



# Legislative Council

## Environment Protection Legislation

### Amendment Bill Hansard - Extract

10/04/2002

#### Second Reading

**The Hon. CARMEL TEBBUTT** (Minister for Juvenile Justice, Minister Assisting the Premier on Youth, and Minister Assisting the Minister for the Environment) [9.36 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

#### Leave granted.

This Bill is a step in the consolidation of the Government's reform of the environment protection laws in this State.

These 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 we have the right tools in New South Wales to tackle the environmental problems that confront us as we go forward into the 21st century.

As happens with the implementation of any major reforms, the need for some minor adjustments and improvements to these new laws has become apparent. This bill addresses that need.

Before turning to the bill itself, it is timely to remind the House of the significant laws that we can now draw upon to protect the environment in New South Wales, thanks to the Government's reforms.

The cornerstone is the *Protection of the Environment Operations Act 1997*. Coming into force in July 1999, it replaced five important but outdated environment protection Acts. In their place we now have modern provisions that enable environmental problems to be vigorously addressed. Importantly, the new provisions are not blunt instruments. They have the flexibility to allow creative solutions to these problems.

The Protection of the Environment Operations Act reflects the reality that protecting the environment is an enormous task. It is a task that requires a determined, joint effort by State and local government, and by the very people whose activities impact on the environment.

The Government recognises that the Act has required adjustments by all sectors. I place on record our appreciation of the energy and commitment with which they have taken the new scheme on board. The partnership between the Environment Protection Authority and local government has been particularly important in ensuring that the potential of the legislation is fully realised.

The *Contaminated Land Management Act 1997*—which came into operation in 1998—is another critical element of the new environment protection package. It demonstrates this Government's strong commitment to the better management of contaminated land issues, and we are seeing significant tangible results.

The Government is successfully tackling the community's serious concerns about pesticide use and management through education programs and implementation of the *Pesticides Act 1999*. Introducing the Bill for the Act just over a year ago, the Minister for the Environment expressed confidence that it would provide the level of protection that members of the community are seeking for themselves, their families, their crops and livestock and the environment. It is showing every sign of doing so.

Under this Government, New South Wales has also gained a piece of legislation that comprehensively covers the land transport of dangerous goods. The *Road and Rail Transport (Dangerous Goods) Act 1997* is part of a national scheme that ensures harmonisation between transport modes, helps to reduce unnecessary costs, duplication and inconsistency.

The *Waste Avoidance and Resource Recovery Act 2001* and the *Waste Recycling and Processing Corporation Act 2001*—which recently commenced—are particularly important. They build on the successful features of the laws that they replace. They also take advantage of lessons learned from those laws over the past few years. They will ensure that we have a modern, effective and cost efficient waste management system and will encourage innovation in the waste industry.

These two Acts are the most recent additions to a suite of major environment laws that is already serving this community and our environment very well. The Government does not, however, rest on its laurels. This bill illustrates its determination to make these laws even better.

I now turn to the substance of the bill itself.

The bill amends the following Acts:

the *Contaminated Land Management Act 1997*

the *Protection of the Environment Operations Act 1997*

the *Radiation Control Act 1990* and

It also makes associated amendments to regulations under 2 of those Acts.

The *Contaminated Land Management Act 1997* and its associated regulation will be amended to allow contaminated site auditors who are accredited under the Act to be accredited for any period up to three years. Currently there is no flexibility in the accreditation period. It has to be for 12 months. The amendment will increase consistency with the equivalent scheme in Victoria (the other main auditor accreditation scheme in Australia) and reduce administrative burdens on auditors and regulators alike.

The amendments to the *Protection of the Environment Operations Act 1997* are generally minor but desirable or necessary in light of recent experience in administering the Act day to-day. They are all aimed at ensuring better implementation of the policies that underpin the Act.

The Minister for the Environment's statutory review of the Protection of the Environment Operations Act—to be conducted after December next year—will be the time to consider whether more significant changes are required.

A number of the amendments in this bill relate to existing offences under the Act and regulations. The scheme of offences is strong and effective, but a few modifications and clarifications are required.

Some of the current offences relating to offensively noisy vehicles and vessels will be brought within a framework similar to the existing, successful regime in the Act for dealing with littering from vehicles. This will be achieved by the bill's amendments to the noise control regulation as well as to the Act. local councils' capacity to deal with these vexing and common noise problems will be improved as a result.

The bill includes minor changes to the Act and associated regulations to assist in the enforcement of laws that are directed at getting smoky vehicles off our roads. The smoky vehicle program is extremely important in the battle for better air quality.

The scheme of water pollution offences will be simplified by replacing the current three separate offences with one general offence of polluting waters. Importantly, however, this will not weaken the current scheme or expand its scope.

The *Protection of the Environment Operations Act 1997* introduced several useful regulatory tools such as the clean-up notice and the prevention notice. The bill makes it clear that a person who has not carried out pollution clean-up or prevention work by the time required by one of these notices is still obliged to carry out that work. The person should not be able to escape their obligations just because the specified deadline has passed.

I have already referred to the importance of the partnership between local councils and the Environment Protection Authority under this legislation. This partnership embraces the taking of enforcement action. The Bill will remove any doubt that a council can prosecute in the Land and Environment Court for an offence under the Act or regulations if the Court grants leave and the other requirements of section 219 of the Act are met.

Finally on offences, a new offence will deter the making of false or misleading statements and representations to the effect that the Environment Protection Authority endorses or approves goods or services. These sorts of statements are completely inconsistent with the EPA's statutory role and could prejudice its effectiveness as a regulator.

Amendments relating to investigatory powers under the *Protection of the Environment Operations Act 1997* will help to ensure that decisions to issue penalty notices or prosecute are made on the basis of sufficient relevant evidence. They will also place all regulatory authorities under the Act in a better position to determine whether or not they are—to use the language of the Act—the "appropriate regulatory authority" for an activity.

This determination is a critical one. Only the "appropriate regulatory authority" for an activity can exercise certain powers in relation to the activity. The determination turns on the type of activity involved. Occasionally it can be a difficult determination to make. The amendments deal with the reality that occasionally mistakes will be made. For example, an authority might issue a prevention notice in the mistaken belief that it is the "appropriate regulatory authority" for the activity concerned.

The Bill will fix an anomaly in the licensing scheme under the *Radiation Control Act 1990* and increase consistency between that scheme and the Act's accreditation and registration schemes. The investigatory powers of inspectors under the Radiation Control Act are out of step with modern investigatory powers, such as exist in the Protection of the Environment Operations Act. The Bill will bring them into step.

The Bill will also bring the Radiation Control Act into line with other environment protection laws by enabling breaches of the Act or regulations to be dealt with by the issuing of a penalty notice. This will

mean that the response to a breach can be better tailored to the particular circumstances of the breach. Prosecution is not always the appropriate response.

The Bill's amendments to the *Road and Rail Transport (Dangerous Goods) Act 1997* are simply to ensure that a breach of the Act can be fully investigated. As the Act stands, some of its investigatory powers can only be used to find out whether the Act is being complied. Use of those powers to investigate compliance in the past is precluded. Offenders who have managed to complete their misdeeds prior to detection could therefore escape investigation. This is obviously unsatisfactory.

In summary, the Bill will make minor but useful changes to our environment protection laws. It irons out some creases in those laws to make their operation smoother and more efficient.

I commend the Bill to the House.