



tabled by Ms Housos
20 March 2024

ENVIRONMENT PROTECTION LEGISLATION AMENDMENT (STRONGER REGULATION AND PENALTIES) BILL 2024

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

Evolving criminal behaviours and emerging environmental issues in NSW, including the discovery of asbestos contaminated mulch, has identified a need for urgent and unavoidable amendments to environment protection legislation (the Acts), including:

- *Protection of the Environment Operations Act 1997*
- *Protection of the Environment Administration Act 1991*
- *Pesticides Act 1999*
- *Protection from Harmful Radiation Act 1990*
- *Dangerous Goods (Road and Rail Transport) Act 2008*
- *Contaminated Land Management Act 1997*
- *Plastic and Circular Economy Act 2021,*
- and consequential amendments to the *Land and Environment Court Act 1979* and other regulations to give effect to these changes.

The Environment Protection Legislation Amendment (Stronger Regulation and Penalties) Bill 2024 (the Bill) amends the Acts to ensure human health and the environment are better protected, that the polluter pays and is held to account for their crimes, and that there are fit for purpose enforcement powers and offences available to the Environment Protection Authority (EPA). The Bill will also reduce the cost to government, community and businesses in responding to and cleaning up pollution and hazardous materials.

The Bill strengthens penalties for not complying with the Acts, provides public transparency via 'name and shame' powers for serious or repeat offenders, adopts regulatory innovations available in other NSW acts or other jurisdictions, improves and clarifies enforcement powers and regulatory tools and addresses loopholes.

It acts on the recommendations of the Legislative Council report *Current and potential impacts of gold, silver, lead and zinc mining and human health, land, air and water quality in New South Wales* which found that some penalties under the *Protection of the Environment Operations Act 1997* are inadequate and fail to act as a deterrent to large companies.

The Bill also makes minor changes to environment protection legislation which are intended to clarify the intention and operation of the Acts relating to EPA's existing powers and functions and administrative processes.

Objectives: What is the policy's objective couched in terms of the public interest?

Environmental crimes and gaps in the Acts can result in potential harm to human health or the environment. These can come with long lasting financial and health liabilities for the NSW Government, businesses, communities and innocent landholders to manage.

It is in the public interest to minimise these risks through strengthened regulatory provisions.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The Bill is responding to urgent and unavoidable issues with the Acts that can only be addressed with legislative amendments.

Alternative options of doing nothing and maintaining the status quo, or applying non-legislative approaches, do not adequately address evolving criminal behaviours, emerging environmental issues and identified gaps and loopholes being exploited.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The benefits and costs of both a status quo and non-legislative approach are largely the same. Benefits of not changing the legislation include no change for government, industry or business to implement, and rather an increased emphasis on industry partnerships, education, and continual improvement. This option has no implementation costs for system changes for NSW Government agencies, including courts.

The costs of not updating the legislation outweigh the benefits. These options leave NSW with outdated provisions that are no longer fit for purpose and lag behind other Australian jurisdictions. This means that unlawful behaviour will go unpunished and potentially increase, creating incentives for businesses to factor penalties into the cost of doing business. Public health and financial liability risk increases by limiting the EPA's ability to respond early to serious environmental issues, recall potentially contaminated substances, and issue public warnings about inappropriate practices.

The status quo has higher financial costs associated with clean-up costs for pollution that impacts on the NSW Government and other public authorities, businesses and innocent landholders. Without changes to the legislation the polluter is not paying or being held to account, and high regulatory costs to manage future pollution incidents, routine compliance, assessing Environment Protection Licence applications from poor performers, and undertaking investigations.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

Most amendments will commence on the date of assent. However, some have a delayed commencement set out in the Bill to enable time for implementation needs.

The Acts amended via this Bill are mainly administered by the EPA and implementation of the changes will be managed by the EPA. The EPA will ensure that stakeholders are informed of relevant changes, and support them to respond to the changes. Stakeholders will also be supported with updated information on the EPA website.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The changes proposed by this Bill increase penalties to deter environmental crimes and make other urgent and unavoidable changes fixing recently identified enforcement issues and some longer standing loopholes in environment protection legislation. It is not appropriate to consult broadly on regulatory and compliance changes of this nature. The changes are aimed at deterring illegal behaviour and ensure that the EPA has the regulatory powers and provisions it needs in the future to adequately respond to major incidents like the recent discovery of asbestos in mulch in multiple sites across NSW. These initial asbestos related reforms are urgently needed in the interest of the public.

The EPA has conducted urgent and targeted consultation with local government and industry bodies on the details of these reforms where necessary. The EPA has contacted

targeted industry bodies to discuss these changes, with further consultation with key industries and community groups to continue during the passage of the Bill.

Comprehensive consultation with NSW Government agencies has occurred. This includes consultation with the Department of Communities and Justice on changes in the Bill with respect to increased penalties, the introduction of new offences, and potential impacts on the Land and Environment Court and Local Courts.