct the activities of the RID squad without consensus from the RID committee members. EPA can influence activities through conditions of the funding agreement. The funding agreement has been drafted to improve the roles and responsibilities of the committee members and the host council.

**Recommendation 4: That the EPA strengthens the WS RIDS's Funding Agreement to include additional specifications consistent with regulatory good practice, such as evaluating regulatory performance against strategic outcomes.**

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action Environment Protection Authority intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

**Implement the recommendation as described in the report**

EPA has strengthened the reporting requirements in the new funding agreement, including a project evaluation framework, with a performance target of 30 per cent reduction of illegal dumping in RID squad council areas by 2020. This target aligns with the state target set out in the Draft *NSW Illegal Dumping Strategy 2017–20*.

The agreement includes the RID squads providing an annual strategic plan, providing progress and annual reports, reporting on the project outcomes and budget expenditure.

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

Implement the recommendation as described in the report

**Recommendation 5: That the EPA strengthens and mandates the technical training of WS RIDS officers to ensure that all officers carry out compliant and effective regulatory activity.**

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action Environment Protection Authority intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

**Implement the intent of the recommendation in an alternative way**

Training continues to be provided by the EPA through the *Protection of the Environment Operations Act 1997* (POEO Act) course which has been designed to equip authorised officers within local government with the necessary knowledge to fulfil their responsibilities as outlined in the POEO Act. This training includes exercising regulatory powers under the Act and an understanding of delegations as the appropriate regulatory authority. RID squads have completed this course and will continue to have access to complete this course.

EPA has strengthened the funding agreement to include conditions relating to training and RID Officers carrying out duties in a transparent and effective way.

The draft *NSW Illegal Dumping Strategy 2017–20* identifies key actions that will support also support this recommendation.

EPA will continue to work with AELERT to ensure RID squads and local councils can access training relating to investigating illegal dumping.

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

RID Squad officers are employees of the host council. Mandating training would require the agreement of the host council, the EPA has no authority to mandate training for employees of the host council.

**Recommendation 6: That the EPA, in partnership with the host council, reviews WS RIDS position descriptions to ensure they reflect the skills and personal attributes necessary to be an effective RIDS manager or field officer.**

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action Environment Protection Authority intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

**Implement the recommendation as described in the report**

The new funding agreement requires the review of RID Squad Position Descriptions:

The review of positions descriptions must ensure that the duties meet the criteria set out in the funding agreement. See Part B -Action Plan for detail.

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

Implement the recommendation as described in the report

**Recommendation 7: That the EPA develops a case management system to be used by all RIDSs that will also support compliant processes, allow in-built approval levels for key decisions and provide metrics to improve oversight of the WS RIDS.**

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action Environment Protection Authority intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

**Implement the recommendation as described in the report**

EPA is expanding RIDonline (a state wide illegal dumping database) to include case management. It is anticipated that the development of the case management system will take up to six months to develop and implement.

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

Implement the recommendation as described in the report

**Recommendation 8: That the EPA works with relevant stakeholders to develop a scheme whereby sites where asbestos is present can be certified and information provided to the relevant local council for inclusion in a register of such sites.**

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action Environment Protection Authority intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

**Implement the intent of the recommendation in an alternative way**

The Commonwealth Asbestos Safety and Eradication Agency (ASEA) estimates that one in three Australian homes built before 1990 contains asbestos. Having information on whether asbestos is present would allow homeowners to make more informed decisions about its management, and also allow better informed conditions of consent for removal and disposal of asbestos in subsequent development applications.

EPA will work with the Heads of Asbestos Coordination Authorities (HACA) group to further explore the development of such a scheme, including linkages with the actions noted in response to Recommendation 9

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

This is a complex area, and issues such as liability where registers are incorrect or incomplete, along with privacy matters, need to be considered and worked through.

**Recommendation 9: That the EPA works with relevant government agencies to explore ways to improve and link DA processes and conditions of consent relating to the handling, transport and disposal of waste from construction and demolition sites.**

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action Environment Protection Authority intends is other than “implement the recommendation as described in the report”, please state the proposed action to be undertaken in the space provided below.

**Implement the recommendation as described in the report**

The Draft *NSW Illegal Dumping Strategy 2017–20* has identified illegal dumping of construction and demolition waste as a key area to target. The strategy acknowledges the need to improve current practices in the “planning process”. See Part B-Action Plan for detail.

Please explain why the above action is action is proposed rather than the ICAC’s published recommendation.

Implement the recommendation as described in the report

**Recommendation 10: That the EPA explores ways to reduce tipping fees for those who dump asbestos loads at licensed landfills.**

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action Environment Protection Authority intends is other than “implement the recommendation as described in the report”, please state the proposed action to be undertaken in the space provided below.

**Implement the recommendation as described in the report**

At most landfills in NSW, tipping fees per tonne are higher for asbestos waste than for mixed solid waste. Currently, the waste levy of \$136 per tonne (metropolitan) applies equally to both types of waste.

The EPA is exploring a number of initiatives to make it easier and cheaper for the community to dispose of asbestos waste. One of the reforms being explored includes removing the levy when asbestos is disposed of at a licensed facility, provided it is not mixed with other waste and is properly transported and managed in accordance with the *Protection of the Environment Operations (Waste) Regulation 2014*. The final terms of a waste levy exemption will be developed in consultation with key stakeholders, including local councils and industry.

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

Implement the recommendation as described in the report

**Recommendation 11: That the EPA strengthens its regulatory response to illegal dumping by developing a suite of approaches to incentivise proper asbestos waste disposal.**

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action Environment Protection Authority intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

**Implement the recommendation as described in the report**

EPA is currently undertaking a range of work to better understand the barriers and drivers around asbestos management and disposal, including financial, economic and behavioural analysis.

EPA is also developing a draft Asbestos Waste Strategy for consultation, which will identify a range of policy, program and regulatory reform options that will make it easier and cheaper for the community to dispose of asbestos and deter commercial operators from doing the wrong thing with asbestos.

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

Implement the recommendation as described in the report

**Recommendation 12: That the EPA develops clear guidelines to ensure that confusion regarding the application of waste disposal laws is eliminated.**

Please indicate the response the public authority will take in its plan of action:

- Implement the recommendation as described in the report
- Implement the intent of the recommendation in an alternative way
- Partially implement the recommendation
- Not implement the recommendation

If the action Environment Protection Authority intends is other than "implement the recommendation as described in the report", please state the proposed action to be undertaken in the space provided below.

**Implement the recommendation as described in the report**



EPA recognises that there is currently some confusion around who is the 'appropriate regulatory authority' in relation to illegally dumped waste. The EPA will review the relevant legislation and seek to clarify any ambiguity.

It should be noted the EPA does not administer or have delegation under the *Environmental Planning and Assessment Act 1997* or the *Local Government Act 1993* that ICAC refers to in the report.

Please explain why the above action is action is proposed rather than the ICAC's published recommendation.

Implement the recommendation as described in the report

## **PART B: Environment Protection Authority's plan of action**

In this section, please provide details of Environment Protection Authority's plan of action in relation to the recommendations and/or proposed actions described above.

The scope and scale of recommendations made in investigation reports varies considerably, and the Commission recognises a single template may not suit every agency or investigation. In view of this, Environment Protection Authority's is invited to develop a format that is appropriate for the proposed plan of action and subsequent report(s).

The Commission asks that the plan of action and subsequent proposed report formats are developed in consultation with the ICAC's corruption prevention representative named in the cover letter. The ICAC corruption prevention representative will advise if the plan or report format has the Commission's endorsement.

However if Environment Protection Authority's prefers to adhere to an established format, the following may be used as a guide.

### **Plan of action**

Each specific recommendation or proposed action
Action to be taken describing activities, allocating responsibility, measures to be used

Recommendation	EPA Action(s)	Timeframe	Status
<p><b>Recommendation 3:</b> That the Environment Protection Authority (EPA) strengthens its involvement in the WS RIDS Management Committee to ensure it properly directs and oversees the WS RIDS's strategic and operational performance.</p>	<p>EPA has strengthened all RID squad and RID funding agreements to require management committee members to be authorised to make decisions on behalf of their Council. The committee member must hold a manager position or above.</p> <p>EPA will chair matters relating to strategic and operational performance at RID squad management committee meetings.</p>	<p>Effective from 1 July 2017</p>	<p>Completed</p>
<p><b>Recommendation 4:</b> That the EPA strengthens the WS RIDS's Funding Agreement to include additional specifications consistent with regulatory good practice, such as evaluating regulatory performance against strategic outcomes.</p>	<p>EPA has strengthened the reporting requirements in the new funding agreement, including a project evaluation framework, with a performance target of 30 per cent reduction of illegal dumping in RID squad council areas by 2020. This target aligns with the state target set out in the Draft <i>NSW Illegal Dumping Strategy 2017–20</i>.</p> <p>RID squads must complete annual strategic plans, progress reports and annual reports on project outcomes and budget expenditure.</p>	<p>Effective from 1 July 2017</p>	<p>Completed</p>
<p><b>Recommendation 5:</b> That the EPA strengthens and mandates the technical training of WS RIDS officers to ensure that all officers carry out compliant and effective regulatory activity.</p>	<p>RID Squad officers are employees of the host council. Mandating training would require the agreement of the host councils. However the EPA outlines the following actions.</p> <p>Training continues to be provided by the EPA through the <i>Protection of the Environment Operations Act 1997</i> (POEO Act) course which has been designed to equip authorised officers within local government with the necessary knowledge to fulfil their responsibilities as outlined in the POEO Act.</p>	<p>Ongoing</p>	<p>In progress</p>

<p><b>Recommendation 6:</b> That the EPA, in partnership with the host council, reviews WS RIDS position descriptions</p>	<p>This training includes exercising regulatory powers under the Act and an understanding of delegations as the appropriate regulatory authority. EPA is hosting training for all RID squads on 24 October 2017 which includes Corruption and Prevention Training being conducted by ICAC.</p> <p>To support compliant and effective regulatory activity, RID funding agreements require:</p> <ul style="list-style-type: none"> <li>• A Standard Operating Procedure for incident management be developed and implemented.</li> <li>• member Councils must develop a protocol for the allocation of incidents to the RID squads</li> <li>• incidents investigated by the RID squads to be reported on at all Committee meetings</li> <li>• The RID coordinator is to maintain adequate oversight of all incidents investigated by their respective RID program officers and oversee employee conduct in relation to corruption risks and corporate governance procedures.</li> </ul> <p>The draft <i>NSW Illegal Dumping Strategy 2017–20</i> identifies key actions that will support this recommendation. These include:</p> <ul style="list-style-type: none"> <li>• delivering an online Illegal Dumping toolkit.</li> <li>• providing support and promote the use of surveillance and prevention techniques by local councils and public land managers.</li> <li>• delivering compliance campaigns with each RID squad/program to target local illegal dumping issues.</li> </ul> <p>EPA will continue to work with Australasian Environmental Law Enforcement and Regulators Network (AELERT) to ensure RID squads and local councils can access training relating to investigating illegal dumping.</p>	<p>30 November 2017</p>	<p>In progress</p>
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<p>to ensure they reflect the skills and personal attributes necessary to be an effective RIDS manager or field officer.</p>	<p>The funding agreements require that the RID coordinator position does not take on patrolling responsibilities, with core duties involving oversight of RID officers and incidents being investigated. The RID coordinator will also be responsible for overseeing employee conduct in relation to corruption risks and corporate governance procedures.</p> <p>RID officers will be required to log all illegal dumping incidents they investigate into RIDonline, they must only investigate illegal dumping and illegal landfilling incidents in which Member Councils are the Appropriate Regulatory Authority (ARA) under the Protection of the Environment Operations Act 1997 (POEO Act).</p>	
<p><b>Recommendation 7:</b> That the EPA develops a case management system to be used by all RIDSs that will also support compliant processes, allow in-built approval levels for key decisions and provide metrics to improve oversight of the WS RIDS.</p>	<p>EPA is expanding RIDonline (a state wide illegal dumping database) to include case management.</p>	<p>Development stage by December 2017</p> <p>Implementation by June 2018</p> <p>In progress</p>
<p><b>Recommendation 8:</b> That the EPA works with relevant stakeholders to develop a scheme whereby sites where asbestos is present can be certified and information provided to the relevant local council for inclusion in a register of such sites.</p>	<p>The Commonwealth Asbestos Safety and Eradication Agency (ASEA) estimates that one in three Australian homes built before 1990 contains asbestos. Having information on whether asbestos is present would allow homeowners to make more informed decisions about its management, and also allow better informed conditions of consent for removal and disposal of asbestos in subsequent development applications.</p> <p>However, this is a complex area, and issues such as liability where registers are incorrect or incomplete, along with privacy matters, need to be considered and worked through.</p>	<p>Commence exploration of options October 2017</p>

<p><b>Recommendation 9:</b> That the EPA works with relevant government agencies to explore ways to improve and link DA processes and conditions of consent relating to the handling, transport and disposal of waste from construction and demolition sites.</p>	<p>The EPA will work with the Heads of Asbestos Coordination Authorities (HACA) group to further explore the development of such a scheme, including linkages with the actions noted in response to Recommendation 9.</p>		
<p><b>Recommendation 10:</b> That the EPA explores ways to reduce tipping fees for those who dump asbestos loads at licensed landfills.</p>	<p>The Draft NSW <i>Illegal Dumping Strategy 2017–20</i> has identified illegal dumping of construction and demolition waste as a key area to target. The strategy acknowledges the need to improve current practices in the “planning process”. Specifically, the strategy outlines three key actions:</p> <ul style="list-style-type: none"> <li>• Undertake social research of the construction and demolition industry to understand knowledge, attitudes and behaviours on waste management, transport and disposal.</li> <li>• Partner with planning authorities and services to achieve better outcomes and ensure that approvals lead to lawful waste management.</li> <li>• Deliver a multi-phase compliance campaign targeting illegal landfilling, with a focus on waste generation, transportation and disposal - Ongoing work. Phase 1 (data gathering) completed July 2017. Phase 2 (implementation) commenced August 2017.</li> </ul>	<p>Commenced May 2017</p>	<p>In progress</p>
<p><b>Recommendation 10:</b> That the EPA explores ways to reduce tipping fees for those who dump asbestos loads at licensed landfills.</p>	<p>At most landfills in NSW, tipping fees per tonne are higher for asbestos waste than for mixed solid waste. Currently, the waste levy of \$136 per tonne (metropolitan) applies equally to both types of waste.</p> <p>EPA is exploring a number of initiatives to make it easier and cheaper for the community to dispose of asbestos waste. One of the reforms being explored includes removing the levy when asbestos is disposed of at a licensed facility, provided it is not mixed with other waste and is properly transported and managed in accordance with the <i>Protection of the Environment Operations (Waste) Regulation 2014</i>. The final terms of a waste levy exemption will be developed in consultation with key stakeholders, including local councils and industry.</p>	<p>Ongoing</p>	<p>In progress</p>

<p><b>Recommendation 11:</b> That the EPA strengthens its regulatory response to illegal dumping by developing a suite of approaches to incentivise proper asbestos waste disposal.</p>	<p>EPA is currently undertaking a range of work to better understand the barriers and drivers around asbestos management and disposal, including financial, economic and behavioural analysis.</p> <p>EPA is also developing a draft Asbestos Waste Strategy for consultation, which will identify a range of policy, program and regulatory reform options that will make it easier and cheaper for the community to dispose of asbestos and deter commercial operators from doing the wrong thing with asbestos.</p>	<p>Ongoing</p>	<p>In progress</p>
<p><b>Recommendation 12:</b> That the EPA develops clear guidelines to ensure that confusion regarding the application of waste disposal laws is eliminated.</p>	<p>EPA recognises that there is currently some confusion around who is the 'appropriate regulatory authority' in relation to illegally dumped waste. The EPA will review the relevant legislation and seek to clarify any ambiguity.</p> <p>It should be noted the EPA does not administer or have delegation under the <i>Environmental Planning and Assessment Act 1997</i> or the <i>Local Government Act 1993</i> that ICAC refers to in the report.</p>	<p>To be developed November 2017</p>	<p>In progress</p>
<p><b>Recommendation 13:</b> That the NSW Government considers enacting a specific and serious standalone</p>	<p>EPA is considering standalone offences for illegal dumping and asbestos waste.</p>	<p>Commence exploration of options October 2017</p>	<p>In progress</p>

<p>offence for the disposal of asbestos waste.</p>			
<p><b>Recommendation 14:</b> That the NSW Government gives consideration to the establishment of a single coordinating authority, with appropriate regulatory powers and funding, that has statutory responsibility for overseeing all asbestos waste matters in NSW.</p>	<p>The NSW Ombudsman's 2017 report <i>Asbestos: How NSW government agencies deal with the problem</i> makes similar recommendations to ICAC's Recommendations 14 and 15. EPA is presently working to provide input to the whole of Government response to the Ombudsman's report, which will address this matter and will be tabled in October 2017.</p>	<p>October 2017</p>	<p>In progress</p>
<p><b>Recommendation 15:</b> That Heads of Asbestos Coordination Authorities (HACA) continues to act as an executive committee to any newly-created coordinating authority.</p>	<p>The NSW Ombudsman's 2017 report <i>Asbestos: How NSW government agencies deal with the problem</i> makes similar recommendations to ICAC's Recommendations 14 and 15. EPA is presently working to provide input to the whole of Government response to the Ombudsman's report, which will address this matter and will be tabled in October 2017.</p>	<p>October 2017</p>	<p>In progress</p>