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PROTECTION OF THE ENVIRONMENT LEGISLATION AMENDMENT BILL 2014

Second Reading

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [11.33 a.m.]: I move:

That this bill be now read a second time.

Members will recall that last year, this Parliament passed the Protection of the Environment Operations Amendment (Illegal Waste Disposal) Bill 2013. That bill was one of a series of reforms made by this Government to strengthen environmental regulation since it assumed office in April 2011. I am now pleased to introduce the Protection of the Environment Legislation Amendment Bill 2014, which is the next part of this Government's reform agenda. This bill will strengthen environmental penalties across environmental legislation, provide the Environment Protection Authority with additional powers to more effectively protect the environment in a timely and cost-effective manner, and enhance ecologically sustainable development. I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

Increased Penalties—New South Wales already has some of the highest penalties that can be imposed by a court for environmental offences. And we have recently increased penalty notice amounts by up to ten-fold for the most serious environmental offences. The first penalty notices for a corporation and an individual under this new regime were recently issued.

In this current bill, we will be increasing a number of maximum penalties in the Contaminated Land Management Act to align with penalties for similar offences in other environmental legislation, particularly the Protection of the Environment Operations Act—or the POEO Act. The high penalties under the Protection of the Environment Operations Act reflect the seriousness with which this Government views environmental offences.

The application of similar penalty amounts under the Contaminated Land Management Act will apply in particular where a person or corporation who is responsible for the contamination does not comply with a direction specified in an EPA management order.

This bill clarifies that where someone has missed a deadline set by a notice under the Contaminated Land Management Act then they are still obliged to comply with the notice, and undertake any works specified to address environmental issues. The daily penalty that the Act applies for each day that the notice is not complied with, still applies after the deadline.

These new provisions align with equivalent provisions in the Protection of the Environment Operations Act and will assist in the effective enforcement of obligations imposed under the Contaminated Land Management Act.

And consistent with the recent penalty notice increases for offences under the Protection of the Environment Operations Act, this bill provides a power to increase penalty notice amounts for repeat offenders in the Contaminated Land Management Act and the Radiation Control Act. If a person is a repeat offender then that can be taken as proof that the penalty notice amount imposed for the first offence was not an effective deterrent.

These increased penalty amounts are intended to:

- be proportionate to the seriousness, harm and nature of an offence;
- provide an effective deterrent to committing environmental offences and reoffending;
- reflect community expectations regarding the financial penalties that apply to environmental offences; and
- be comparable for similar offences across environmental legislation.

Alternative sentencing options—The Protection of the Environment Legislation Amendment Bill 2014 will provide a range of additional alternative sentencing options to increase the ability of the courts to impose a fit-for-purpose penalty. The bill will provide for alternative sentencing options in the Protection of the Environment Operations Act 1997, Contaminated Land Management Act 1997 and Radiation Control Act 1990, including the use of:

- o monetary benefit orders,
- o restorative justice processes,
- o publication orders,
- o orders to provide financial assurance,
- o enforceable undertakings,
- o remedy or restraint of breaches; and
- o orders to attend a training course.

Restorative justice processes will bring together both an environmental offender and the affected community and individuals to agree on the steps the offender should take to repair the harm as much as possible, and to understand the impacts of their actions. Restorative justice allows the court to require offenders to undertake actions that are not restricted to restoring or benefiting the environment but instead will directly benefit those impacted by the offence.

Monetary benefits orders allow for the recovery of any monetary benefits that the offender gained as a consequence of the offence, this includes the money saved by the offender in avoiding or delaying the purchase of equipment it should have purchased to prevent the pollution.

By aligning these sentencing options across the various Acts this bill will assist in achieving consistency which will contribute to building public confidence and integrity in the administration of justice for environmental offences.

It will result also in a more cost-effective response to environmental crime and better outcomes for impacted communities and the environment.

Timely and cost-effective enforcement—The bill also makes further incremental reforms to the Protection of the Environment Operations Act and the Contaminated Sites Land Management Act and the Radiation Control Act to facilitate timely and cost-effective enforcement by the EPA across a number of areas.

One reform will permit the EPA to require a financial assurance to secure funding for the carrying out of actions under a management order for contaminated land.

Another will improve the ability of the EPA to revoke or suspend an environment protection licence where this is warranted. A decision to revoke or suspend a licence is only taken in the most serious of cases, such as when a company goes into liquidation, or shows continual disregard for their environmental obligations. When a licensee will not or cannot comply with the conditions of its environment protection licence, or a prevention or clean-up notice, then the EPA needs the power to respond quickly to prevent further environmental damage.

This bill will:

- remove the requirement for the EPA to issue a licensee with a notice of intent to revoke or suspend a licence; and
- ensure that the revocation or suspension of a licence will have effect during any merit appeal proceedings against that action.

This is important because the requirement to issue a notice of intent to revoke a licence means the actual revocation is delayed and the licence holder can continue to operate between the date of the notice and the date of the revocation. This was the case in the recent Chester Hill landfill smoulder where the licensee continued to receive waste at the facility while the EPA was attempting to manage the fire and prevent further impact on the immediate neighbourhood.

A further change will include the owner of the land on which a licensed activity is undertaken to be listed as a person who may be issued with a clean-up notice. This will provide one more avenue to recover the costs of a clean-up in the event of the polluter's insolvency, which would otherwise be funded by the New South Wales Government out of the Environmental Trust.

This power will only be exercised in accordance with the EPA's Compliance and Enforcement Policy and will not be used against landowners who are innocent victims of illegal dumping.

And further to the measures adopted in last year's illegal waste amendments, a new provision will enable the EPA to require specified waste transporters to be fitted with an approved global positioning system device. This will enable the EPA to require waste operators who it reasonably suspects are disposing of waste improperly to have a global positioning system device fitted to their trucks. This overt surveillance will be successful if it results in those operators using legal waste disposal facilities. But it will also make it easier to detect illegal activity.

The final amendment addressing enforcement will require that environmental incidents involving material harm must be reported even though odour may be the only indication that an incident has taken place. Several cases have recently occurred where odour is the only clue that a serious environmental incident has occurred. A requirement to notify the EPA of the presence of an odour which causes acute impacts to humans will help protect workers, the community and the environment.

Miscellaneous amendments—There are also a few miscellaneous amendments in the bill. These amendments are not significant of themselves but will assist in the work of the EPA.

One amendment is to remove an obsolete process in regard to affixing labels to defective vehicles.

The next change is to clarify what is meant by failure to comply with a management order under the Contaminated Lands Management Act.

And the third and final amendment in the bill clarifies and restores a legislative requirement to prevent or minimise fugitive air emissions from industry, especially dust from coalmines and quarries, which as members would be aware, is a matter of considerable concern to communities in the Hunter Valley. A recent court decision has had the effect of removing this requirement.

Amendment to the Protection of the Environment Operations Act—This bill will also provide a speedy response to facilitate implementation of recommendation 10 of the New South Wales Auditor-General's report "Performance Audit Managing Contaminated Sites". The report recommends that the EPA should "gain a better understanding of its costs and develop procedures that support the recovery of costs and begin recovering the costs of managing certain sites".

This bill amends the Protection of the Environment Administration Act 1991 to provide for certain fees and charges under the legislation administered by the EPA to be paid into the Environment Protection Authority Fund rather than into consolidated revenue.

This includes fees payable under the contaminated land, radiation control, pesticide licensing and the control of environmentally hazardous chemicals and dangerous goods legislation.

These changes will align this EPA legislation with existing arrangements for revenue retention in respect of regulatory fees and charges under the Protection of the Environment Operations Act.

Conclusion—This bill is the latest in a series of incremental reforms to give the Environment Protection Authority back its bite. It will strengthen and align environmental penalties and alternative sentencing options and provides important legislative support for timely and cost-effective enforcement by the EPA. It also provides for a swift response to the Auditor-General's report.

I commend the bill to the House.