



New South Wales

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

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament. This Bill is cognate with the *Retirement Villages Amendment Bill 2018*.

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Protection of the Environment Operations Act 1997* (the *principal Act*) as follows:
  - (i) to transfer certain asbestos waste offences from the *Protection of the Environment Operations (Waste) Regulation 2014* to the principal Act and increase penalties for those offences,
  - (ii) to increase penalties for other waste offences (such as land pollution) that involve asbestos waste,
  - (iii) to make the presence of asbestos a sentencing consideration, and
- (b) to make related and consequential amendments to the principal Act, and
- (c) to make consequential amendments to the *Protection of the Environment Operations (General) Regulation 2009* and the *Protection of the Environment Operations (Waste) Regulation 2014*.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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

**Schedule 1 [1]–[6]** increase the penalties for offences relating to the pollution of land, the unlawful transporting or depositing of waste and the use of a place as a waste facility without lawful authority, where the offences involve asbestos waste. Penalties are increased from \$1,000,000 to \$2,000,000 for corporations and from \$250,000 to \$500,000 for individuals.

**Schedule 1 [7]** transfers asbestos waste offences relating to the disposal of asbestos waste and the re-use and recycling of asbestos waste from the *Protection of the Environment Operations (Waste) Regulation 2014* to the principal Act (the **transferred offences**). Penalties for the transferred offences are increased in line with the amendments made by Schedule 1 [1]–[6].

**Schedule 1 [8]** includes the transferred offences for the purposes of the repeat waste offence under the principal Act. The maximum penalty for repeat waste offenders includes imprisonment.

**Schedule 1 [9]** provides that the transferred offences are special executive liability offences under the principal Act.

**Schedule 1 [10]** provides that summary proceedings for the transferred offences must be commenced within but not later than 3 years after the date on which the offence is alleged to have been committed.

**Schedule 1 [11]** provides that the presence of asbestos will be a factor that the court must take into consideration when sentencing offenders.

**Schedule 1 [12]** inserts definitions for *asbestos* and *asbestos waste* in the Dictionary.

## **Schedule 2      Consequential amendments to regulations**

**Schedule 2.1** makes consequential amendments to the *Protection of the Environment Operations (General) Regulation 2009*, including the prescription of the transferred offences as penalty notice offences.

**Schedule 2.2** makes consequential amendments to the *Protection of the Environment Operations (Waste) Regulation 2014*, including to omit the transferred offences from the regulation.



New South Wales

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

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New South Wales

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

No. , 2018

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## **A Bill for**

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

**1 Name of Act**

2

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

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4

**2 Commencement**

5

This Act commences on a day or days to be appointed by proclamation.

6

<b>Schedule 1</b>	<b>Amendment of Protection of the Environment Operations Act 1997 No 156</b>	1
		2
<b>[1] Section 142A Pollution of land</b>		3
	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).	4 5
<b>[2] Section 142A (1), penalty provision</b>		6
	Insert “\$500,000 (if the offence involves asbestos waste) or” before “\$250,000” in paragraph (b).	7 8
<b>[3] Section 143 Unlawful transporting or depositing of waste</b>		9
	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).	10 11
<b>[4] Section 143 (1), penalty provision</b>		12
	Insert “\$500,000 (if the offence involves asbestos waste) or” before “\$250,000” in paragraph (b).	13 14
<b>[5] Section 144 Use of place as waste facility without lawful authority</b>		15
	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).	16 17
<b>[6] Section 144 (1), penalty provision</b>		18
	Insert “\$500,000 (if the offence involves asbestos waste) or” before “\$250,000” in paragraph (b).	19 20
<b>[7] Sections 144AAA and 144AAB</b>		21
	Insert after section 144:	22
<b>144AAA Unlawful disposal of asbestos waste</b>		23
(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.	24 25
	Maximum penalty:	26
(a)	in the case of a corporation—\$2,000,000, or	27
(b)	in the case of an individual—\$500,000.	28
	<b>Note.</b> 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.	29 30 31
(2)	In this section, <i>dispose</i> 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.	32 33 34
<b>144AAB Re-use and recycling of asbestos waste prohibited</b>		35
	A person must not cause or permit asbestos waste in any form to be re-used or recycled.	36 37
	Maximum penalty:	38
(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	39 40 41

	(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.	1 2
	<b>Note.</b> 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.	3 4 5
<b>[8]</b>	<b>Section 144AB Repeat waste offenders</b>	6
	Insert after section 144AB (1) (d):	7
	(e) section 144AAA (1),	8
	(f) section 144AAB.	9
<b>[9]</b>	<b>Section 169 Liability of directors etc for offences by corporation—offences attracting special executive liability</b>	10 11
	Insert after section 169 (1A) (p):	12
	(p1) section 144AAA (1),	13
	(p2) section 144AAB,	14
<b>[10]</b>	<b>Section 216 Time within which summary proceedings may be commenced</b>	15
	Insert after paragraph (c) of the definition of <i>prescribed offence</i> in section 216 (6):	16
	(ca) an offence under section 144AAA (Unlawful disposal of asbestos waste) or 144AAB (Re-use and recycling of asbestos waste prohibited), or	17 18 19
<b>[11]</b>	<b>Section 241 Matters to be considered in imposing penalty</b>	20
	Insert after section 241 (1) (e):	21
	(f) the presence of asbestos in the environment.	22
<b>[12]</b>	<b>Dictionary</b>	23
	Insert in appropriate order:	24
	<i>asbestos</i> has the same meaning as it has in Schedule 1.	25
	<i>asbestos waste</i> has the same meaning as it has in Schedule 1.	26

<b>Schedule 2</b>	<b>Consequential amendments to regulations</b>	1
<b>2.1</b>	<b>Protection of the Environment Operations (General) Regulation 2009</b>	2
<b>[1]</b>	<b>Schedule 6 Penalty notice offences</b>	3
	Insert after the matter relating to section 144 of the <i>Protection of the Environment Operations Act 1997</i> :	4
		5
	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)
<b>[2]</b>	<b>Schedule 6</b>	6
	Omit the matter relating to clauses 80 (1) and 81 of the <i>Protection of the Environment Operations (Waste) Regulation 2014</i> .	7
		8
<b>2.2</b>	<b>Protection of the Environment Operations (Waste) Regulation 2014</b>	9
<b>[1]</b>	<b>Clause 80 Disposal of asbestos waste</b>	10
	Omit clause 80 (1).	11
<b>[2]</b>	<b>Clause 80 (5)</b>	12
	Insert after clause 80 (4):	13
	(5) In this clause, <i>landfill site</i> means a landfill site that can lawfully receive asbestos waste.	14
		15
<b>[3]</b>	<b>Clause 81 Re-use and recycling of asbestos waste prohibited</b>	16
	Omit the clause.	17