



## NSW Legislative Council Hansard

### Local Government Amendment (Waste Removal Orders) Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 7 June 2006.

#### Second Reading

**The Hon. TONY KELLY** (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [11.30 a.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

#### Leave granted.

The Local Government Amendment (Waste Orders Removal) Bill has been drafted to respond to a need for local councils to be able to react quickly and effectively to a situation that is posing a threat to public health or the health of an individual on private land. The Local Government Act currently allows councils to issue an order to land owners and occupiers in a number of situations to preserve healthy conditions. For example, an owner or occupier can be ordered to restore land to a safe and healthy condition. The current powers to issue orders cannot always allow a council to get a land owner to make their land safe and healthy as quickly as is needed. This is because before serving an order under current arrangements, a council is required to give notice of its intention to serve the order so that the recipient has an opportunity to make representations to the council about the order.

These representations may be both written and oral and legal representation may be used. If, after hearing the representations, the council decides to go ahead and issue the order then the recipient can appeal to the Land and Environment Court. There is an existing order relating to the conduct of an activity on premises that constitutes a life threatening hazard or threat to public health or safety. This order can be given in an emergency, which would mean that the council would not have to give notice of the order or hear representations. However, the recipient can still appeal against the making of the order to the Land and Environment Court. This can mean delays of as many as 18 months or more before the clean up can be achieved. Public health is a very serious matter. Councils should be able to respond promptly to situations where public health or the health of an individual is put at risk. This bill will allow councils to issue a new order on an owner or occupier of residential premises requiring them to remove and dispose of waste that constitutes a threat to public health or the health of an individual.

The new 22A order can be issued to remove or dispose of waste on residential premises where the waste, in the opinion of an environmental health officer, is causing or is likely to cause a threat to public health or the health of an individual. A 22A order can also require the owner or occupier of residential premises to refrain from keeping the waste. A 22A order could remain in effect for up to 5 years. At any time during the period, if there is a failure to comply with the terms of the order, the council may enter and clean up the land or premises without the need to serve a further order. The cost of the clean up work is to be borne by the person upon whom the order was issued. For example, if it is the occupier who is responsible for the accumulation of waste then the order will be issued to the occupier. If the owner is responsible for the accumulation of waste then the owner will be issued with the order. This will avoid a situation where a landlord is forced to bear the cost of clean up orders served as a result of a tenant's conduct and vice versa.

This is consistent with current provisions of the Act. It is up to council to determine whether or not to charge for the cost of clean up work, taking into consideration each case on its own merits. The power to issue a 22A order is different from the usual types of orders because a council will not first have to issue a notice of its intention to issue the order and hear submissions as to why the council should not issue this order. Also, there is no right to appeal to the Land and Environment Court about the council's intention to issue the order. Because of this, a 22A order can only be issued where an environmental health officer, as defined in the Public Health Act 1991, is of the opinion that the waste causes or is likely to cause a threat to public health or the health of any individual. Before issuing a 22A order a council will be required to consider whether the order will make a resident homeless. If the order does have that effect and the resident cannot find alternative satisfactory accommodation then the council will be required to provide the resident with information as to satisfactory alternative accommodation.

This is already a requirement in the Act where other orders are issued. A council will have to give the order in writing. This will make sure that the person to whom the order is issued knows their obligations. The council will also be required to give reasons for the order being made. These may be provided in the order or provided in a separate document. This is consistent with the current provisions of the Act in relation to other orders in section

124. A council will have to give the person a reasonable period to comply with the order. This is to give the resident or owner the opportunity to clean up the premises themselves at their own cost. However, if the situation is so serious that the council believes the circumstances constitute a serious risk to health or safety, or an emergency, then the council will be able to require the clean up to occur immediately. The effect of the order may involve council officers repeatedly entering onto land or premises over the maximum five year period.

Councils will be required to notify the owner or occupier served of the intention to enter the property on a certain date and at a certain time to clean up. This notice will be required each time the council seeks to enter the property during the period the order is in force. This means that when the work required to give effect to the terms of the order has not been done at any time during the period the order is in force, the council can enter the property and carry out the necessary clean up work. While it is recognised that this type of order may have the potential to deprive the resident of their inherent right to quiet enjoyment of their property and their right to privacy, in such situations it is the right of the public and individuals to have their health protected that must be the paramount consideration. The exception to the requirement to give notice is where the threat to public health or the health of an individual is so serious that the clean up must be done urgently. The bill requires that the paramount consideration in giving this order is the protection of public health.

If the terms of the order are not complied with in the period specified and the council is required to do the clean up work itself then it can resolve to recover the cost of the work from the person issued with the order. The Act already allows this to occur where other orders are issued. The bill removes some appeal rights that relate to the process of issuing clean up orders, but it does not remove the right of a person to bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of the Act. This means that where a person believes that a council had no grounds to issue an order in terms of order 22A they can ask the Court to review the decision. For example, if the person did not believe the waste on their premises constituted or was likely to constitute a threat to public health they could ask the Court to set aside the order. Where a person has complied with the terms of the order but believes that the order should not have been made, they can seek compensation for expenses incurred.

This can only occur if the Court finds that the giving of the order was unsubstantiated or the terms of the order were unreasonable. The amendments in this bill will significantly improve a council's ability to deal with residents who fill their yards with rubbish collected from the streets, garbage bins and council clean-ups. We are not talking about unsightly conditions or visual amenity. We are talking about a threat to the public health of neighbours and the public. A recent example of where this reform is urgently needed is in Waverley. Waverley Council has tried for around 17 years to get the owner of residential premises in Bondi to rectify the unhealthy condition of the premises that posed a health risk to the public, neighbours and the landowner. The rubbish was attracting rodents and other pests and spilled out from the premises onto the pavement. At one point in time, rubbish had been accumulated up to the eaves of the house. The Council issued an order to clean up the premises under its existing powers but the Council's decision to issue the order was appealed to the Land and Environment Court.

That appeal process took 8 hearings before the Court recognised that the Order could be validly issued and that the clean up was required. The Court then gave a further two months to allow the landowner to clean the land up herself. It was only when she failed to do this that the Court allowed the Council to enter the property and clean it up. That is not the whole of the story. The Council has reportedly spent around \$27,000 on its latest clean up of these premises and another \$30,000 on legal costs defending its decision to issue the orders in the Land and Environment Court. This is because the owner continues to collect rubbish after the Council cleans it up. The story has not ended yet. There are recent media reports that the owner of the Bondi premises is again filling her yard with rubbish. The Council has indicated that the rubbish again started to accumulate soon after the Council had cleared it away in December last year. The Council has again issued a notice of an intention to issue a clean up order and the landowner has again appealed to the Land and Environment Court.

On the last occasion the Court recognised that there was a threat to public health as a result of the accumulated rubbish. The neighbours were deeply concerned about their health and amenity due to the increase in odours and vermin in the area. The bill will provide Waverley Council with the ability to enter the Bondi premises and clean them up without the current delays. The local residents will not be so affected by one resident's behaviour that is putting her own health and the health of the public at risk. But this is not an isolated instance. There has been an instance in the Fairlight area at Manly where a resident was collecting rubbish and storing it in the yard. This too created an unhealthy situation for the resident and the neighbours. I recognise that sometimes there are underlying mental health issues that contribute to these unfortunate situations. In such circumstances councils are expected to proceed in a sensitive manner when issuing clean up orders. Nevertheless councils must be able to act where public health is threatened.

This is not only for the sake of the person collecting the waste, but also for the sake of other residents of the premises and neighbours and the wider public. It is a requirement of this bill that councils give the protection of public health paramount consideration in issuing this order. Whenever a Court reviews a matter relating to order 22A, the Court will also be bound to give the protection of public health paramount consideration. Copies of the bill and briefing notes have been provided to the LGSA and the Opposition spokesman. The Mayor of Waverley

has said that the amendment will quote "save councils large amounts of money in legal costs; it will mean we can act faster to solve the problem" . This bill provides a sensible and timely way for councils to deal with the problem. I commend the bill to the House.