

Coalition's policy than with the situation that existed in the past. This process will prepare us for a drought and guarantee water security. In the last drought I saw Labor members running around responding to what was necessary in a critical situation. No action was taken in advance. Labor was reactive; this Government is being proactive.

The member for Mount Druitt spoke about Labor managing water in the State. It really was the result of the National Water Initiative, which was headed up by the Federal Government and passed on to the States. Most of the guidance for that process came from the Federal Government, which basically got the States to agree to it as the best way to manage this resource in New South Wales. Most of it did not apply to a water supply for communities, and this is where it becomes critical. Recently I held a meeting with Essential Water to plan for the future management of water. Highlighted was the fact that without any further intakes in the unregulated Darling River the water supply for Broken Hill after December would be challenged, so we are heading towards a critical situation.

Work to ensure sufficient water supply for Broken Hill has already started. I think back to the days before the Menindee pipeline when trains brought water to Broken Hill and we relied on two local reservoirs. During the last drought we almost reached that stage in Broken Hill. We were close to putting water on trains and bringing it to Broken Hill. We can do it a better way. Opportunities exist, particularly along the Darling River, for good flowing bores that can supplement water supply for Broken Hill. We will be prepared, unlike experiences in the past.

**Question—That the motion be agreed to—put and resolved in the affirmative.**

**Motion agreed to.**

**The ASSISTANT-SPEAKER (Mr Andrew Fraser):** Order! The motion accorded priority having concluded, the House will now consider Government Business.

#### **PROTECTION OF THE ENVIRONMENT LEGISLATION AMENDMENT BILL 2014**

**Bill introduced on motion by Mr Rob Stokes, read a first time and printed.**

#### **Second Reading**

**Mr ROB STOKES** (Pittwater—Minister for the Environment, Minister for Heritage, Minister for the Central Coast, and Assistant Minister for Planning) [3.55 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Protection of the Environment Legislation Amendment Bill 2014. This bill is the next instalment in this Government's plan to reinforce the Environment Protection Authority [EPA] as a strong environmental regulator for New South Wales. In 2012 this Government re-established the Environment Protection Authority as a statutory authority with an independent board, appointed a new chief executive officer and chief environmental regulator, required that pollution incidents involving material harm be notified immediately and increased penalties for failing to comply with these requirements, and improved the community's right to know by requiring industry to publish pollution monitoring data.

Members will recall that only last year this Parliament passed the Protection of the Environment Operations Amendment (Illegal Waste Disposal) Bill 2013 to crack down on illegal waste dumpers and break the business model of illegal waste activities. This bill is the next step. It will strengthen and align environmental penalties, enhance enforcement provisions, enable timely and cost-effective enforcement by the EPA and support the ecologically sustainable development of our State. New South Wales already has some of the highest maximum court-imposed penalties in Australia for environmental offences. In this bill we are increasing a number of maximum penalties in the Contaminated Land Management Act 1997 to align with penalties for similar offences in other environmental legislation, particularly the Protection of the Environment Operations Act. In particular, the penalty for a corporation that is responsible for contamination and does not comply with a direction specified in an EPA management order will be increased by over \$800,000.

The maximum penalties under the Protection of the Environment Operations Act reflect the seriousness with which this Parliament views these offences. Given the environmental impact of contamination incidents, offences under the Contaminated Land Management Act should attract similarly significant penalties. It is also

proposed that the power within the Protection of the Environment Operations Act to make regulations that provide for higher penalty notice amounts for repeat offenders be replicated in the Contaminated Land Management Act and the Radiation Control Act. These increased penalty amounts are intended to be proportionate to the seriousness, harm and nature of an offence, provide an effective deterrent to committing environmental offences and recidivism, reflect community expectations regarding the financial penalties that apply to environmental offences and be comparable to similar offences in other environmental legislation.

Members of this place will be aware that this Government has announced its intention to amend the regulations under the Protection of the Environment Operations Act to increase penalty notice amounts for the 10 most serious environmental offences to \$15,000. The Government will also be increasing a range of other penalty notice amounts to ensure that they keep pace with the consumer price index. These increases will become effective by the beginning of September. Alternative sentencing options provide courts with a range of responses to environmental offences. The options include significant fines and imprisonment, but also include orders to publicise the offence, to provide financial assurance, to restore or enhance the environment, to recover monetary benefits accruing to the offender from the offence, to attend training and to establish a training course. This bill ensures that a consistent range of orders are available to a court where an offence is proven under the Contaminated Land Management Act and the Radiation Control Act.

<20>

This provides the court with a greater range of responses to appropriately address the harm caused by offences to the community and the environment. It also encourages public confidence in our environmental legislation by promoting consistent responses to incidents of environmental harm. In addition to aligning existing sentencing options available to the court, this bill introduces to each of these three Acts an additional order which would be available to the Land and Environment Court: a restorative justice order.

Restorative justice involves both a process in dealing with an offender, as well as different outcomes. It is a process already in place for many criminal offences. As a process, it brings together both an offender and a victim to address the actions that should be undertaken by the offender to repair the harm that has been caused. It also ensures that the victim has the best opportunity to explain to the offender the impact that the offender's actions have had on the victim.

As for outcomes, restorative justice allows the court to require offenders to undertake actions that are not restricted to restoring or benefiting the environment, but may also directly benefit those impacted by the offence. It should be recognised that whilst there will sometimes be an identified victim for environmental incidents, often the actions of the offender will impact on the broader community. For instance, water pollution may render a local waterway unsuitable for swimming or fishing.

Under this bill, the actions that may be ordered by the court may go beyond restoration or enhancement of the environment to also include social or community actions. This will result in a more cost-effective response to environmental crime and better outcomes for impacted communities and the environment. For the same reasons, restorative justice actions can be included in enforceable undertaking agreements between the Environment Protection Authority and offenders. The bill also makes a number of amendments to the Protection of the Environment Operations Act, the Contaminated Land Management Act and the Radiation Control Act to facilitate timely and cost-effective enforcement by the Environment Protection Authority across a number of areas.

First, the Environment Protection Authority can require a financial assurance to secure funding for the carrying out of actions under a management order for contaminated land. Secondly, this bill clarifies that where a deadline to carry out a requirement or direction under the Act is missed, the relevant person is still obliged to carry out that work. Further, any relevant daily penalty for each day that the work has not been undertaken will still apply after the deadline is missed. These new provisions align with equivalent provisions in the Protection of the Environment Operations Act and will assist in the effective enforcement of obligations imposed under the Contaminated Land Management Act.

The fourth amendment will improve the ability of the Environment Protection Authority to revoke or suspend an environment protection licence where this is warranted. A decision to revoke or suspend a licence is only taken in the most serious of cases, such as when a company goes into liquidation or shows continual disregard for their environmental obligations. This amendment will remove the requirement for the Environment Protection Authority to issue a licensee with a notice of intent to revoke or suspend a licence and ensure that the revocation or suspension of a licence will have effect during any merit appeal proceedings against that action.

This is important because the requirement to issue a notice of intent to revoke a licence means the actual revocation is delayed and the licence holder can continue to operate between the date of the notice and the date of the revocation. As with the case of the fire that smouldered for weeks at the Chester Hill waste facility, this can lead to environmental damage being compounded during the period of the notice, posing an unacceptable risk to the community.

The fifth amendment will include the owner of the land on which a licensed activity is undertaken to be listed as a person who may be issued with a clean-up notice. This will provide one more avenue to recover the costs of a clean-up in the event of the polluter's insolvency, which would otherwise be funded by the New South Wales Government out of the Environmental Trust. This power will only be exercised in accordance with the Environment Protection Authority's Compliance and Enforcement Policy and will not be used against landowners who are innocent victims of illegal dumping.

The sixth amendment will complement the measures adopted in last year's amendments that addressed illegal dumping. It will enable the Environment Protection Authority to require specified waste transporters to be fitted with an approved global positioning system device. The final amendment addresses a gap in reporting environmental incidents involving material harm and will require that odour must be reported as it may be the only indication that an incident has taken place. Sometimes, a pungent odour may be the only clue that a serious environmental pollutant has escaped into the environment. An obligation to report such an odour could have protected those workers who fell ill by continuing to work after odour was first noticed upon uncovering buried drums of hazardous materials during the Pacific Highway upgrade last year.

There are also a few miscellaneous amendments in the bill. These amendments do not represent a significant policy shift. The first amendment is to remove an obsolete process regarding affixing labels to defective vehicles. The second change is to clarify what is meant by failure to comply with a management order under the Contaminated Lands Management Act. The third miscellaneous amendment clarifies and restores a legislative requirement to prevent or minimise fugitive air emissions from industry, especially dust from coal mines and quarries. The decision of *Environment Protection Authority v Ravensworth Operations Pty Ltd* [2013] NSWLEC 92 had the effect of removing this requirement.

Finally, this bill provides a speedy response to facilitate implementation of recommendation 10 of the New South Wales Auditor-General's report "Performance Audit Managing Contaminated Sites". The report recommends that the Environment Protection Authority gain a better understanding of its costs and develop procedures that support the recovery of costs and begin recovering the costs of managing certain sites.

This bill amends the Protection of the Environment Administration Act 1991 to provide for certain fees and charges under the legislation administered by the Environment Protection Authority to be paid into the Environment Protection Authority Fund rather than into consolidated revenue. This includes fees payable under contaminated land, radiation control, pesticide licensing and the control of environmentally hazardous chemicals and dangerous goods legislation.

These changes will align this new Environment Protection Authority legislation with existing arrangements for revenue retention in respect of regulatory fees and charges under the Protection of the Environment Operations Act. This bill will strengthen and align environmental penalties, introduce alternative sentencing options and provide important legislative support for timely and cost-effective enforcement by the Environment Protection Authority. I commend the bill to the House.

**Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day for a future day.**

## **WATER MANAGEMENT AMENDMENT BILL 2014**

### **Second Reading**

**Debate resumed from 29 May 2014.**

**Mr PAUL LYNCH** (Liverpool) [4.07 p.m.]: I lead for the Opposition in this place on the Water Management Amendment Bill 2014. The shadow Minister with the carriage of the bill is the Hon. Steve Whan