

THE POLICING HAZARDOUS WASTE RESEARCH PROJECT

Briefing Paper No. 1

This paper provides an introduction to the Policing Hazardous Waste Research Project being conducted by the University of Tasmania. The project commenced in April 2010 and concludes in December 2011, culminating in a final report in early 2012

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Environmental harm is a crime

We welcome feedback

We welcome feedback on any of the issues raised in this paper – please email r.d.white@utas.edu.au or diane.heckenberg@utas.edu.au with your comments.

Please include the phrase *Policing hazardous waste project* in the subject line of your email.

Thank you

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Introduction and Background

Environmental crime is an emerging issue of great concern both within Australia and internationally. It involves, among other activities, illegal trade in wildlife and fauna, illegal logging, and illegal transport and disposal of hazardous waste. In Australia very little criminological attention has been given to the issue of hazardous waste and its disposal. Aside from a recent investigation of the hazardous waste sector by the Australian Crime Commission (ACC), and an Australian Institute of Criminology study on environmental crime in Australia (see Bricknell 2010), few police investigators or academic researchers have examined the policing of hazardous waste disposal in the Australian context.

The impetus for this research project partly arose out of discussions with personnel affiliated with two different agencies, (the Australian Fishing Management Authority (AFMA) and the Australian Crime Commission (ACC), each of which was looking at different types of environmental issues (namely, illegal fishing and hazardous waste disposal, respectively). During conversation it became clear that there was a lack of knowledge about which agencies are doing what, who is talking to whom, and what opportunities exist to work collaboratively towards environmental protection and enforcement in Australia.

Key issues for people concerned with both fisheries and hazardous waste disposal included:

- Who is doing what?
- Under what regulatory regime?
- What level of collaboration is there between relevant local, state and national agencies?
- What differences exist between agencies in focus and priorities?

At present, a plethora of environmental legislation and agencies exist at each jurisdictional level which has led to different understandings and priorities regarding particular environmentally harmful activities. To date there has been very little sustained attempt to identify key players and strategies in dealing with environmental crime. A major part of this research, therefore, is to provide a systematic identification of Australian environmental law enforcement agencies operating at the international, regional, national, state and local levels – and the

legislative and practice parameters within which they work. As part of this, a review of partnerships and collaborations, as well as affiliations, will be undertaken (for a similar exercise at the international level, see DeSombre, 2006). The practical outcome of agency enforcement practices will be documented (e.g., number of prosecutions, court outcomes, sanctions and sentences). The impact of prosecutions (including the publication of exemplary cases) will be explored, as will the wider role of regulatory agencies beyond the enforcement function as such. Specific investigation will be directed to how agencies respond to the illegal disposal of hazardous waste, although the study as a whole has relevance to capacity building within the area of environmental law enforcement more generally.

The Study

This research project involves a scoping of the extent of and problems associated with hazardous waste disposal and a review of national environmental enforcement agencies and practices in Australia, with a view to building capacity for agency collaboration. The specific exemplar for this process is the policing of hazardous waste disposal. The major focus of this study is to examine how Australia regulates and polices the disposal of hazardous waste

The Team

The research team comprises Rob White, Professor of Criminology at the University of Tasmania and Diane Heckenberg, a researcher and PhD candidate in the School of Sociology and Social Work at the University of Tasmania. The project is funded by the Australian Research Council.

Aims of the Study

The aims of this study are to:

- ascertain the scale of illegal disposal of hazardous waste, by undertaking an inventory of hazardous waste problems in Australia
- collect information on who carries out regulation and enforcement activities in Australia in regard to the disposal of hazardous waste
- examine the operational practices of relevant environmental law enforcement agencies at international, regional, national, state and local levels

- document the activities of relevant agencies in Queensland, Victoria and Tasmania as a means to provide detailed information about actual practices

Significance and Innovation

The concerns of this study are informed by four basic questions

1. What is the size and seriousness of the problems associated with the disposal of hazardous waste in Australia?
2. Who actually does environmental law enforcement in the area of hazardous waste disposal and under what legislative parameters?
3. How is environmental law enforcement of hazardous waste disposal carried out in practice?
4. Which agencies are currently involved in collaborative approaches to policing hazardous waste and how well do these work?

Approach and Methodology

In addition to a general review of agencies and existing practices nationally, more detailed study will be undertaken of hazardous waste regulation in Queensland, Victoria and Tasmania, as a means to describe and compare practices in different jurisdictional contexts.

The study is divided into four overlapping and at times simultaneous task areas (See Figure 1.1)

Figure 1.1 : Stages of the Project

Stage 1 : Mapping the extent of problems associated with hazardous waste disposal

Explore definitions of hazardous waste and construct an inventory of opportunities and evidence of criminal activities in this area

Examples of data collection:

Agency annual reports, summaries of prosecutions, reporting of events

Examples of key questions:

What is hazardous waste?

Who produces hazardous waste?

How is hazardous waste transported and disposed of, and by whom?

What illegal activities are associated with disposal of hazardous waste?

Stage 2 : Mapping agencies and legislative parameters

A systematic mapping of Australian law enforcement agencies involved in policing hazardous waste and the legislative parameters within which they work, with particular attention to agencies in Queensland, Victoria and Tasmania.

Examples of data collection

Review of Australian environmental enforcement agencies involved in policing hazardous waste at the local, state, federal and international level

Examples of key questions

What is the nature/range of legislation for each relevant agency?

What is the scope of agency power in relation to inspection, investigation, enforcement, prosecution?

How quickly/effectively can the agency respond to breaches?

What strategies can and does the agency use to enforce compliance?

What are the legislative and operational strengths and weaknesses?

Stage 3 : Mapping agency enforcement practices

Identify and document the nature and scope of agency enforcement practices in relation to hazardous waste.

Examples of data collection

In-depth interviews with key agency personnel in relation to the nature and scope of enforcement practices.

Examples of key questions:

Who is doing the inspections?

Who is doing the investigating?

Who is doing the policing?

Who is doing the prosecuting?

How are states similar or different in their approaches?

Stage 4 – Mapping collaborative practices

Examine which agencies are presently involved in collaborative approaches to policing hazardous waste and how they work with other agencies around such matters.

Examples of data collection

In-depth interviews with key agency personnel to identify trends and patterns in collaborative practices

Examples of key questions

What co-operative formal and informal networks exist with other government and non-government agencies?

Do affiliations and web links translate into collaborative practices at operational level?

What factors inhibit cross-agency information sharing?

What factors enhance collaborative operations?

What protocols exist for information sharing?

Outcome

The expected outcome of the research is the construction of baseline data in regard to the scope of hazardous waste in Australia, the nature of the problems associated with the disposal of hazardous waste; which agencies are doing what and under which regulatory regimes; identification of barriers and opportunities for collaborative inter-agency work; and development of models of practice suitable to the enhancement of environmental law enforcement capacity and effectiveness.

In a specific sense, the research will advance understanding of the nature of environmental law enforcement in this particular area (that in itself has major implications for the health and wellbeing of humans, ecological systems and nonhuman animals within Australia). More generally, interrogating environmental law enforcement in this manner should provide insight into models of intervention applicable to the further development of climate change strategies, as well as building enforcement capacity and collaborative work practices that are relevant to combating other types of criminal activity (e.g., terrorism, transnational organised crime).

Complexities

As indicated above, a major focus of this study is to examine how Australia regulates and polices the disposal of hazardous waste. This is more complex than may first appear - there are different definitions as to what 'waste' is and which

wastes are hazardous (e.g., medical, electronic waste, radioactive), there are different tiers of government involved (from local to international), there are multiple agencies (including for example environmental protection agencies and the police), and differing types of criminality (organised crime, illegal activity by legitimate companies, individuals).

Different Agencies, different tasks

One of the initial questions to be asked concerning environmental crime is who is actually going to do the policing (Tomkins, 2005)? Many jurisdictions have specialised agencies – such as Environmental Protection Agencies – which have a mandate to investigate and prosecute environmental crimes (White, 2007). In some instances, the police play an auxiliary role in relation to the work of these agencies. In other instances, the lead agency for environmentally-related crimes – such as illegal fishing – may be a specialist agency such as the Australian Fisheries Management Authority (AFMA). Personnel within these agencies are mandated to ensure compliance and enforcement as determined by legislation.

In some contexts and situations, members of a police service may be specially trained as environmental police. In Israel, for example, an environmental unit was established in 2003 within the framework of the Police. It is financed by the Ministry of the Environment and includes police officers who form the ‘Green Police’. These officers carry out inspections, investigation and enforcement under a variety of laws in areas such as prevention of water source and marine pollution, industrial and vehicular pollution, hazardous substances, and prevention of cruelty to animals. Each year they conduct thousands of inspections of factories, landfills and sewerage treatment sites, in the process liaising with regional officers of the Ministry of the Environment. The United Kingdom also has wildlife officers in most constabularies (White, 2007: 4).

Within a particular national context, there may be considerable diversity in environmental law enforcement agencies and personnel, and police will have quite different roles in environmental law enforcement, depending upon the city or state within which they work. In federal systems of governance such as the United States, Australia and Canada, there will be great variation in environmental enforcement authorities ranging from police operating at the local municipal level (such as the Toronto Police Service) through to participation in international organisations (such as Interpol or Europol) (White, 2007: 4).

Specific kinds of crime may involve different agencies, depending upon the jurisdiction. For example, the policing of abalone poaching in Australia is generally undertaken by civilian authorities, except in Tasmania and the Northern Territory where it is in the hands of marine police. The trans-border nature of illegal fishing operations – across state as well as international boundaries – means that often a local police service (such as Tasmania Police) will necessarily have to work collaboratively with national agencies (such as the Australian Federal Police) that, in turn, will have relationships with regional partner organisations (such as Interpol).

Blindell (2006: Note 2, p. 1) defines environmental agencies as all those agencies that enforce environmental protection legislation, for example:

- Water Resource agencies
- Parks and wildlife agencies
- Planning and development agencies
- Native vegetation protection agencies
- Environmental Protection Agencies

As stated by the Australian Federal Police, the protection of the Australian environment is an issue that the Australian Government and the AFP takes very seriously. The AFP identifies a number of Australian Government departments that have a role to play in the detection and enforcement of laws designed to protect our environment, including the Department of Sustainability, Environment, Water, Population and Communities, Australian Customs and Border Protection Service, Australian Fisheries Management Authority [AFMA], Australian Maritime Safety Authority [AMSA], Australian Quarantine and Inspection Service [AQIS], and state agencies such as Environmental Protection Agencies (AFP website 2008).

There are, then, many diverse agencies engaged in some form of environmental law enforcement. Some of these are involved in both regulation and enforcement, and individual agencies may be charged with either or both. As illustrated below, agencies dealing with environmental matters work in and across different jurisdictions and deal with a myriad of issues.

Table 1.1 : Agencies at different tiers dealing with environmental issues

Examples of agencies	Examples at the Operational Level
Local Councils	<ul style="list-style-type: none"> • Urban (Brisbane) • Regional (Toowoomba)
State	<ul style="list-style-type: none"> • Environmental Protection Agencies (e.g., New South Wales, Queensland) • Local Government Association (Queensland/Tasmania) • Tasmania Police (prior to establishment of the EPA on 1 July 2008)
National	<ul style="list-style-type: none"> • Australian Fisheries Management Authority (AFMA) • Australian Federal Police • Australian Customs and Border Protection Service • Department of Sustainability, Environment, Water, Population and Communities
National/State bodies	<ul style="list-style-type: none"> • Australian Crime Commission • National Pollution Inventory (part of the Department of Sustainability, Environment, Water, Population and Communities) • Australasian Environmental Law Enforcement and Regulators Network (AELERT)
International	<ul style="list-style-type: none"> • Interpol • International Network of Environmental Enforcement and Compliance (INECE)

This plethora of players and laws demands an approach to environmental law enforcement that is necessarily collaborative in nature.

Different Agencies, Different Capacities

How environmental law enforcement is carried out in practice is shaped by agency mission and organisational capacities. Blindell (2006: 3) observes that ‘a major organisational enforcement challenge is that while police agencies have an existing and extensive pool of expertise and resources to enforce the criminal law, they have little experience or expertise in the enforcement of EPL [Environment Protection Legislation]. On the other hand, environment agencies have a very limited pool of expertise and resources to enforce EPL, coupled with substantial advisory, regulatory and compliance responsibilities – creating at the very least, a perception that environment agencies have conflicting roles’. Whether the issue is one of conflicting roles, or the emergence of multifaceted roles among environmental regulatory agencies, is an important question for further consideration.

In a scoping analysis of law enforcement practices and institutions in Brazil, Mexico, Indonesia and the Philippines, in relation to a variety of environmental issues, Akella and Cannon (2004:19) identified the following common problems across different sites:

1. Poor interagency co-operation
2. Inadequate budgetary resources
3. Technical deficiencies in laws, agency policies and procedures
4. Insufficient technical skills and knowledge
5. Lack of performance monitoring and adaptive management systems

Likewise, in a national study of crime in the Australian fishing industry, Putt and Anderson (2007: 54) found ‘the survey of fisheries officers as highlighting insufficient sharing of information by agencies and of collaboration across jurisdictions’. They observed that:

- the lack of formal agreements was seen as a major problem
- protocols to enable the sharing of information that does not breach privacy provisions would clearly be of benefit (subject to some degree of agreement on the purpose of sharing the information and what the expected benefits are to all parties)
- differing priorities will continue to affect the success of joint operations, as well as the willingness of agencies to collaborate with information and resource commitments

Tomkins (2005) also clearly identified the need to share intelligence and to develop co-operative enforcement structures to deal with environmental offenders. To some extent this is acknowledged at a formal governmental level, in that the responsibilities and interests of the three levels of Australian government, in relation to environmental policy are set out under the *Intergovernmental Agreement on the Environment (1992)* and by the adoption of the *National Strategy for Ecologically Sustainable Development (NSESD)* by all levels of Australian government in 1992 (Blindell, 2006: 3). Who does what, and how, remain, however, important practical issues.

Different Agencies, Different Partners

In addition to questions of resources, staffing and training, a big factor that impacts upon agency performance is how well it interacts with other relevant agencies in the field. For example, Blindell (2006: 5) observes that current interaction between police and environment agencies can largely be characterised as uncoordinated and informal. Such relationships often rely heavily upon personal rapport, for example ex-police personnel working in enforcement units of environmental agencies, with the problem being that as personnel change, so too does the nature of the interaction between agencies. There are exceptions, however, to this general rule – for example, WA Police have Memoranda of Understanding with the Department of Environment regarding the exchange of information and provision of training (see Blindell, 2006).

Barriers to effective environmental law enforcement include factors such as:

- within a particular national context, there may be considerable diversity in environmental law enforcement agencies and personnel, and police will have quite different roles in environmental law enforcement, depending upon the city or state within which they work (see Tomkins 2005; Situ & Emmons, 2000).
- multiple demands on environmental protection agencies from different sections of government, business and community and the varied tasks in which they participate, may lead to a dilution of their enforcement capacities and activities. (White, 2008)
- the nature of the crime will determine the nature of the law enforcement, including who collaborates with whom, and what powers the enforcement agency may utilise (White, 2008)
- the language and tone of guidelines may lead to an interpretation that the role of enforcement is to be de-emphasised in a government's overall approach and, as well, the barriers to prosecution can be over-emphasised compared to the benefits (Robinson, 2003)

The powers and resources available to specific law enforcement officials will vary greatly from jurisdiction to jurisdiction, and from agency to agency, depending upon whether or not the police are directly involved and whether or not agents have been granted specific powers of investigation, arrest, and use of weapons to enforce environmental laws. The policing of environmental crimes frequently demands a high level of collaboration with non-police agencies.

How best to organise law enforcement activities in regards to different environmental crimes is a perennial issue:

- should *specific environmental police units*, within police services, be created, as in the case of Israel?
- or should *'flying squads'* be created, that are comprised of personnel from different agencies and that reflect interagency collaboration and expertise? (see Anderson and McCusker, 2005)
- or should it be *the specific crime* in question that ought to shape the organisational make-up and operational activities of law enforcement?

It has also been suggested that there is a need to develop systematic environmental crime policing strategies to provide broad policy guidance to police jurisdictions and to ensure consistency in the expanded police interactions with non-police environmental agencies (Blindell, 2006).

Related to organisational matters, the dynamics of environmental crime are such that new types of skills, knowledge and expertise need to be drawn upon as part of the policing effort. For example, dealing with toxic waste and pollution may require the sophisticated tools and scientific know-how associated with environmental forensics (Murphy and Morrison 2007; White 2008). Powers of investigation, particularly in relation to the gathering of suitable evidence for the specific environmental crime, will inevitably be shaped by State, federal and international conventions and protocols, as well as by availability of local expertise, staff and resources.

Conclusion

In summary, then, there are a series of interrelated matters that need to be addressed if environmental law enforcement generally is to be improved within Australia. The areas of focus for research include issues pertaining to the proliferation of agencies dealing with environmental crime and environmental harm, each of which may be driven by different methods of intervention, with different powers, and exhibiting different levels of collaboration with others. Another issue relates to the need to distinguish between organisational affiliation (which may be formal and policy oriented) and inter-agency collaboration (which refers to actual operational practices and linkages). In some cases, there is a clear need for capacity building in order for collaboration and, especially, for rapid response, to be successfully institutionalised as part of agency normal practice. There can also be agency differences in defining and interpreting just what the crime is and how it should be responded to – as in the case of breaches versus crime, customs offences versus fisheries offences, and so on.

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