

**PROTECTION OF THE ENVIRONMENT LEGISLATION MISCELLANEOUS AMENDMENTS BILL
2017**

First Reading

Bill introduced on motion by Ms Gabrielle Upton, read a first time and printed.

Second Reading

Ms GABRIELLE UPTON (Vaucluse—Minister for the Environment, Minister for Local Government, and Minister for Heritage) (11:03): I move:

That this bill be now read a second time.

The Protection of the Environment Legislation Miscellaneous Amendments Bill 2017 is an important part of the New South Wales Government's ongoing reforms to improve and align environmental protection legislation. The amendments in this bill will improve the efficiency and effectiveness of environmental legislation and ensure it reflects the community's expectations about both the role of the Environment Protection Authority [EPA] and the responsibilities of the regulated community. The bill will also continue the process of aligning the various pieces of environmental legislation administered by the EPA to ensure consistency in regulatory tools to penalise non-compliance and in prosecution proceedings. This is a continuation of the reforms started by this Government in 2011 with the re-establishment of the EPA as an independent regulator that is robust and respected by the community and industry. The bill includes amendments to the following Acts: the Contaminated Land Management Act 1997, the Protection of the Environment Operations Act 1997, the Protection of the Environment Administration Act 1991 and the Radiation Control Act 1990. I speak now to the specific provisions of the bill and refer, first, to the amendments to the Contaminated Land Management Act.

This bill will amend the Contaminated Land Management Act to adopt the investigative powers available to the EPA under the Protection of the Environment Operations [POEO] Act. This will not result in an expansion of the EPA's powers but will ensure that EPA officers have a consistent set of investigative powers across a suite of environmental legislation they administer. Rather than EPA officers needing to decide under which Act regulatory action will be taken to inform how evidence will be collected, all Protection of the Environment Operations Act provisions relating to investigations will be available to authorised officers under the Contaminated Land Management Act. This includes the power to request assistance for occupiers to provide all necessary information to an authorised officer. This amendment will reduce inefficiencies associated with needing to amend the Contaminated Land Management Act if investigative powers are amended in the Protection of the Environment Operations Act.

Several amendments will be made to the Protection of the Environment Operations Act to improve regulatory efficiency and effectiveness. The first set of amendments relates to notification of licence review requirements. The EPA is required by legislation to advertise licence reviews in a newspaper circulating throughout the State. There are approximately 2,800 issued environment protection licences. The cost of advertising licence reviews is about \$200,000 annually. This money is diverted from other EPA programs. There is little evidence to suggest that these advertisements result in any community input. In the past two years the EPA has received from the public only five submissions on licence reviews.

Changing technology means the community is much more likely to access information on specific licence activities from the public register on the EPA's website, rather than via a newspaper advertisement. The EPA is happy also to accept comments on specific licence activities and respond to these as appropriate at any time. This is already the case with comments received by email, mail or by the environment line that handles general inquiries about environmental issues and reports of

pollution. The bill will amend the Protection of the Environment Operations Act to remove the requirement regarding newspaper advertising and instead require the EPA to seek public input on licence reviews via its website. The review date of each licence will also be added to the public register. The EPA will develop a comprehensive communication strategy to inform the community of this change and to monitor any change in the number of community submissions.

The second set of amendments to the Protection of the Environment Operations Act relates to licences to transport trackable waste. In an industry with a regular turnover of operators, especially small businesses, the current perpetual environmental protection licence for the transport of trackable waste is no longer appropriate. Currently licensees who exit the industry are required to formally surrender their licences. Should they fail to do so they are charged an administration fee and begin accruing punitive interest if they do not pay this fee. In such cases the EPA attempts to contact the licensee and eventually revokes the licence, but the debt for the administration fee plus punitive interest remains and must be cleared before a new licence will be issued. The bill addresses this problem by changing licences to transport trackable waste from being issued on a perpetual basis to instead being issued for fixed terms of not more than five years. A licence can be renewed after five years. However, licensees exiting the industry who do not surrender their licences will no longer accrue any debt and their licences will simply lapse when they expire unless they choose to renew them.

Some trackable wastes are also dangerous goods, for example waste corrosives. At present, a transporter must hold both a dangerous goods vehicle licence and a trackable waste transport licence to transport these wastes. The amendments will align both these requirements and allow for an integrated licence that covers both the existing dangerous goods vehicle licence and the licence for the transport of trackable waste. Only one application will be required for a new licence, or to renew a licence, covering either or both activities. The EPA is working towards enabling applications for new licences, variations and renewals to be submitted online.

The third amendment to the Protection of the Environment Operations Act relates to the limitation period for prosecuting groundwater offences. The hidden nature of groundwater and possible seasonal changes to flows and chemistry makes the investigation of potential groundwater offences very complex. This can result in an investigation not progressing sufficiently to inform a decision to prosecute within the current water pollution limitation period of one year. Extending the groundwater pollution limitation period in which a prosecution can be commenced from one year to three years will ensure the EPA has sufficient time to complete groundwater investigations in all but the most exceptional cases. This time frame is consistent with limitation periods available in relation to illegal waste transport and disposal, which are often complex, and a resource-intensive activity. It is also consistent with the time frame for the commencement of proceedings under the Water Management Act and with similar environmental legislation in South Australia, Tasmania and Western Australia.

The fourth set of amendments to the Protection of the Environment Operations Act relates to updating investigative powers. The Protection of the Environment Operations Act currently allows EPA authorised officers to enter premises by foot or by a motor vehicle or other vehicle, by an aircraft or in any other manner. Increasingly the EPA, like other authorities, has been using unmanned aerial vehicles, or drones, to collect evidence. The bill will amend the Protection of the Environment Operations Act to explicitly provide for the use of unmanned aerial vehicles to collect evidence. EPA authorised officers only use these powers for legitimate investigation purposes and appropriate checks and balances are implemented to ensure that the people's privacy is protected. Protocols for ensuring that unmanned aerial vehicles are used appropriately are in place, and only operators who are licensed and certified by the Civil Aviation Safety Authority [CASA] under the Civil Aviation Safety Regulation, will be used. This power will not extend to residential premises unless covered by a search warrant.

The fifth set of amendments to the Protection of the Environment Operations Act relates to the limitation period for prosecuting repeat waste offences. The Government has a strong track record in tackling rogue elements in the waste industry. A number of new offences were introduced into the Protection of the Environment Operations Act in 2013, along with stronger powers for the EPA to tackle those seeking to subvert the State's laws on appropriate disposal of waste. A new repeat waste offence was introduced to address and deter serious and repeat waste offenders. Under that section, a person commits a repeat waste offence if he or she has been convicted of a waste offence and then commits a separate waste offence within five years after that first conviction. The waste offences covered by the repeat waste offence provisions are prescribed under the Protection of the Environment Operations Act. The offence contains an additional deterrent, namely, that in addition to the normal financial penalty, repeat offenders can receive a custodial sentence of up to two years.

There is currently a limitation period of one year to commence any prosecution for a repeat waste offence. This is shorter than the limitation period for the prescribed waste offences provided for in the Act. For these prescribed offences there is an extended limitation period of three years. These waste offences relate to pollution of land, unlawful waste transport and operating an unlawful waste facility. The longer limitation period for these waste offences reflects the fact that waste investigations are very complex and resource intensive. It does not make sense that if a prescribed waste offence was committed once that a three-year limitation period applies, but if committed twice, a lesser limitation period for prosecution of one year applies. This was a drafting oversight at the time the amendment was made. The EPA considers that the limitation period for the repeat waste offence should be aligned with the limitation period for prescribed waste offences, otherwise the additional deterrent intended by the repeat waste offence may be ineffectual.

The repeat waste offence, along with the most serious tier 1 offences under the Act, is also listed under the Protection of the Environment Administration Act 1991 as a "serious environment protection offence". This means that the EPA board's approval is required before a prosecution can be commenced. This step also has the potential to extend the time required to prepare a case for prosecution. This also necessitates a longer time for investigation for prosecution, as is proposed by this bill. In summary, this amendment would address the issues associated with the complexity of investigating waste offences, additional time required to seek the EPA board's approval to use the repeat waste offence and the inconsistency between the limitation period for the individual waste offence and the respective repeat waste offence. This bill will extend the limitation period for repeat waste offences to three years.

The sixth set of amendments to the Protection of the Environment Operations Act relates to global positioning system [GPS] tracking devices on waste transporters. In addition to increasing penalties and providing for custodial sentencing for repeat waste offenders, in 2014 the Government also gave the EPA the power to require a transporter of waste, who it reasonably suspects is engaging in illegal dumping or other illegal activities in relation to waste, to have a global positioning system device fitted to their trucks. That provision specifically refers to motor vehicles. A motor vehicle is defined in the Road Transport Act 2013 as a vehicle propelled by a motor that forms part of the vehicle. The definition of motor vehicle therefore does not include trailers attached to prime movers or other types of trucks.

This bill amends this provision to ensure GPS devices can be attached to trailers as well as trucks that are used to transport waste. This will ensure rogue waste operators cannot avoid tracking of their illegal waste disposal operations by switching their trailers from a vehicle that has a GPS device fitted, to a vehicle that does not have a GPS device installed. This change will remove this loophole and increase the strong deterrent effect that these GPS devices have. The Government is serious about stopping rogue operators dumping material including asbestos in our streets, parks and community. This amendment will mean the EPA can keep a closer eye on those waste offenders that pose a risk to our community and the environment.

The seventh set of amendments to the Protection of the Environment Operations Act relates to supervisory waste licences. Under the Protection of the Environment Operations Act, a public authority can hold a supervisory licence over a putrescible waste facility operated by another entity—in general this is a private company. These licences were introduced when the Act was first drafted to address community concerns about environmental risks from the growth of private sector operated landfills. However, the supervisory licences are duplicative, given the waste facility operator also holds an environmental protection licence, and do not provide any regulatory powers to the public authority. The EPA regulates the waste facility through the environment protection licence. This bill will remove the supervisory class of licence, thereby reducing red tape for public authorities. The amendments will not result in any lessening of oversight of these putrescible waste facilities.

This bill amends the Protection of the Environment Administration Act 1991. This Act currently provides for the establishment of a number of consultation forums, an education council and advisory committees. Neither of the environment protection community consultation forums has met since 2003 and the education council was discontinued after 2009. In their place, the EPA has established the Newcastle Community Consultation Committees on the Environment, as well as specialist consultation committees in Rutherford, relating to odour; the lower and upper Hunter, relating to air quality; Lake Macquarie, relating to lead; and for the Williamstown RAAF Base contamination issue.

The EPA has also established the Botany Industrial Park Community Consultation Committee and the Botany Community Information Group. It has supported industry liaison committees in the Botany area which facilitate interactions between industry and the local communities directly impacted by those industries. In the Illawarra it has established the Port Kembla Pollution Meeting, the Port Kembla Harbour Environment Group and several industry community consultative committees including one for BlueScope Steel. These committees have been formed in direct response to community concerns and are informed by a range of stakeholders, including independent experts where required. The current provisions in the Protection of the Environment Administration Act are too prescriptive in their membership requirements as well as too broad in the area to which they apply, for example, four currently convened committees cover the area previously covered by the Hunter Community Consultation Forum.

Similarly, education programs are now more targeted and are developed in consultation with appropriate community groups to be consistent with the New South Wales Department of Education Environmental Education Policy for Schools. This bill will remove the provisions requiring the establishment of these prescriptive particular forums. The EPA will continue to consult directly with affected communities in New South Wales and listen to their concerns, but it will do so in forums which are more targeted to specific communities and issues, and make the best use of modern communication tools for the efficient exchange of information.

This bill will make various amendments to the Radiation Control Act including to extend the limitation period in which prosecutions can be brought for an offence under the Act from 12 months to two years. Illegally disposing of, or abandoning, radioactive sources is a serious environmental crime. Handling of such sources to retrieve serial numbers and other identifiers requires the use of specialist facilities and forensic experts at the Australian Nuclear Science and Technology Organisation. This cannot be done in the EPA laboratories and requires more time than other types of testing.

Tracing who actually owned a radiation source may also require interstate and international inquiries as these sources are only manufactured in Canada and the United States. Records have only recently been computerised and checking older paper records is very time consuming. Therefore, the time needed to determine who disposed of a radioactive source illegally can take a lot longer than the current 12 month limitation period in the Act. Proceedings for offences under the

Dangerous Goods (Road and Rail Transport) Act 2008 have a two-year statute of limitation period in which prosecutions can be commenced. It is therefore considered appropriate to align the statute of limitation period for prosecutions brought under the Radiation Control Act.

Despite their potential seriousness, currently the maximum penalty amounts that can be imposed by a Local Court or by way of a penalty notice for radiation offences under both the Radiation Control Act and its regulation are extremely low in comparison with those available for other environmental offences. The maximum penalty that may be imposed by a Local Court is 100 penalty units or \$11,000. The maximum penalty notice that can be imposed for offences under the Radiation Control Regulation is set in the Radiation Control Act as \$1,500.

It is proposed to amend the Radiation Control Act to double the maximum penalty that can be imposed by a Local Court to 200 penalty units or \$22,000. It is also proposed to amend the Radiation Control Act to remove the limit on penalty notice amounts. While the EPA does not currently intend to increase penalty notice amounts in the regulation, this proposed amendment will allow it to do so at an appropriate time in the future. No other environmental legislation in New South Wales imposes a maximum penalty notice amount for offences under its accompanying regulation. Some other jurisdictions do set maximum penalties for radiation offences in the primary Act but these are considerably higher than in New South Wales.

The Land and Environment Court is a specialist environmental court that can hear cases and determine prosecutions brought under most environmental legislation in New South Wales. However, prosecutions for offences under the Radiation Control Act are heard in the Local Court and the Supreme Court in its summary jurisdiction. It is proposed to move radiation control prosecutions that can currently be heard in the Supreme Court to the Land and Environment Court for consistency. Further, it is also proposed to allow the Land and Environment Court to hear appeals against EPA decisions under the Radiation Control Act and its regulations.

To facilitate the changes relating to radiation control prosecutions and appeals, there will be consequential amendments to the Land and Environment Court Act. The court has signalled that it supports these changes. Finally, it is proposed to remove the requirement for the EPA to have the consent of the Minister in order to commence court proceedings. This last requirement is inconsistent with the prosecutorial independence of the EPA. These changes are not expected to increase the workload of that court in any appreciable manner and the court has agreed to these changes also.

In conclusion, the changes in this bill will better align the environmental legislation of the EPA, ensuring that it remains up to date and relevant and continues to meet the needs of the environment, the community and business in New South Wales. This bill provides the EPA with improved and more efficient regulatory tools to address a range of environmental issues by, for example, giving the EPA the time it needs to investigate complex environmental offences. This bill reduces red tape by removing unnecessary regulatory burdens and regulatory duplication for licensees. It also helps to ensure that the resources of the EPA are able to be better focused on addressing serious environmental issues and on programs most likely to deliver positive environmental outcomes for our communities across New South Wales. I commend the bill to the House.

Debate adjourned.