

21 NOVEMBER 2013

NOTE THAT THIS IS A PROOF VERSION ONLY. THE FINAL VERSION AND SUBSEQUENT DEBATES CAN BE VIEWED FROM THE HANSARD SECTION OF THIS WEBSITE.

## **PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT (PROSECUTIONS) BILL 2013**

**Bill introduced on motion by Mr Ron Hoenig, read a first time and printed.  
Second Reading**

**Mr RON HOENIG** (Heffron) [10.21 a.m.]: I move:

That this bill be now read a second time.

The purpose of the bill is to transfer the power to prosecute serious environmental offences from the Environment Protection Authority to the Director of Public Prosecutions. It arises over the scandalous conduct by the Environment Protection Authority that I referred to on 13 August in respect of the decision of the Land and Environment Court in the case of the *Environment Protection Authority v Hanna* [2013] NSWLEC 41. Members will recall that a serial rubbish dumper who had about eight convictions for rubbish dumping and 22 penalty notices dumped building material containing unbonded asbestos near a school. Rather than the Environment Protection Authority prosecuting the offender for a serious environmental offence that carried a maximum penalty of seven years jail, civil action was taken against this particular offender. Injunctions were obtained. The orders of the court were not complied with and, consequently, Dib Hanna was sentenced to three months suspended sentence for breaches of contempt.

There was community outrage in respect of the penalty imposed by Justice Pain, and the Minister introduced amendments to the legislation to strengthen the Environment Protection Authority powers, indicating to the House that serial criminal rubbish dumpers would be dealt with in accordance with the full force of the law. The full force of the law was not available to the Government of the day but to the Environment Protection Authority and it failed to bring Mr Hanna to justice, who was in breach of section 115 of the Protection of the Environment Operations Act 1997, which is one of the most serious environmental offences. I asked the Minister some questions on notice to which I will refer later in my second reading speech. The answers that the Minister gave on advice to the Environment Protection Authority show that the Environment Protection Authority has no understanding of its responsibility or prosecution powers.

Persons who dump asbestos could well be sentencing unsuspecting people to death. The dumping of asbestos such as Mr Hanna did, particularly near a school, could cause unsuspecting people who inhale a fibre to contract symptoms that only arise in 20 or 40 years time, and they may well die. As this House knows, asbestos is an insidious substance that was used as a standard component of building material and there are strict laws in this State to deal with it. It is immensely dangerous for unbonded asbestos to be sitting in the open air. The law provides that those people who dump it are criminals and it provides a maximum penalty for one offence of seven years jail. The Environment Protection Authority, which is charged with investigating and prosecuting these offenders, should have brought Mr Hanna, who had eight previous convictions and 22 penalty notices, before the court on indictment to be prosecuted and jailed. If the Government wishes to send a signal to people that it will not tolerate this insidious criminal act there must be general deterrence and people must face the criminal justice system. If they are found guilty for dumping a substance such as asbestos, they must go to jail. The Environment Protection Authority failed to prosecute in accordance with its own prosecution guidelines.

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This bill amends the Protection of the Environment Operations Act 1997. It seeks to transfer standing to initiate prosecutions for tier one offences under that Act, its most serious offence provisions, to the Director of Public Prosecutions and the Attorney General respectively. At the outset, I note that the explicit intention of this bill is to separate the investigative functions and the prosecutorial functions of the Environment Protection Authority as laid out in the Protection of the Environment Operations Act 1997 in respect of tier one offences. The bill removes the prosecutorial function of the Environment Protection Authority only in respect of tier one offences as defined by part 5.2 of the Act. These are serial offences for which section 119 sets out maximum penalties in these terms:

- A person who is guilty of an offence under this Part is liable, on conviction:
- (a) in the case of a corporation-to penalty not exceeding \$5,000,000 for an offence that is committed wilfully or \$2,000,000 for an offence that is committed negligently, or
  - (b) in the case of an individual-to a penalty not exceeding \$1,000,000 or 7 years' imprisonment, or both, for an offence that is committed wilfully or \$500,000 or 4 years' imprisonment, or both, for an offence that is committed negligently.

This bill, as I have indicated, will not alter the investigative arrangements already in place. In respect of investigations conducted by the Environment Protection Authority, the bill will impose two duties upon the Environment Protection Authority. First, where the investigation results in the Environment Protection Authority forming a view that a prima facie case exists against the person for an offence arising under part 5.2, a duty is imposed upon the Environment Protection Authority to inform the Director of Public Prosecutions of that fact.

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Secondly, where the Environment Protection Authority is unable to determine whether or not there is a prima facie case in respect of an offence under part 5.2, an identical duty will be imposed upon the Environment Protection Authority to inform the Director of Public Prosecutions of that fact also. The powers presently enumerated in the Director of Public Prosecutions Act are sufficient to transfer the entirety of the Environment Protection Authority's prosecutorial functions in respect of tier one offences without consequent amendment to that Act. Section 7 of the Director of Public Prosecutions Act establishes the principle functions of that office.

**Pursuant to sessional orders business interrupted and set down as an order of the day for a future day.**