

PROTECTION OF THE ENVIRONMENT LEGISLATION AMENDMENT BILL 2011

Page: 32

Second Reading

The Hon. JOHN AJAKA (Parliamentary Secretary) [5.57 p.m.]: I move:

That this bill be now read a second time.

The Protection of the Environment Legislation Amendment Bill 2011 is the Government's response to the incident at the Orica industrial complex on Kooragang Island, near Newcastle on 8 August, subsequent community demands for more transparency and accountability from both industry and government, and the recommendations made by Mr Brendan O'Reilly in his review of the incident. The Government has publicly released the O'Reilly report and not only has accepted all of its recommendations but committed to going beyond them. The bill is part of a broader package of reforms and complementary actions that together ensure that incidents like the one at the Orica Kooragang Island plant are avoided wherever possible in the future. Whilst the O'Reilly review found that there was no health risk to nearby residents from the incident, the community expects industry and government to respond faster and to communicate more effectively when faced with incidents that have potentially serious implications for either human health and/or the environment.

To achieve this, the Government has developed a wide-ranging suite of initiatives that will deliver to the people of New South Wales a modern and strengthened Environment Protection Authority that is better equipped to regulate high-risk industries, improve environmental legislation so that industry is fully held to account for its environmental performance, answer the community's demands for more engagement and specifically for more information about their industrial neighbours, provide stronger incentives for industry to comply with pollution incident notification requirements by doubling the maximum penalties for non-compliance, and improve the Environment Protection Authority's and the community's knowledge about the cumulative impacts of industry where they coexist in close proximity to residential areas.

At the heart of these changes is a renewed commitment to the communities of New South Wales, a commitment that got lost under the 16 years of a Labor Government. The bill modernises the Environment Protection Authority [EPA] to ensure the people of New South Wales have an environmental regulator that is responsive and flexible with clear goals, functions and accountabilities. This requires a series of amendments to the Protection of the Environment Administration Act 1991 for an Environment Protection Authority which has at its head a chairperson who will drive the authority rather than advise it and a smaller expertise-based board to make it more accountable.

I am aware that there have been some concerns that the new Environment Protection Authority might focus on pollution matters at the expense of other aspects of a healthy environment. The Government wants a single, consolidated environmental regulator—that is, a regulator that is responsible not only for pollution control but also for protecting human health and the environment more broadly. This includes protecting native vegetation, threatened species and their habitats, and biodiversity and ecosystems more generally. It is crucial that the Environment Protection Authority looks at the environment as a whole because each part plays an important role in maintaining human health and providing safe and healthy places for people to live in today and for generations to come.

A new statutory position of chairperson appointed by the Governor will be responsible for

managing and controlling the affairs of the Environment Protection Authority. The chairperson will report directly to the Minister for the Environment. A key function of the chairperson will be to listen and respond to community views and concerns, to effectively be the community's champion on environmental matters. The chairperson will also ensure that local government has a voice and where specific issues warrant it, will engage face-to-face with individual councils and their regional bodies. This will ensure that the Environment Protection Authority reconnects in a real way with the community it serves. The community will be given an opportunity to influence how industry operates in their local area to a greater extent than before.

In the first instance this will be achieved through the chairperson meeting with the Community Consultative Committee which the Minister for the Environment is establishing in the Lower Hunter and Newcastle areas. There will be opportunities to expand these committees to other heavily industrialised regions in the future as required. The intention of the Government is to create a new Environment Protection Authority board with clear and stronger governance, accountability and reporting requirements. The bill establishes a board that is more along the lines of a corporate board, with clear responsibilities to deliver environmental protection for the people of New South Wales. The existing board is too big and meets too infrequently. The Government thanks the existing board for its good work. It has informed Environment Protection Authority policies and approaches but it is difficult to give a board of that type the responsibility and accountability the Government and community wants the board and the authority to have.

Together the chairperson and board will oversee the effective, efficient and economical operation of the Environment Protection Authority; set clear directions for the Environment Protection Authority; and monitor and report on its performance. The board will be required to provide an annual regulatory assurance statement to the Minister for the Environment, which the Minister will table in Parliament. This statement will detail the success of the Environment Protection Authority in reducing risks to human health and harm to the environment, determine whether this level of protection satisfactorily compares with other Australian jurisdictions, and provide an assessment of the performance by those industries regulated by the authority in reducing risks to human health and preventing material harm to the environment.

The chairperson will be assisted by a new position of the Chief Environmental Regulator, who will be responsible for the day-to-day delivery of the Environment Protection Authority's statutory responsibilities and management of the authority's staff. The Chief Environmental Regulator will report directly to the Environment Protection Authority chairperson. The Government's proposals in this bill will modernise and strengthen the ability of the Environment Protection Authority to regulate serious pollution incidents by significantly improving notification responsibilities, requiring pollution incident response management plans to be prepared and implemented, and increasing penalties for non-compliance. These amendments will ensure that serious pollution incidents are avoided to the greatest extent possible and, if they occur, they are handled more effectively, quickly and transparently in the future.

The bill requires polluters to immediately report serious incidents not only to the Environment Protection Authority but also to the Minister for Health, the WorkCover Authority, New South Wales Fire and Rescue and the local council. The proposed amendments allow the licensee to report the incident immediately without having to wait for all the information about the incident to be available. Industry has previously stated this as a reason for delays in notification. However, they must now provide further information as and

when it becomes available. I understand that industry may have concerns about the word "immediately". Some have said that the term "immediately" is unclear and that a specific time period should be included. It is not possible to define the appropriate period of time in which notification is required in every conceivable circumstance. However, "immediately" simply means promptly and without delay. That is the everyday meaning of the word.

The Government and the community expect industry to report pollution incidents promptly and without delay. This is both reasonable and necessary. If a pollution incident does occur, the Environment Protection Authority will also be able to formally direct industry to notify other parties of the incident including the immediate industrial neighbours and the community. The amendments will be supported by clear guidance for licensees and response agencies that will be made publicly available. Appropriate methods of notification will be detailed in the guidance material which licensees will use to prepare pollution incidence response management plans. The bill also increases the penalties for failure to comply with notification requirements to provide a more substantial deterrent to the offence. The maximum penalties for contravening the duty to notify pollution incident requirement will be doubled for both corporations and individuals. The O'Reilly review recommended that:

The Protection of the Environment Operations Act 1997 and any associated regulations are amended to allow in the event of a hazardous incident the Office of Environment, on advice from the Chief Health Officer, to direct the company responsible for the activity to fund New South Wales Health for an independent analysis of the health risks associated with a hazardous incident.

The Environment Protection Authority currently has the ability to require a licensee to commission expert advice via a prevention notice or a clean-up notice. However, to address this O'Reilly recommendation, provisions in the bill will make it explicit that the Environment Protection Authority and the Minister for Health can require polluters to pay the reasonable costs of independent, expert advice or studies into the human health and/or environmental impacts that are needed to better understand the effects of, and inform the response to, the particular pollution incident.

The Orica incident highlighted the need for stronger and broader provisions for the Environment Protection Authority to require appropriate premises to prepare, implement and test pollution incident response management plans. The bill provisions require all environment protection licensees to prepare such plans which will also include community notification and communication protocols. All licensees will have six months from the commencement of the legislation to prepare and implement a pollution incident response management plan. A regulation making power will also be included in the Protection of the Environment Administration Act to allow a regulation to be made that specifies the content of such plans and testing and review requirements. This may be extended to require some non-licensed industrial facilities to also prepare, implement, test and report on pollution incident response management plans. These plan requirements will be designed to complement existing requirements that are in place for major hazardous facilities under WorkCover New South Wales legislation.

Finally, it is proposed to make it more straightforward for the Environment Protection Authority to require mandatory environmental audits to be undertaken when it reasonably suspects that an activity has been or is being carried on in an environmentally unsatisfactory manner. The bill also improves the community right to know aspects of the Act. This includes measures to improve the public's access to information by requiring industry to make its monitoring results publicly available and expanding the information on the

Environment Protection Authority's public register. This will include information about mandatory environmental audits required by the Environment Protection Authority and undertaken by industry, pollution studies and pollution reduction programs required by licence conditions, and the details of penalty notices issued by a regulatory authority.

The bill will make it mandatory for industry to make its monitoring results publicly available through its website or in hard copy on demand to any member of the public. The Environment Protection Authority will work with these industries to make this requirement as simple and effective as possible, including the best way to present complex or large amounts of data. Written guidance will be available to ensure that licensees provide this information in a meaningful way so that it is easily understood by the public. In addition, the Newcastle community consultative committee has been established, with representation from the community, local government and industry. This will ensure that the local community is given the information it needs to again have confidence that its industrial neighbours are addressing issues of community concern. There also will be the capacity to establish specific groups to address local issues. This will be the pilot for the establishment of similar approaches in other areas.

The Minister for the Environment convened a round table on 21 October 2011 in Mayfield to inform industry and the community about the reforms the Government is implementing and what is expected and required of industry. The event provided an opportunity for industry, community and government to discuss the proposed legislative changes at length. The meeting was the first step towards providing greater transparency for local communities, who have a right to know about the workings of industries in their neighbourhoods, and opening a dialogue between all interested parties to achieve positive environmental outcomes on local levels. During the debate of the Government's bill in the other place, The Greens requested that the Government reconsider the way in which we propose to address recommendation 7 of the O'Reilly report, which recommends that the Environment Protection Authority board include a community representative.

It should be noted that even though the existing Environment Protection Authority board is made up of representatives, there is no statutory position for a community representative on the current Environment Protection Authority board. While there are two Nature Conservation Council representatives, these members represent conservation group interests. They do not necessarily represent all of the community's diverse make-up and views. We have chosen to capture the community's interests in a different way because it is extremely difficult, if not impossible, to identify and provide a single community representative. The bill provides for an expertise-based board. This is necessary in order to deliver on the additional responsibilities of governance and accountability that this new board will have. One of the key responsibilities and functions of the new chairperson role will be as the community's champion to engage and connect with members of the public, to listen to their concerns and issues and to ensure that the Environment Protection Authority is addressing them. Similarly, the chairperson will meet with and hear from local government as both a co-regulator and a voice for the local community.

The package of legislative amendments and complementary actions I have just outlined to the House not only responds to the recommendations of the O'Reilly review in a comprehensive way but goes beyond them. These reforms will help to ensure that the people of New South Wales—and the people of residential areas such as Stockton, in particular—are protected. This will be done through a reinvigorated Environment Protection Authority that has as its core responsibility the role of protecting the health of the people of New South Wales by providing them with a safe and healthy environment. The Government's reforms and

particularly the provisions in the bill will help to ensure that New South Wales continues to be a place where people want to live and raise their families. We are protecting the environment not only for communities today but also for future generations to enjoy. I commend the bill to the House.