

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

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

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**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.