

PROTECTION OF THE ENVIRONMENT LEGISLATION MISCELLANEOUS AMENDMENTS BILL 2017

Second Reading

The Hon. BEN FRANKLIN (16:34): On behalf of the Hon. Don Harwin: 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 ongoing reforms of the New South Wales Government to improve and align environmental protection legislation. The amendments in the bill will improve the efficiency and effectiveness of environmental legislation and ensure that it reflects the community's expectations about 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 will now speak to the specific provisions of the bill. First, the bill will amend the Contaminated Land Management Act to adopt the investigation powers available to the EPA under the Protection of the Environment Operations Act. This will ensure that the EPA officers have a consistent set of investigation powers, regardless of the piece of legislation that may apply to a potential offence. All provisions relating to authorised officer powers will now be available to those using those powers under the Contaminated Land Management Act, including the power to request assistance and for occupiers to provide all necessary information to an authorised officer. This amendment will also reduce inefficiencies associated with needing to amend the Contaminated Land Management Act if investigation powers are amended in the Protection of the Environment Operations Act.

Several amendments to the Protection of the Environment Operations Act are proposed 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. Approximately 2,800 environment protection licences are issued and the cost of advertising licence reviews is around \$200,000 annually. That money is diverted from other EPA programs. There is little evidence to suggest that those advertisements result in any community input. The EPA has received only five submissions on licence review from the public in the past two years. Changing technology means that the community is much more likely to access information on specific licensed activities from the public register on the EPA's website rather than via a newspaper advertisement. We must move with the times.

The EPA is also happy to accept comments on specific licensed activities and respond to those as appropriate outside of licensed review periods. Such comments are generally unsolicited and come in via mail, email or the environment line, which handles general inquiries about environmental issues and reports of pollution. This bill will amend the Protection of the Environment Operations Act to remove the requirement regarding newspaper advertising and, instead, will require the EPA to seek public input on licensed 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 environment protection licence for the transport of trackable waste is no longer appropriate. Licensees who exit the industry are required to formally surrender their licence. Should they fail to do this, they are charged another annual administrative fee and begin to accrue punitive interest when they do not pay the fee. In such cases, the EPA attempts to contact the licensee and eventually revokes the licence, but the debt for the administrative fee plus punitive interest remains and must be cleared before a new licence is issued.

The bill will address 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, a licensee exiting the industry who does not surrender their licence will no longer accrue any debt. Their licence will simply lapse when it expires unless they choose to renew it. 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. Some delays can be managed by requiring the drilling of additional monitoring wells and taking and analysing water samples more frequently. However, this will significantly increase costs for both a licensee and the EPA without guaranteeing conclusive results within the limitation period. Extending the groundwater pollution limitation period in which a prosecution can be commenced from one year to three years will ensure that 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 for certain other matters regulated by the EPA, which are often complex matters. It is also consistent with the time frame for the commencement of proceedings under the Water Management Act and with those under 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, 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 will use these powers only for legitimate investigation purposes, and appropriate checks and balances will be implemented to ensure that people's privacy is protected. This power will not extend to residential premises unless covered by a search warrant.

The fifth amendment 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 the appropriate disposal of waste. A new repeat waste offence was introduced to address and to deter serious and repeat waste offenders. Under that section, a person commits a repeat waste offence if they have been convicted of a waste offence and then commit a separate waste offence within five years after that conviction. 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 prescribed waste offences that are captured by the repeat waste offence provisions. 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 then a three-year limitation period applies, but if committed twice then a lesser limitation period 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" for which 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 limitation period. In summary, this amendment would address the issues associated with the complexity of investigating waste offences, the 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. The 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 GPS 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. The 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 the 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 sixth 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. These licences are duplicative, given the waste facility operator itself 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. The bill will remove this class of licence, thereby reducing red tape for public authorities who are required to hold a supervisory licence. The amendment will, however, not result in any lessening of oversight of these putrescible waste facilities.

The bill also amends the Protection of the Environment Administration Act 1991. That 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 that 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 they apply to—for example, four currently convened committees cover the area previously covered by the Hunter Community Consultation Forum. Similarly, education programs are more targeted, developed in consultation with appropriate community groups and consistent with the New South Wales education department's Environmental Education Policy for Schools. A broad range of material for teachers and primary and high school students is available on the website of the Office of Environment and Heritage, including modules on climate change, energy, stormwater, sustainability, waste and water quality.

Educational material is also available for biodiversity and threatened species, heritage and transport issues. The website includes information about sustainable schools and links to information on grants, including the Sustainable Schools Grants available under the Environmental Trust. The website also provides links to the Environmental Education Centres across the State that schools can visit or partner with. The bill will remove the provisions requiring the establishment of these 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 that are more targeted to specific communities and issues and the EPA will make the best use of modern communication tools for the efficient exchange of information.

The 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 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. Proceedings for offences under the Dangerous Goods (Road and Rail Transport) Act 2008 have a two-year statute of limitations period in which prosecutions can be commenced. It is therefore considered appropriate to align the 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 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 if it is deemed necessary. No other environmental legislation in New South Wales imposes a maximum penalty notice amount for offences under its accompanying regulation. Some other jurisdictions 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 this State. However, prosecutions for offences under the Radiation Control Act are heard in the Local Court and 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. 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.

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 businesses 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. I commend the bill to the House.