LOCAL GOVERNMENT NSW

Submission on the EPA Draft Regulatory Strategy

March 2021

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to provide feedback on the NSW Environment Protection Authority's (EPA) Draft Regulatory Strategy. NSW councils are a partner in protecting, restoring and enhancing the quality of the environment.

This submission was endorsed by the LGNSW Board in April 2021.

Background

The Draft Regulatory Strategy sets out the EPA's proposed approach to regulating new and existing environmental challenges. The Strategy is based on ecologically sustainable development principles including the precautionary principle, inter-generational equity, biodiversity conservation, and polluter pays.

The EPA is the state's primary environmental regulator however NSW councils also have responsibilities and powers under environment legislation.

Feedback on challenges

LGNSW recognises that environment protection, restoration and enhancement is complex, diverse and challenging.

Protecting human health
The EPA's regulatory challenge for protecting human health is currently written with a focus on emerging harmful substances and emerging scientific knowledge. However, regulatory approaches for dealing with existing or legacy harmful substances (e.g. asbestos, PFAS) should not be neglected.

Recommendation 1: Identify regulatory approaches to existing and legacy contaminants in the environment that threaten human health in partnership with other stakeholders including local government.

Asbestos is endemic to the built environment and soils in developed areas. Asbestos is a legacy contaminant in our environment that is neither identified or managed sufficiently or appropriately to ensure human health is protected. A lack of comprehensive information on contaminated land can lead to unexpected finds of asbestos on land otherwise thought to have been free from contaminants. This can lead to poor environmental practices including illegal and unsafe disposal of soils and fill.

Recommendation 2: The EPA specifically state what past human activity is known to cause harm to current and future generations, and the specific and funded strategies that will eliminate those known harms.

Degradation of our environment
Land contamination is a major issue for many councils, with many specific contaminants known. The strategy could be more specific and assertive in regulating existing land degradation. There appears to be no specific commitment to hold those who degrade land to account through the polluter pays principle.

Recommendation 3: The EPA specify known legacy sites where major contamination issues have occurred along with regulatory strategies for the sites. For example, the James Hardy Legacy sites in and around the Parramatta Council area are a long running issue that appear to have no specific strategy or attached funding to resolve.

LGNSW supports the approach to create and act on opportunities to restore environments and suggests the EPA could do this by encouraging or incentivising development to occur in environmentally degraded areas where the development can be used to help remediate degraded sites and provide community amenity. There are also opportunities for councils to develop better land use records through for example the Council Regional Capacity Building Program where improved databases of contaminated land are being developed.

Recommendation 4: The EPA specify a regulatory pathway to identify and remediate degraded land in a safe and timely manner to protect the environment and human health.

Reducing Waste
LGNSW supports the circular economy approach to address over consumption and waste generation issues. However, there are further regulatory opportunities to avoid the generation of waste that the Strategy does not identify. It is also unclear how the Strategy will deal with hazardous or residual waste that cannot be resolved by a circular economy.

Recommendation 5: The EPA develop regulatory approaches that avoid and minimise waste generation.

Recommendation 6: The EPA expand their regulatory approach for waste that cannot be included in the proposed circular economy. The strategy must also state how hazardous waste including asbestos will be kept out of the circular economy to ensure contamination does not impact efforts to re-use or recycle waste.

Bushfires and floods have been responsible for the production of vast amounts of disaster waste that have significantly impacted state and council resources to manage waste. Often this disaster waste is contaminated, leading to increased risks to human health.

Recommendation 7: The EPA develop a regulatory approach for disaster waste management.

Climate Change
LGNSW supports EPA's use of regulatory approaches to reduce carbon emissions that are complementary to a whole-of-government approach.

Recommendation 8: Based on the polluter pays principle, EPA include greenhouse gas emissions as a regulated pollutant and that tools, such as the load-based licencing, be expanded to capture carbon intensive activities such as coal mining, electricity generation, petroleum exploration etc.

Environmental crime
People commit environmental offences for a variety of reasons and factors already identified by the EPA in other publications and strategies. Many councils believe the waste levy on hazardous waste such as asbestos influences the behaviour of the community and may lead to illegal and unsafe disposal of asbestos. This strategy could benefit by taking advantage of existing work undertaken by the EPA in identifying drivers for environmental crime involving asbestos.

Recommendation 9: Improve regulatory compliance and crime prevention by incentivising the safe and legal identification, removal, and transport and disposal of hazardous waste.

The strategy may benefit by specifically identifying asbestos under its section on 'Environmental crime'. Asbestos is also a specific and known hazardous substances with specific offences under the POEO Act and POEO Regulation, and the illegal dumping or disposal of asbestos can cause significant harm to people and the environment. The strategy would also benefit from acknowledging others involved in regulating this issue such as local councils and SafeWork NSW, and by fostering a stronger partnership with local government.

Recommendation 10: Invest in local government training, technology and tools to assist local government to crack down on environmental crime by using their powers under environmental legislation.

The strategy could also benefit by clearly identifying the victims of environmental crime, such as land holders who received asbestos contaminated clean fill and must pay to clean it up, and the people exposed to asbestos as a result of environmental crime who have to worry about contracting asbestos- related diseases for the rest of their lives. This could also extend to those people left in housing on or near contaminated land as a result of past actions not of their own doing. An example of this is the James Hardie legacy sites in Parramatta.

What challenges are missing?
It is unclear how the strategy will address the following environmental issues:

- Hazardous substances cut across all issues identified in the strategy. Consideration should be given as to whether this needs to be recognised as an environmental challenge in its own right.
- Cumulative impacts of activities that fall below regulatory thresholds.

Comments on EPA's regulatory approach

The EPA's regulatory approach is focussed on seven elements to improve outcomes for the environment and human health including:

- *Influence* by encouraging change
- *Enable* action through education
- *Monitor* the environment and compliance
- *Enforce* compliance to environmental legislation
- *Act* to investigate and solve problems
- *Require* compliance
- *Listen* to understand issues and ideas

All of the above can be effective approaches if they are well resourced and delivered in a timely manner. Past performance of the EPA shows this is a challenge. For example, a review of the Load Based Licencing scheme was commenced in 2016 and has not been finalised.

Recommendation 11: The EPA be appropriately funded and resourced to be able to deliver on the outcomes of the legislation it administers.

Monitor
The Strategy's monitoring approach could be enhanced by including a requirement to share information/data with partners and to report back outcomes to the community in a timely manner. Monitoring is also an important aspect of continuous improvement and should be designed to feed into these processes.

Enable
People generally want to do the right thing but sometimes barriers to act make it hard to comply. Education and awareness raising programs may not be sufficient by themselves. The

EPA's regulatory role is also enabled by the information provided by the public and local government, and the EPA's effectiveness would be reduced without this.

Recommendation 12: The EPA examine and remove barriers to regulatory compliance to enable behaviour change.

Recommendation 13: The EPA recognise the contribution that the public and local government make that enables EPA to effectively implement its regulatory approach.

Listen
The process of listening to the views of local communities and stakeholders is an important component of the EPA's regulatory approach. While the draft Strategy explains that the components of the regulatory wheel (Figure 2 of Strategy) will be used in different orders and combinations, the tendency is to expect the top of the wheel to be the starting point. To reflect to stakeholders the importance placed on listening to their views, it is suggested that 'listening' be moved to the top of the wheel.

The regulatory wheel could also be enhanced by including a section for reporting back to the community and stakeholders. It is important for the EPA to be seen to have listened and understood the issues raised by others, particularly when consulting on decision making.

Review processes
The Strategy is silent on the review processes for the Regulatory Strategy. An evaluation or review process would give stakeholders confidence that the strategy is being implemented and effective, and that incorporates an adaptive management approach to regulation. Changes in the environment and policy settings will trigger the need to adapt the regulatory settings. For example, more intensive and frequent disasters producing more waste; waste export ban; circular economy policy; net zero emissions policy.

Partnering with local government

The Strategy recognises that local government is a partner in protecting the environment and human health. The role of councils in environmental regulation and compliance in local communities could be further enhanced in partnership with the EPA. Local government would benefit from:

- Guidance to assist local government's implementation of the environment regulations administered by the EPA. This includes a consistent set of resources that all councils can use.
- Guidance should include a risk /enforcement matrix to inform how council staff investigate incidents.
- Early consultation and collaboration on new strategies and partnership approaches.
- Regular roadshow/training for councils on regulating activities. The UPSS and Vapour recovery handover (training, joint inspection etc) was fairly well received by councils.

Approaches for partnership with local government have been identified through a number of IPART reviews.

IPART Local government compliance and enforcement review (2014)
The local government compliance and enforcement review undertaken by IPART highlighted many areas where the EPA and local councils can collaborate better for more effective regulatory outcomes. It is not clear if this strategy has addressed any of the recommendations of IPART in regard to this issue.

For example: Subject to cost benefit analysis, the NSW Environment Protection Authority should engage in a Partnership Model with local government, similar to the Food Regulation Partnership, to enhance the capacity and capability of councils to undertake their regulatory functions. This should include:

- enshrining the partnership model in legislation
- clear delineation of regulatory roles and responsibilities
- risk-based approach to regulation supported by a compliance and enforcement policy
- use and publication of reported data to assess and assist council performance
- dedicated consultation forum for strategic collaboration with councils
- ability for councils to recover their efficient regulatory costs
- system of periodic review and assessment of the partnership agreement
- dedicated local government unit to provide:
    - council hotline to provide support and assistance
    - password-protected local government online portal
    - guidelines, advice and protocols
    - standardised compliance tools (e.g. forms and templates)
    - coordinated meetings, workshops and training with councils and other stakeholders.

IPART Review of reporting and compliance burdens on local government (2016)
IPART recommended that where councils are subject to compliance and reporting requirements to the EPA consideration should be given to the cost and burden of this. It is not clear in this strategy where the EPA has taken on board the recommendations made by IPART in its Review of reporting and compliance burdens on Local Government. The EPA should also be clear on how they are contributing to the whole of government approach to reducing unfair reporting and compliance burdens on councils.

Conclusion

The EPA's Regulatory Strategy is geared to address the challenges of future threats to the environment. LGNSW supports the research and focus on emerging issues. However, the Strategy should not lose sight of regulating and managing the present and legacy environment issues.

Further work is needed in strengthening the partnership between EPA and local government to assist in meeting the objectives of the environmental legislation that EPA administers. LGNSW would be pleased to assist the EPA in this regard.

For further information in relation to this submission, please contact Susy Cenedese.

Summary of recommendations

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