

**PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT
(ILLEGAL WASTE DISPOSAL) BILL 2013**

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Bill introduced on motion by Ms Robyn Parker, read a first time and printed.

Second Reading

Ms ROBYN PARKER (Maitland—Minister for the Environment, and Minister for Heritage) [3.24 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Protection of the Environment Operations Amendment (Illegal Waste Disposal) Bill 2013. The bill makes it clear that this Government will not tolerate serial waste dumpers—those who flout the laws that are there to protect the health of our communities and the health of our environment. I know that the community is with the Government on these changes. We are all sick and tired of people who take the law into their own hands, flout the law, and illegally dump. Illegal dumping is a despicable criminal act. The Government is taking action to ensure that those people's illegal actions are dealt with by application of the full force of the law.

The bill provides additional powers to the Environment Protection Authority [EPA]. Under our Government the Environment Protection Authority has been strengthened, and this bill will confer further powers on the authority. The bill will increase sentencing and penalty provisions to enable courts to crack down on illegal waste dumpers and break the business model of organised illegal waste activities. For the information of people who adopt as a business practice doing the wrong thing I point out that there are plenty of people in the waste disposal industry who are capable of running a business within the law and that they are doing so quite successfully. It is a shame for those participants in the industry to see rogue operators who continue to do the wrong thing. However, the illegal dumping of waste is proliferating. The Government intends to stop it, and that is the purpose of the bill. The bill is all about breaking the business model of organised criminal groups who think that they can get away with illegal waste disposal.

The Government estimates that each year \$100 million is lost to the New South Wales Government from incidents causing significant and long-lasting environmental harm, associated clean-up costs and unpaid waste levies. There is a strong expectation from the community that companies and individuals that are polluting the environment and placing human health at risk as a result of those actions should face heavy penalties. They have been getting away with illegal waste dumping because the fines and penalties for environmental crimes, which we inherited from the previous Government and were imposed by the courts, have been low enough to be regarded by unscrupulous operators as simply a cost of doing business. The cost of fines and penalties was factored into their business model. It has been a case of paying the fine and carrying on with whatever they were doing.

Illegal waste dumpers sometimes choose a site that is a vacant block in a residential area, and communities suffer the consequences. Not all illegal waste comprises asbestos, but asbestos is a large part of it. Illegal waste also comprises mattresses, tyres, building waste and a whole range of things. The communities on the fringes of rural lots often suffer more than others. However, it is not only rural communities that are adversely affected by illegal waste

dumping. To put the scale of illegal waste dumping into perspective, I remind the House that during the stint of the member for Blacktown as environment Minister—brief as it was; only 82 days, during which he gave us the Solar Bonus Scheme—he presided over 58 reported incidents of illegal dumping, which equates to well over one incident every second day. As we all know, the member for Blacktown did nothing about it. Most of us agree that, no matter how small the scale of illegal dumping is, under the current system it continues to be a lucrative business. The Government is closing that opportunity.

Recently some particularly abhorrent examples showed that some waste operators have no regard for the wellbeing of the environment or the community. The examples include emptying truckloads of asbestos outside preschools and flouting court orders to stop illegally dumping waste on innocent people's private property. Prior to the introduction of this bill some waste operators were serial illegal waste dumpers and they did not face a custodial sentence for their crimes. However, the issues are not limited to a couple of individual rogue operators. Over the past 12 months the Environment Protection Authority conducted the largest covert intelligence operation in the organisation's history. We have been on the case for a while, uncovering organised illegal dumping and waste levy fraud, and more information will be coming forward on what is systemic in some parts of the industry.

The current options available to the courts to penalise both individuals and businesses that break the law do not outweigh the profits that can be made from these unlawful waste-related actions. As the Minister for the Environment and a member of the New South Wales community I find this unacceptable. I have visited sites across New South Wales where rubbish has been trucked and dumped, left for councils and government to clean up and communities to bear the eyesore, not to mention any associated health risks. A site that becomes an illegal dumping site is often used by a number of operators or individuals. By introducing this bill the Government will ensure that sufficient penalties are in place to deter environmental criminals, and courts are empowered to punish them appropriately.

The bill includes five significant reforms that crack down on illegal dumping and waste activities and strengthen the penalties available to address and deter serious and repeated environmental crimes. These are: introducing a new penalty of imprisonment available to the courts to punish repeated waste-related strict liability offences; providing the Environment Protection Authority with powers to seize vehicles for repeated waste-related offences and allowing forfeiture of the vehicles on conviction of an offence; introducing a new offence that includes an imprisonment penalty for fraudulently providing false or misleading information in relation to waste; restructuring the waste levy to remove the incentive for illegal waste disposal; and to ensure an even playing field is evident across the waste industry ensuring that a monetary benefits calculation model can be prescribed by regulation for use by the courts.

The bill includes a new offence for committing a repeated waste-related offence within a period of five years that may be prosecuted in the Land and Environment Court. Upon conviction of the offender the court may sentence the offender to a term of imprisonment. This will act as a strong deterrent to those offenders who feel that the current fines are too small to warrant changing their unlawful behaviour. This important amendment will apply to specific waste offences regardless of whether that waste is disposed of to land, water or to an unlicensed industrial premises. Recalcitrant illegal waste operators will be put on notice that waterways and land in New South Wales are not dumping grounds. The Government will review the effectiveness of this offence within three years to make sure that what we think

will happen does happen. The waste levy is the Government's key economic instrument to drive waste avoidance and recycling in New South Wales. It has traditionally been applied at the landfill gate to drive increased waste avoidance and the recovery, reuse and recycling of materials.

The idea with the waste levy is that it is a marketplace mechanism to drive down what goes to landfill and increase recycling. The more recycling there is the less that goes into landfill. We know from Environment Protection Authority intelligence that illegal waste activity is occurring at waste storage, recycling and transfer facilities. Waste transported from these facilities for disposal is not showing up at lawful landfills and is likely to have been illegally disposed of on private property, in State forests and national parks. Other unscrupulous operators have been stockpiling large volumes of waste at recycling yards in the name of recycling, but these waste piles are never processed. The community wears the risk for the eventual clean-up of these alleged recycling sites. They are eyesores, the odour is quite significant sometimes, and if a rogue waste operator walks away from these stockpiles the community will have to pay for them to be disposed of appropriately.

To break the business model of these illegal waste operators it is proposed to apply the waste levy whenever waste is received at all licensed waste facilities, not just landfills. A waste levy rebate or reimbursement will then be available where waste is sent off-site for recycling. By requiring the levy to be paid upfront at all facilities we are removing the incentive for unscrupulous operators to transport waste long distances to dump their waste at unlicensed sites to avoid paying the levy. It removes the incentive for unscrupulous operators who run illegal waste dumping or dubious stockpiling operations to use waste storage, recycling and transfer facilities. This scheme is a clear message to those operators. It will have no effect on those legitimate recycling businesses that are currently paying the levy on waste going to landfill. Any additional levy they pay in the short term will be returned to them once they apply for a rebate. This new system will provide an even regulatory and financial playing field for the lawful operators and expose the illegal operators.

Certain waste facilities are currently exempted from the waste levy under the Act. As part of implementing the new approach the bill will repeal the current exemptions so that all waste facilities will be subject to the levy. We hope this new approach will break the business model of shonky operators. That is certainly the aim. The bill also includes provisions for the Environment Protection Authority to seize vehicles used to commit repeat waste offences and for the court to be able to order those vehicles to be forfeited if the offender is found guilty. This is an important amendment that will act as a circuit breaker for repeat offenders who would otherwise continue to break the law while they have access to their vehicle.

Recent Environment Protection Authority investigations have also uncovered sophisticated waste levy evasion schemes. In a recent example the authority uncovered a levy evasion scheme between a landfill and recycler which amounted to \$3 million in unpaid waste levies. These operators are not only defrauding the New South Wales Government of millions of dollars, but they are also distorting the waste market and undermining legitimate waste and recycling businesses. These are serious crimes. While there is already a tier two, strict liability offence for providing false or misleading information about waste, this bill includes a new offence for knowingly supplying false and misleading information.

This new offence carries significant fines of \$500,000 for corporate offenders and \$240,000 for individual offenders. It also allows the court to sentence individual offenders to up to 18

months imprisonment instead of or in addition to a fine. This will ensure that the penalties for waste levy evasion schemes are consistent with penalties in other legislation for fraudulent activities. Of course, it is for the courts to impose the fine, and we certainly hope they do. A court can currently order a person convicted of an offence against the Protection of the Environment Operations Act to pay an additional financial penalty equal to the monetary benefit they gained from committing the crime. The monetary benefit could include, for example, avoided waste disposal costs and additional market share or business acquired by undercutting legitimate waste operators.

The bill will enable the regulations to prescribe a protocol that can be applied by the courts to consistently and transparently calculate the size of the monetary benefit. The use of an agreed or prescribed calculation model will allow the courts to readily and consistently calculate the size of the monetary benefit penalty and ensure that the offender does not benefit from the offence. It will also act as a greater deterrent to all offenders. The only people who would oppose this bill are those rogue operators who undercut the market, pollute our environment and put public health at risk. Those dodgy dumpers should consider themselves on notice. As Tony Khoury from the Waste Contractors and Recyclers' Association of NSW told 2GB this morning:

The system is in need of reform and the Government has recognised that with the announcement of the last 24 hours ... these changes send a strong message to a rogue operator he could find himself facing a jail term in the future.

Indeed, the intention of this bill is to create a meaningful deterrent to the act of illegal dumping. It is an important enhancement of the range of powers available to the Environment Protection Authority and the courts to crack down on illegal waste operations and environmental criminals. In an industry where the monetary incentive to break the law often outweighs the existing penalties, this bill provides a range of strengthened and expanded penalties and sentencing options to seriously deter unscrupulous operators from continuing to commit illegal waste activities. I commend the bill to the House.

Debate adjourned on motion by Mr Ryan Park and set down as an order of the day for a future day.