



# Legislative Assembly

## Environment Protection Legislation

### Amendment Bill Hansard

#### Extract

20/03/2002

#### Second Reading

**Debate resumed from an earlier hour.**

**Mr DEBUS** (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts) [5.43 p.m.], in reply: I thank honourable members for their contributions to this debate. As I have said previously, the bill is a step in the Government's reform of the State's environment protection laws. Those laws have been fundamentally overhauled since the Carr Government was elected in March 1995. The newly elected Government embarked on a comprehensive reform program to ensure that this State has the right tools to tackle the environmental problems that confront us as we go forward into the twenty-first century. As happens with the implementation of any major reforms, there is a need for minor adjustments and improvements to these new laws over time. This bill addresses such a need. There are no major policy changes, but rather a number of modest but nevertheless necessary changes to the bill.

I now turn briefly to the matters raised by the honourable member for Pittwater either in his contribution today or in briefings provided to him by the Environmental Protection Authority [EPA] and my staff. He has raised a number of issues in relation to the roles that councils presently play in monitoring and enforcing environmental standards. Under the Protection of the Environment Operations Act local government councils have the power to issue clean-up and prevention notices, to issue penalty notices and to commence prosecutions. Councils also have a variety of enforcement powers under local government and planning legislation that can be used to manage environmental problems. The honourable member raised the circumstances in which a council incorrectly undertakes an action under an Act and then abandons that action upon discovering its error. He proposes that the appropriate regulatory authority, namely the EPA, be compelled to continue the council's action to completion under those circumstances. I do not accept that view.

It is not appropriate to fetter the discretion of the appropriate regulatory authority with an appropriate response to an offence or alleged offence. For example, upon further investigation the EPA could decide that not only was the council wrong in believing it had a right to take action, it may also have been wrong in its assessment of the offence or of the appropriate remedy. To force the EPA to continue with such an action would clearly be inappropriate. That is separate from circumstances in which it is clear that a council will not exercise its powers. There are a range of measures the EPA may contemplate if a council refuses to exercise its powers. For example, in an emergency the EPA may issue a clean-up notice to a polluter. The EPA can direct a council to take clean-up action itself, or it may choose to issue a penalty notice or take court proceedings for an offence. Members of the public who are dissatisfied with a council's response may also utilise complaints processes, such as the council's own complaints procedures or those of the Ombudsman.

The honourable member for Pittwater also raised the costs to local government associated with the enforcement of this legislation. The first point to make is that local government was consulted before this bill was drafted. The Local Government and Shires Associations have directly indicated their support for the measures before the House today. Further to the question of costs, the honourable member for Pittwater is apparently unaware that councils retain the bulk of the fine when they issue penalty infringement notices on their own behalf. That is the case for all environmental offences. It is a fact that councils do not lose money by enforcing the environment laws; in fact, it is generally the case that they make a little. Furthermore, councils are able to issue compliance cost notices to recover their administrative costs if they have issued clean-up or prevention notices.

The honourable member for Coffs Harbour suggested that local government officers are often overzealous, and the honourable member for Pittwater suggested that consistency of enforcement could not be achieved if local government is the main avenue for the enforcement of environmental regulation. I am advised that consistency is achieved by two measures. First, the EPA issues prosecution guidelines to councils. Second, and I have seen this important process happen, council officers who are involved in enforcing environmental laws go through training conducted by the EPA about the legislation to ensure consistency of application.

**Mr Brogden:** Paid for by the EPA?

**Mr DEBUS:** I am not sure; I think so. The honourable member for Pittwater has made much of his concern for air quality and has labelled the Government's progress in that area a failure. It is likely that from time to time members of this House will be unwilling to let a good story be destroyed by the facts, but in this case the facts should hold. The fact is that Sydney's air quality is improving significantly. Lead, carbon monoxide and nitrogen oxide emissions in Sydney have all dropped dramatically in recent years. Despite an increase in population and car usage in recent decades, smog levels have not increased. We are doing better than one might originally have anticipated without an emissions testing program.

The honourable member for Coffs Harbour criticised the Environment Protection Authority for, he said, using more sticks than carrots. However, one who looks at air quality policy as a whole right across government will see that although the EPA is somewhat biased in the area of sticks—after all, that is a substantial part of its job as regulator—one will find lots of carrots, some of them offered by the EPA. I will explain a little about the approach that the Government is taking. In November last year the Premier announced his Cleaner Car initiative.

We will set two benchmarks to better inform the community of the cleanest cars available—one for very clean cars and the other for those of above-average performance. Stamp duty will be restructured for the purchase of new cars—the cleaner the car you buy, the less stamp duty you will pay. That means that cleaner cars will be cheaper cars. All government agencies are to establish fleet improvement plans with targets for reduction in fuel consumption and greenhouse gas emissions. The Government will assist in the development of a consumer green guide for new cars, and there will be a voluntary Clean Fleet program for private companies with a large number of vehicles.

Other measures that will add to a significant reduction in emissions from cars in the immediate future include the creation of a three-year, \$6 million Clean Air Fund to help local councils tackle air pollution in their local neighbourhoods. Those will include, for example, programs to replace outdated and polluting wood heaters with cleaner alternatives. They will include also new design standards for wood heaters to further reduce smoke particle emissions. I am sure honourable members would be aware that smoke particles are critical to the creation of the brown haze sometimes seen in Sydney in the autumn. The initiatives focussed on wood heaters are extremely important in that respect. They are also extremely important in a number of towns along the Great Divide which have new programs just now going into place, such as Armidale and Lithgow as well as other towns that are cool and at high altitude and have a lot of trouble from the effects of wood smoke in winter.

There will be a boost to State Transit's green fleet that will result in 400 buses powered by clean compressed natural gas by 2002. I can also advise that negotiations with the petrol refining industry secured an agreement to provide low-volatility petrol to reduce pollution during summer time. That significantly reduces the emission of volatile pollutants into the air. That agreement was in place for the summer that has just ended. The changes that are in place or about to be put in place will guarantee a continuing improvement in the quality of our air.

The honourable member for Pittwater suggests that penalty notices for smoky vehicles should be issued on the spot and that the tests currently used are subjective and inadequate. No doubt the honourable member, in forming that view, relied in particular on representations from the honourable member for Wakehurst. I expected the honourable member for Wakehurst to speak in this debate at great length about a particular prosecution, but he has not participated in the debate. However, the matter that he previously raised regarding a particular prosecution is indicative of the effective application of the EPA's smoky vehicles policy. That was a case in which, in the end, a small business person who objected to the claim by an EPA inspector that his vehicle had issued excessive smoke was found to have committed the offence but received no penalty.

The court agreed not to impose a penalty in that case because part of the purpose of the smoky vehicles policy is to ensure not simply that we collect revenue but that we guarantee effective action is taken by those who are in possession of smoky vehicles. That policy is working exceptionally well. The EPA has an extremely high success rate for prosecutions in court, including the one I just mentioned. In the year 2000 the EPA had a 100 per cent success rate with smoky vehicle defendants who had elected to go to court. In other words, in the overwhelming number of cases the courts find that the evidence presented by enforcement officers is legitimate.

The prosecution guidelines ensure that a penalty notice is issued within 14 days of an offence being observed, which means that most offenders received the notice within a short period of being observed. Indeed, for first-time offenders in a private motor vehicle EPA policy is to issue a warning only. Only repeat offenders using private motor vehicles are subject to penalty notices. These measures will continue. Obviously, that is so because emissions from motor vehicles are the largest single source of pollutants threatening our air quality. Controlling vehicle emissions will continue to be a most important priority of the Government.

Diesel vehicles are increasingly becoming the focus of emission reduction programs around the world as more research shows that diesel fumes can be especially harmful to human health. Diesel fumes are particularly critical to the formation of both the brown haze that we get in our autumn air and the photochemical smog in our summer air. By 2006 Australia will have moved considerably closer to European standards in relation to national emission standards for diesel vehicles, although not for petrol vehicles. New South Wales will continue to push the Commonwealth Government to implement stricter European standards as a matter of priority.

New South Wales has worked with other States and the Commonwealth to develop a national environment protection measure which contains programs—such as detection of smoky vehicles, auditing of large fleets, vehicle test and repair and community education—to reduce emissions from diesel vehicles. That national environment protection measure is underpinned by new in-service emission standards for diesel vehicles established under National Roads and Transport Commission legislation. These standards provide the benchmark against which the performance of diesel vehicles can be assessed.

The New South Wales Government will lead by example, commencing soon emission testing of all diesel buses operated by State Transit. We will also work with private trucking fleets to develop maintenance programs that ensure vehicles comply with in-service emission standards. In summary, despite having made great progress in

securing air quality, the Government will not in any way rest on its laurels. It will continue to implement positive programs—like the smoky vehicle policy, like the diesel fuel policies, like the Clean Fleet program—to ensure a healthy future. This bill makes a small contribution to that greater project. It is a worthwhile contribution that should be viewed in the context of our whole-of-government approach to the issue. I commend the bill to the House.