

CONTAMINATED LAND MANAGEMENT AMENDMENT BILL 2008

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Bill introduced on motion by Ms Noreen Hay.**Agreement in Principle****Ms NOREEN HAY** (Wollongong—Parliamentary Secretary) [10.20 a.m.]: I move:

That this bill be now agreed to in principle.

Contaminated land is the legacy of past industrial practices and can be difficult and costly to remediate. It can pose serious environmental and human health problems. Investigation and clean-up work can be complex, time-consuming and costly. The Labor Government led the way in addressing the legacy of contaminated land by introducing the Contaminated Land Management Act in 1997. This regulatory framework ensures that contaminated sites are managed so they do not pose serious risks to either human health or the environment. The Lemna Government is continuing this commitment.

The bill is the result of the statutory five-year review of the Act and was drafted after an extensive consultation process. A key finding was that the Act had significantly improved the management of contaminated sites in New South Wales. The review did, however, reveal a number of concerns about the operation of the Act. This bill has been drafted to address those concerns. Overall the bill will improve and streamline the operation of the Act by clarifying how contaminated land will be regulated and removing unnecessary regulation, strengthening investigation and duty to notify requirements, clarifying reporting and disclosure of information arrangements, expanding cost-recovery provisions, providing for voluntary offset arrangements, and strengthening the false and misleading information offence.

The bill also proposes to replace the term "significant risk of harm" with the term "significantly contaminated land". The factors that the Environment Protection Authority [EPA] must consider to decide whether a site is contaminated and whether such contamination is significant enough to warrant regulation remain largely unchanged. The Environment Protection Authority will still be required to take into account any increase in the risk of harm that arises from the current and approved uses of the land. Where an increase in the risk from contamination could occur because of a proposed change in the approved use of the land, this will continue to be managed through the land use planning process under the Environmental Planning and Assessment Act 1979 so that the land is appropriately cleaned up and does not become significantly contaminated land because of the change in the approved use.

The bill will streamline the Act to enable more efficient regulation of contaminated sites. It seeks to amalgamate what are currently two distinct stages—the investigation and remediation of contaminated sites, which are essentially duplicate regulatory processes—into management orders that cover both. The intention is to allow investigation and remediation to be conducted concurrently under management orders and/or approved voluntary management proposals. The bill introduces a new power to enable the Environment Protection Authority to require certain persons to carry out preliminary contaminated site investigation to facilitate quicker decision making. The preliminary investigation is intended to be only a modest snapshot study that will enable the Environment Protection Authority to decide if the land is significantly contaminated and warrants regulation. This will assist in informing the community and addressing the problem as soon as possible.

It will also enable the Environment Protection Authority to require an investigation of the nature and extent of contamination, and whether it is significant enough to warrant regulation where it is reasonably suspected. Those responsible for the contamination would be asked to undertake the preliminary investigation. However, if this is not possible or would result in unacceptable delays, the landowner could be directed to do so. The bill provides clearer and more objective criteria to trigger the duty to report contamination to the Environment Protection Authority, and strengthens the duty to notify. The bill seeks to address uncertainty in relation to the duty to notify and the term "significant risk of harm" by removing the significant risk of harm test as the basis for notifying significantly contaminated sites. It is proposed to replace this test with an assessment based on the existing Guidelines on Significant Risk of Harm from Contaminated Land and the Duty to Report published by the Environment Protection Authority.

I must emphasise that the duty to notify is not intended to capture the notification of general diffuse urban contamination that is not attributed to a specific industrial or commercial activity. I stress that the Environment Protection Authority will still need to consider largely the same factors that it has always used in determining whether a site posed a significant risk of harm. The bill clarifies that a person will have a duty to notify if that

person ought reasonably to have been aware of the contamination. The bill takes into account the person's abilities, experience, qualifications and training; whether the person could reasonably have sought advice that would have made the person aware of the contamination; and the circumstances of the contamination.

The bill bolsters the widely recognised "polluter pays" principle already incorporated in New South Wales legislation and clarifies that an owner or occupier of land can be responsible for contamination if it occurs because of inaction. It is proposed to expand the cost recovery provisions in the Act to allow the Environment Protection Authority to recover costs and expenses that it incurs in association with the approval and implementation of voluntary management proposals. This is consistent with the Environment Protection Authority's existing ability to recover administrative fees in relation to the administration of environment protection licences under the Protection of the Environment Operations Act 1997. The bill proposes allowing the Minister to enter into offset arrangements with the party responsible for contamination.

It is a reality that remediation is expensive and it can take a very long time for the contaminants to be removed. While remediation is progressing, the community can lose its access to land or water resources. This amendment will provide a way of mitigating the community impacts of contamination. To ensure the fairness of such programs, the offset arrangements can only be applied to a person responsible for the contamination and cannot include direct financial compensation. I stress that offset arrangements are not an alternative to addressing significant contamination. The bill promotes transparency and better information dissemination. The proposed amendments make it clear that the Environment Protection Authority and councils can disclose site audit statements and reports without breaching the prohibition on disclosure of information under the Act.

These amendments will provide greater protection to site auditors and councils who rely on reports in making recommendations about land suitability or providing consents for development. It will be an offence for a person to knowingly or recklessly provide false or misleading information to the Environment Protection Authority or another person, including councils and accredited site auditors, in relation to a compliance requirement under the Act. This includes information that is required to be provided in relation to the assessment or remediation of site contamination. Other minor amendments are also proposed, to improve the clarity of the Act and to remove inconsistencies and simplify processes.

This includes clarifying that more than one person can be responsible for the contamination of land. The sites regulated under the Act are often complex and have entrenched contamination from multiple uses, and it is not uncommon that more than one party has contributed to the contamination. For this reason, the bill clarifies that a management order can be issued to one or more persons who are responsible for the contamination. The bill also clarifies that the Environment Protection Authority can issue clean-up and prevention notices under the Protection of the Environment Operations Act 1997 in relation to significantly contaminated land, regardless of whether it is the appropriate regulatory authority under that Act. This will ensure the Environment Protection Authority can respond to pollution incidents in a pragmatic and timely manner.

In summary, the proposed amendments to the Act will reduce red tape and facilitate speedier resolution of contaminated land issues, while bolstering the "polluter pays" principle and improving the operation of the Contaminated Land Management Act. Industry will be able to make commercial decisions with greater speed and certainty, and the reforms will provide the community and the environment with an even more robust, effective and protective regulatory regime. I commend the bill to the House.