



## Full Day Hansard Transcript (Legislative Council, 28 August 2013, Proof)

### Proof

Extract from NSW Legislative Council Hansard and Papers Wednesday, 28 August 2013 (Proof).

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

### Second Reading

**The Hon. MARIE FICARRA** (Parliamentary Secretary) [12.43 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

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

### Leave granted.

The Government is pleased to introduce the Protection of the Environment Operations Amendment (Illegal Waste Disposal) Bill 2013. This bill makes it clear that this Government will not tolerate serial waste dumpers. The bill provides additional powers to the Environment Protection Authority and increased sentencing and penalty provisions to the courts to crack down on illegal waste dumpers and to break the business model of organised illegal waste activities.

It is estimated that \$100 million is lost to the New South Wales Government each year 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 pollute the environment and place human health at risk as a result of their actions should face heavy penalties. Unfortunately, the current fines and penalties for environmental crimes handed out by the courts are low enough to be viewed by unscrupulous operators as simply the cost of doing business.

### Waste Amendments

Recently we have unfortunately seen examples of waste operators who have no regard for the wellbeing of the environment or the community, emptying truck loads of asbestos outside preschools and flouting court-imposed orders to stop illegally dumping waste on innocent private citizens' property.

These issues are not limited to a couple of individual rogue operators. Over the past 12 months the Environment Protection Authority has conducted the largest covert intelligence operation in the organisation's history. The operation has uncovered that organised illegal waste disposal activities and waste levy fraud 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. This important bill will ensure that sufficient penalties are in place to deter environmental criminals and sufficient options are available to the courts to punish the offenders.

This bill includes five significant reforms that crack down on illegal dumping and waste activities and strengthens the penalties available to address and deter serious and repeat environmental crimes. These are:

- (1) restructuring the waste levy to remove the incentive for illegal waste disposal and to ensure an even playing field across the waste industry;
- (2) introduction of a new penalty of imprisonment available to the courts to punish repeat waste-related strict liability offences;
- (3) providing the EPA with powers to seize vehicles for repeat waste-related offences and allowing forfeiture of the vehicles on conviction of an offence;
- (4) introduction of a new offence, that includes an imprisonment penalty, for fraudulently providing false or misleading information in relation to waste; and
- (5) ensuring that a monetary benefits calculation model can be prescribed by regulation for use by the courts.

### Custodial sentence for repeat offenders

The bill includes a new offence for committing a repeat waste-related offence within a period of five years that may be

prosecuted in the Land and Environment Court. On conviction, 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.

The bill will add to the range of prosecutorial options currently available to the Environment Protection Authority. Although there is currently a tier one offence for illegal waste disposal that potentially includes a custodial sentence, this offence requires the Environment Protection Authority to establish wilfulness or negligence on behalf of the perpetrator. This bill however provides the option of a strict liability offence with potential custodial sentences for repeat commission of waste offences. This important amendment will apply to specific waste offences regardless of whether that waste is disposed 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.

### **Changes to the waste levy**

The waste levy is the key economic instrument used by the Government to drive waste avoidance and resource recovery in New South Wales. The waste levy has traditionally been applied at the landfill gate to drive increased waste avoidance and the recovery, reuse and recycling of these materials.

The waste levy has helped drive New South Wales' overall recycling rate from 45 per cent in 2002-03 to 63 per cent in 2010-11.

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, State forests and national parks.

Other unscrupulous operators have been stockpiling large volumes of waste at recycling yards in the name of recycling, but many of these waste piles are never processed. The community wears the risk for the eventual clean-up of these alleged recycling sites. That is, 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, the bill proposes to make changes to the waste levy regime so that all waste received at any licensed waste facility, not just landfills, will be liable to pay the levy.

Concerns of councils have been raised in the other place that this proposal equates to a levy on recycling. Let me be very clear, this is not a new levy or tax on recycling. This Government is committed to increasing recycling and diverting waste from landfills. In February this year, the Government announced the Waste Less, Recycle More initiative, which will invest \$465.7 million over the next five years to transform waste management in this State. At the centre of this initiative is a \$250 million investment in recycling and recovery infrastructure. We are not intending to undermine the very industry we are supporting by applying a "new tax".

The objective of this amendment is to curtail the illegal operations that are becoming systemic in the industry, not to penalise legitimate council and industry recycling facilities. Concerns were raised in the other place that the new system would require facilities to pay the levy upfront, ensuring that until the waste was processed and moved off-site a facility may be required to be out of pocket large amounts of money.

I can confirm that the proposed system will apply a liability to all waste received at a recycling facility. However, payment of the levy will not be triggered until the waste is sent off-site for disposal or stockpiled on-site for more than 12 months or stockpiled above any legal stockpile limits.

The liability will be entirely extinguished on waste that is transported off-site for further processing or reuse. It is important to note that it is a liability—not a levy payment—that will be incurred by recycling facilities on receipt of waste. The Environment Protection Authority will not be requiring payment of the levy on waste received that is stored on-site below legal stockpiling limits and awaiting processing unless it remains onsite for 12 months.

For those legitimate recycling businesses, there will be no net effect on the amount of levy they currently pay on waste going to landfill. However, all other operators will need to account for the waste leaving their facility and pay the levy on waste leaving the site intended for disposal. This new system will provide an even regulatory and financial playing field for the lawful operators and expose the illegal operators.

The Environment Protection Authority has consulted with the Australian Council of Recyclers, Waste Contractors and Recyclers, the Australian Organics Recyclers Association, Local Government NSW, Bankstown City Council, the Southern Sydney Regional Organisation of Councils and Lake Macquarie City Council who have all expressed in-principle support for the new levy framework I have outlined today. Stakeholders have expressed the desire to engage in a robust consultation process on the detailed mechanism.

The *Protection of the Environment Operations (Waste) Regulation 2005* is due to be remade as part of the Government's staged statutory repeal program. The details around the waste levy reforms will be part of the remade regulation and will be included in the extensive public consultation process for the remade regulation as required by the Better Regulation Office and subject to a regulatory impact statement as required under the *Subordinate Legislation Act 1985*.

The Environment Protection Authority is planning to consult on a draft regulation and regulatory impact statement that will include both the details of the levy reforms and the broader review of the regulation in the coming months. The consultation will be comprehensive and cover all councils across the State, relevant Government agencies and industry associations including the Australian Council of Recyclers, the Waste Management Association of Australia, the Waste

Contractors and Recyclers Association and the Australian Organics Recyclers Association.

In addition to these levy reforms, the Environment Protection Authority will be consulting on a range of amendments to the current regulation including a proposal to enable operators of levy-paying facilities to claim operational purpose deductions for quarried and recycled materials used in making roads at licensed landfills.

The Centre for International Economics, experts in economic analysis have already been commissioned by the Environment Protection Authority to undertake a rigorous cost-benefit analysis that will underpin the changes to the levy system and ensure legitimate operators are not negatively impacted by these changes. The consultation process will provide council and industry with the opportunity to provide valuable feedback to ensure the new reforms deliver the right outcomes.

The Government has already listened to concerns expressed in the other place by councils and industry regarding the issue of moisture loss associated with the composting of garden, food waste. To address this issue, the Government is committed to exempting waste facilities that process only garden waste, biosolids or food waste, or a combination of those waste types from the levy. These facilities will be exempted under the current exemption powers that exist in the regulation. In addition, drum reconditioners, being those waste operators who clean and refurbish used drums, will also be exempted.

Requiring facilities to account for the movement of waste on and off their site, and pay the levy when waste leaves the facility for disposal, removes the incentive for unscrupulous operators to transport waste long distances and to dump their waste at unlicensed sites to avoid paying the levy. It also removes the incentive for unscrupulous operators to run illegal waste dumping or dubious stockpiling operations through waste storage, recycling and transfer facilities.

The new system will introduce a higher degree of transparency into a sector worth an estimated \$2.5 billion. The amendments will require that licensed recycling and storage facilities now keep records and report the movement of waste to the Environment Protection Authority in accordance with the regulations. This information is already kept by legitimate operators in the sector and will not represent a significant increase in red tape or costs.

To ensure that the data collected is accurate and verifiable; weigh bridges will be required to be installed at all licensed waste facilities.

The Environment Protection Authority estimates that there are approximately 20 licensed waste facilities across almost 100 licensed waste facilities that do not have a weigh bridge to record incoming and outgoing movements of waste, with only four of the 20 sites operated by local councils. These 20 waste facilities are not keeping accurate business records on the amount of waste received.

The implementation of weighbridge systems can be beneficial to small business operators because it can help to improve business practices. The waste operators have a better understanding on the movement of waste onto and off the site. Having weighbridges installed means that the business has real-time and accurate data on material movements, and better stock control.

The cost of installing a weighbridge can be up to \$150,000 and there are additional costs for software, installation and ongoing operating costs. To mitigate the costs to councils and small business, under the Waste Less, Recycle More initiative, the Government will fund up to \$75,000 of the cost of the installation of weighbridges at licensed recycling, storage and processing operations.

I note that concerns had also been raised by the other place regarding the application of this new levy system to small community drop-off and recycling centres. I can confirm that the levy will only apply to waste facilities that are required to be licensed by the Environment Protection Authority. Small community drop-off centres are likely to fall below the relevant licensing thresholds for waste storage or processing.

#### **Environment Protection Authority powers to seize vehicles**

Recent high profile court cases have illustrated that some illegal dumpers have a reckless attitude towards the environment, the community and the orders of the court. This bill 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.

#### **New offence for fraud**

Recent Environment Protection Authority investigations have 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.

I note that one council raised concerns that the defence for a person that has taken all reasonable steps to ensure the

information was not false or misleading for the current offence under section 144M had been removed by the bill. I can confirm that this is not the case. The original offence for providing false or misleading information about waste and the current defence will remain in place. The bill introduces a new offence for knowingly supplying information that is false or misleading.

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.

### **Prescribing monetary benefits**

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/business acquired by undercutting legitimate waste operators.

This 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/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 deterrence to all offenders.

### **Conclusion**

By way of conclusion, this bill 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. 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.