

**PROTECTION OF THE ENVIRONMENT LEGISLATION AMENDMENT BILL
2011**

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Bill introduced on motion by Ms Robyn Parker.

Agreement in Principle

Ms ROBYN PARKER (Maitland—Minister for the Environment, and Minister for Heritage) [5.36 p.m.]: I move:

That this bill be now agreed to in principle.

The Protection of the Environment Legislation Amendment Bill 2011 is a direct response to the immediate issues arising from the recent incidents that occurred at the Orica industrial complex at Kooragang Island, near Newcastle, and to other recent incidents involving major hazardous facilities. The community has also called for more transparency and accountability from industry and Government. The bill forms part of a comprehensive response from the Government not only to those incidents but to recommendations made by Mr Brendan O'Reilly in his review of the Kooragang Island incident. Mr O'Reilly's report has been publically released and while the Government has accepted all of his recommendations, it will go beyond them.

The Kooragang Island incident on 8 August 2011 exposed a number of practices that were not good enough from the industry's perspective or from the responses of a number of authorities, and certainly not good enough under legislation. It has also been telling as to what took place in the Environmental Protection Authority under the former Government. The Environmental Protection Authority was proudly established under the last Coalition Government. It was designed to respond and independently regulate as a statutory body in those industries involving major hazardous facilities and other types of pollutant industries, such as waste industries. Over the past 16 years the strength and responsibility of the Environmental Protection Authority has been moulded into what is now the Office of Environment and Heritage. The Environmental Protection Authority lost its way and its resources were reduced. The bill commences a process, which the Government has been working on since day one and since realising a number of the inadequacies highlighted by the Orica incident, for an independent Environmental Protection Authority. The authority will be comprised of an experienced board with control over what happens under direct lines of supervision. It will have a chief environmental regulator and a chair person employed to work with the community and industry to achieve good outcomes.

I am proud of the Government's response but the Opposition acted in a shameful fashion during the Orica incident. The Government has been working hard so that if an incident such as this were to happen again it would not be handled in the same way. If such an incident did occur the community will be informed in a timely fashion, with an adequate response given by industry, authorities and government. The Government is working hard to get good results and outcomes, the fruition of which we see today. In contrast, the Opposition simply wanted to grandstand and scare the community at any expense. Members opposite went up the

freeway to Kooragang and Stockton simply to grab media headlines with outrageous comments and claims. It was an absolutely appalling effort by members opposite who know full well that all the people involved in this incident were simply doing what they did for 16 years under the previous Government.

The community was scared and frightened by the Opposition's politicking. We had the outrageous idea of bringing Erin Brockovich to Stockton to talk to the residents, and we had one falsehood after another. It was outrageous. Almost immediately after the incident the Government introduced the notion of holding an independent inquiry with an independent chairperson—a person who is widely respected—but that was not good enough for the Opposition. Brendan O'Reilly was given terms of reference that allowed him to inquire into anything he wished, with the resources to do so. He chose the people he spoke to; I know he went doorknocking in Stockton. He spoke to the Premier, other Ministers and me at length. He listened to our ideas about what we thought we would change. The Opposition knew about our ideas because they were contained in the documents provided to the Legislative Council under Standing Order 52. Those ideas, generated in the days following the Stockton incident, related to the community's right to know, community consultative committees, an immediate response by industry and, importantly, air quality monitoring.

The Opposition spokesperson pulled the ideas out of the box one by one and claimed that they were his ideas when he did not know what he was talking about. He simply wanted to sensationalise the matter. He made sure there was headline after headline with catchy little phrases that attacked individuals and did not get to the heart of the problem. And the heart of the problem is the system that the previous Government accepted as okay. On radio as recently as Friday, when the Opposition environment spokesperson was asked why the previous Government had not done anything about the system, he said, "It wasn't on our radar." The system should have been on the previous Government's radar because there were 76 major pollution incidents over the past 16 years.

Dr Geoff Lee: How many?

Ms ROBYN PARKER: There were 76 major pollution incidents. Guess what? We have been unable to find one ministerial statement or press release from any Labor Minister about those incidents—not a peep. Do members opposite want to mention that? Of course not. They wanted to get into the media with references to 54 hours, 16 hours, whatever they wanted to say. They did not want to get to the heart of the problem, which was the system inherited by this Government. Unlike the previous Government, we will fix the system. The Opposition simply wanted to do some politicking on the issue. We are having another inquiry. That will be more of "smells like, looks like, feels like a witch-hunt"; it does not look like it will have any substantive outcomes. The Government will participate in that inquiry. In the meantime the Government is getting on with business and fixing what the previous Government would not do.

People should not think that the incident at Orica on Kooragang Island was the first incident

where there were delays in reporting by industry. Under the previous Government, there were more than 30 incidents where there were delays in reporting—delays of 14 days and 37 days. During the time the Leader of the Opposition was the Minister for Climate Change and the Environment there were two major incidents but there was no press release or ministerial statement—nothing from the previous Government. Indeed, there were delays of one day, six days and 37 days, and in one case there was a delay of three years in reporting a major incident. I compliment The Greens on their approach to this matter. They have not been involved in this political witch-hunt or tried to get media headlines in order to raise their stakes as leadership material. They have been sensible. The Hon. Cate Faehrmann introduced a bill in the other place to address the issue of industry being required to respond immediately to a major incident such as a chemical spill. All credit to The Greens for their approach and the reasonable way they have gone about that.

While we accept the Greens approach and have incorporated their ideas as part of our legislative changes, we have gone much further. We have also incorporated a number of the recommendations contained in Mr O'Reilly's comprehensive report. He talked to me and to other Ministers at length, and the Government has accepted all of his recommendations. He discussed at length what we thought needed to change, and more changes will be made. I note that the Leader of the Opposition is now in the Chamber. To correct the record, I had nothing to do with writing the terms of reference for the upper House inquiry. The Government will participate in the inquiry although it is simply a political witch-hunt. Let us be clear about what Mr O'Reilly said about a ministerial statement. He addressed the response by the Minister for the Environment—

Mr John Robertson: What? The 54-hour delay?

ACTING-SPEAKER (Ms Sonia Hornery): Order! The Leader of the Opposition will come to order.

Ms ROBYN PARKER: Mr O'Reilly referred to the way this became a political issue and how media interest intensified. I wonder why.

ACTING-SPEAKER (Ms Sonia Hornery): Order! Members will come to order.

Ms ROBYN PARKER: The Leader of the Opposition was being ignored and had no profile so he used the incident as an opportunity to scare the people in Stockton time and time again. Mr O'Reilly addressed that issue on pages 35 and 36 of his report. He addressed the fact that people were confused and concerned because of all the media and political interest. Members opposite could not care less about the people of Stockton; they care only about their own profiles and their catchy claims in the media. The Leader of the Opposition and the potential Leader of the Opposition, when there is a seat available in the lower House, tried to one up themselves. Let us be honest: That is what the upper House inquiry is all about. I have talked to many people and environmental groups in Hunter communities.

Mr John Robertson: In Stockton?

Ms ROBYN PARKER: Of course in Stockton. I have the neighbouring electorate. I have been in Stockton many times. I do not simply turn up promising to bring Eric Brockovich. I live there. I live in the Hunter Valley and I represent the adjoining electorate. I do not use people and frighten and scare them, unlike members opposite. Today the Government is fixing what the previous Government did to the Environment Protection Authority. That is why I am proud to introduce this legislation. The Government has developed a wide-ranging package of initiatives which includes both legislative and non-legislative reforms that will strengthen the legislation holding industry to account for its environmental performance, improve the community's right to know, provide for an independent and modern Environment Protection Authority to better regulate high-risk industries, increase penalties for non-compliance and, importantly, improve the knowledge of the Environment Protection Authority and the community about the cumulative impacts of industry where they co-exist in close proximity to residential areas.

In essence, the bill will strengthen the ability of the Environment Protection Authority to regulate serious pollution incidents by significantly improving notification requirements and pollution incident response management provisions and increase penalties for non-compliance. These amendments will ensure that serious pollution incidents are avoided to the greatest extent possible and that if they occur they are handled more effectively, quickly and transparently in the future. At the heart of these changes is a renewed commitment to the communities of New South Wales—a commitment that got lost during 16 years of a Labor government. The bill modernises the Environment Protection Authority to ensure that the people of New South Wales have a single, consolidated, modern 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 to establish the Environment Protection Authority with an independent chairperson to lead it, and a smaller reconstituted expertise-based board to make it more accountable.

[Interruption.]

If the Leader of the Opposition had been the Minister for the Environment for more than two months he might have done this in the two major incidents that occurred while he was Minister for the Environment. He could have done this, but did not. He is just interested in politics. He was only there for two months, thank goodness. However, we will do it—just watch and learn. The existing board is made up of part-time members: it is too big and only meets monthly. While this has helped to inform Environment Protection Authority policies and approaches, it is difficult to give a board of that type greater responsibility and accountability. The intention of the Government is to create a new board with clear governance, accountability and reporting requirements; one that is more along the lines of a corporate board that takes greater responsibility for setting a clear direction for the Environment Protection Authority and monitoring and reporting on performance. The chairperson and the board will oversee the effective, efficient and economical operation of

the Environment Protection Authority. They will hold the Environment Protection Authority to account and will report directly to the Minister.

The board will be required to provide an annual regulatory assurance statement to the Minister, which I will table in Parliament. This statement will detail the success of the Environment Protection Authority in reducing risks to human health and material harm to the environment and whether this level of protection satisfactorily compares with other Australian jurisdictions. It will 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, and the impact those industries have on the environment.

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 be the head of the Environment Protection Authority and will be responsible for the strategic direction and management of the authority. The chairperson will be assisted by a new position of Chief Environmental Regulator who will be responsible for the day-to-day running of the Environment Protection Authority and its activities. In order to ensure the Environment Protection Authority stays connected to the community it serves, the chairperson will be required to actively engage with community groups to hear firsthand the concerns of local residents about environmental and health impacts from industry and other activities. The community must be able to have a say about how the industries operate in their local areas. In the first instance this will be achieved through the chairperson meeting with the Community Consultative Committee I am establishing in the lower Hunter and Newcastle areas. There will be an opportunity to expand these committees to other heavily industrialised regions in the future.

The new chairperson will be the community's champion and will ensure that local government has a voice through its involvement in the consultative committees. Where specific issues warrant it, the chairperson will also engage face-to-face with individual councils and their regional bodies. There will be a new role for a Chief Environmental Regulator who will be responsible for the day-to-day delivery of the authority's statutory responsibilities and management of its staff. The Chief Environmental Regulator will report directly to the chairperson. The Protection of the Environment Operations Act 1997 will be amended to require industry to immediately report serious pollution incidents not only to the Environment Protection Authority but also to the Ministry of Health, WorkCover Authority, New South Wales Fire and Rescue and the local council. Consequential amendments are also required, including amendments that ensure the licensee can report the incident immediately, without having to wait for all the information about the incident to be available. However, they must provide further information as and when it becomes available. In essence, not what was acceptable to the last Government—as soon as practicable—we are talking about immediate; that immediately they pick up the phone, not that they wait 16½ hours which Orica did in this case and not that they wait two years, six days, three years 14 days, 37 days, eight days, one day, six days, 19 days, 14 days and so it goes on for at least 32 other incidents in the case of the last Government.

The Environment Protection Authority will now be able to direct an industry, where a pollution incident has occurred, 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. The bill increases the penalties for failure to comply with notification requirements, to provide a more substantial deterrent to the offence. In essence, the maximum penalties for contravening the "duty to notify pollution incident" requirement will be doubled for both corporations and individuals. That means instead of a \$1 million fine, a \$2 million fine for a failure to notify. This figure of \$2 million is a substantial penalty that will ensure industry picks up the phone immediately. Additional provisions in the bill explicitly allow the Ministry of Health and the Environment Protection Authority to require polluters to pay for independent expert advice or studies into the human health and/or environmental impacts 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 will require all environmental 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 provision 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 environment audits to be conducted when it reasonably suspects that an activity has been or is being carried on in an environmentally unsatisfactory manner. The Government has already embarked on a comprehensive audit, the largest audit ever undertaken in New South Wales of major hazardous facilities. No doubt when the audit looks into the behaviour that industry got used to under the last sloppy government mismanagement, the Environment Protection Authority will uncover a whole of truths. I would not be so smug when you have a look at your record and the 76 incidents that happened, two of which were on the watch of the Leader of the Opposition, not that you will be the Leader of the Opposition for long.

ACTING-SPEAKER (Mr Lee Evans): Order! The House will come to order. The Minister has the call.

Ms ROBYN PARKER: Other initiatives in the suite of actions include improving the "community right to know" aspects of environmental regulation. 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 Environment Protection Authority will provide written guidance to ensure that licensees provide this information in a meaningful way. This will also consider the best way to present large amounts of data to make it practical for licensees to allow it to be understood easily by the public.

I have also directed the Environment Protection Authority to commence work to establish an industry-funded environmental monitoring network in the lower Hunter, and in particular for the suburbs of Stockton and Mayfield, to provide information on the potential cumulative impacts that might be occurring. Further investigation will determine whether pollution impacts are occurring or have the potential to develop in the area, the nature of those impacts such as cumulative hot spots or site-specific, the type of pollutants that appear to be causing the impacts and in general where they are occurring, the need for a program to monitor the identified pollutants and whether the program should be funded by licence holders or particular classes of licence holders.

I have directed the Environment Protection Authority to provide a full report to me by March 2012. In addition, a pilot Lower Hunter area community advisory and consultative committee is being established. This will be a body with representation from interested members of the community, local and State Government, and industry. This will ensure that the local community is given the information it needs to regain confidence that its industrial neighbours are addressing issues of community concern. The committee will have the capacity to establish specific groups to address local issues.

To inform industry and the community about the reforms that the Government is implementing and what is expected and required of industry, I am convening a roundtable discussion among a number of groups to formulate evidentiary requirements so that we can work out the best way of informing the community and the best response in an emergency and so that clusters of organisations and responsible authorities are all on the same page. The Office of Environment and Heritage has also commenced a program of audits targeting industries that pose a high risk of environmental harm. Initial audits are being conducted at 42 high-risk facilities across the State that store toxic, hazardous or dangerous substances in large quantities or volumes. These include oil refineries, chemical processing plants, large chemical and gas storage depots and large chemical warehouses. The audits are focusing on making sure that industry manages potential risk to people and the environment, and that adequate emergency response procedures are in place should an incident occur. Any deficiencies found will be systematically addressed.

I take this opportunity to remind members of two motions of which notice has been given in the Legislative Council in relation to the Orica incident. I have already acknowledged the work of the Hon. Cate Faehrmann. The bill supersedes the bill she introduced in that it incorporates the requirements for industry to respond immediately and beyond, and the recommendations of the O'Reilly review. The Hon. Luke Foley gave notice of motion in the other place relating to the need for air quality monitoring sites at Stockton and Mayfield. He does not understand what they are. He got the idea out of our box of papers and documents produced to Parliament in accordance with the Legislative Council's Standing Order 52. As I indicated earlier, air quality monitoring already is underway and the Government is examining locations. Of course, the motion of which he gave notice does not consider the critical elements required for effective environmental monitoring, which needs to be done in a strategic rather than political manner and in a way that considers the potential for cumulative impacts. In other words, the Government is getting on with what a government needs to do and is not playing politics, unlike the Opposition. This Government already is committed to expanding the State's air quality monitoring network that was cut in previous mini-budgets of the former Labor Government.

The suite of initiatives I have outlined to the House not only responds to the recommendations of the O'Reilly review in a comprehensive way. It goes beyond those recommendations to make sure that the needs of communities and the people of New South Wales are at the heart of environmental protection in this State. The bill re-establishes and strengthens the Environment Protection Authority and provides it with capability to deal with major industrial incidences as well as informing and involving the community, thereby placing the Environment Protection Authority at the forefront of environmental regulation. This legislation represents a government getting on with business and being prepared to fix the mistakes and sloppy behaviour of the past government. The bill also represents just the start of what we intend to do to tighten regulation that applies to hazardous industry and pollutant licensing. I commend the bill to the House.