

Passed by both Houses



New South Wales

Protection of the Environment Operations Amendment (Asbestos Waste) Bill 2018

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2018

Clerk of the Parliaments



New South Wales

Protection of the Environment Operations Amendment (Asbestos Waste) Bill 2018

Act No , 2018

An Act to amend the *Protection of the Environment Operations Act 1997* in relation to offences involving asbestos waste; and for related purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Protection of the Environment Operations Amendment (Asbestos Waste) Act 2018*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) A day may not be appointed under subsection (1) that commences Schedule 1 [11] earlier than 12 months after the date of assent to this Act.

Schedule 1 Amendment of Protection of the Environment Operations Act 1997 No 156

[1] Section 142A Pollution of land

Insert “\$2,000,000 (if the offence involves asbestos waste) or” before “\$1,000,000” in paragraph (a) of the penalty provision in section 142A (1).

[2] Section 142A (1), penalty provision

Insert “\$500,000 (if the offence involves asbestos waste) or” before “\$250,000” in paragraph (b).

[3] Section 143 Unlawful transporting or depositing of waste

Insert “\$2,000,000 (if the offence involves asbestos waste) or” before “\$1,000,000” in paragraph (a) of the penalty provision in section 143 (1).

[4] Section 143 (1), penalty provision

Insert “\$500,000 (if the offence involves asbestos waste) or” before “\$250,000” in paragraph (b).

[5] Section 144 Use of place as waste facility without lawful authority

Insert “\$2,000,000 (if the offence involves asbestos waste) or” before “\$1,000,000” in paragraph (a) of the penalty provision in section 144 (1).

[6] Section 144 (1), penalty provision

Insert “\$500,000 (if the offence involves asbestos waste) or” before “\$250,000” in paragraph (b).

[7] Sections 144AAA and 144AAB

Insert after section 144:

144AAA Unlawful disposal of asbestos waste

- (1) A person disposing of asbestos waste off the site at which it is generated must do so at a place that can lawfully receive the waste.

Maximum penalty:

- (a) in the case of a corporation—\$2,000,000, or
(b) in the case of an individual—\$500,000.

Note. An offence against subsection (1) committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

- (2) In this section, *dispose* of asbestos waste includes to dump, abandon, deposit, discard, reject, discharge or emit anything that constitutes asbestos waste, and also includes to cause or permit the disposal of asbestos waste.

144AAB Re-use and recycling of asbestos waste prohibited

A person must not cause or permit asbestos waste in any form to be re-used or recycled.

Maximum penalty:

- (a) in the case of a corporation—\$2,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or

- (b) in the case of an individual—\$500,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

Note. An offence against this section committed by a corporation is an offence attracting special executive liability for a director or other person involved in the management of the corporation—see section 169.

[8] Section 144AB Repeat waste offenders

Insert after section 144AB (1) (d):

- (e) section 144AAA (1),
- (f) section 144AAB.

[9] Section 169 Liability of directors etc for offences by corporation—offences attracting special executive liability

Insert after section 169 (1A) (p):

- (p1) section 144AAA (1),
- (p2) section 144AAB,

[10] Section 216 Time within which summary proceedings may be commenced

Insert after paragraph (c) of the definition of *prescribed offence* in section 216 (6):

- (ca) an offence under section 144AAA (Unlawful disposal of asbestos waste) or 144AAB (Re-use and recycling of asbestos waste prohibited),
or

[11] Section 241 Matters to be considered in imposing penalty

Insert after section 241 (1) (e):

- (f) the presence of asbestos in the environment.

[12] Dictionary

Insert in appropriate order:

asbestos has the same meaning as it has in Schedule 1.

asbestos waste has the same meaning as it has in Schedule 1.

Schedule 2 Consequential amendments to regulations

2.1 Protection of the Environment Operations (General) Regulation 2009

[1] Schedule 6 Penalty notice offences

Insert after the matter relating to section 144 of the *Protection of the Environment Operations Act 1997*:

Section 144AAA	1, 2	\$4,000 (if the penalty notice is served by a class 1 enforcement officer) or \$7,500 (in any other case)	\$8,000 (if the penalty notice is served by a class 1 enforcement officer) or \$15,000 (in any other case)
Section 144AAB	1, 2	\$4,000 (if the penalty notice is served by a class 1 enforcement officer) or \$7,500 (in any other case)	\$8,000 (if the penalty notice is served by a class 1 enforcement officer) or \$15,000 (in any other case)

[2] Schedule 6

Omit the matter relating to clauses 80 (1) and 81 of the *Protection of the Environment Operations (Waste) Regulation 2014*.

2.2 Protection of the Environment Operations (Waste) Regulation 2014

[1] Clause 80 Disposal of asbestos waste

Omit clause 80 (1).

[2] Clause 80 (5)

Insert after clause 80 (4):

- (5) In this clause, *landfill site* means a landfill site that can lawfully receive asbestos waste.

[3] Clause 81 Re-use and recycling of asbestos waste prohibited

Omit the clause.