

## ENVIRONMENTAL OFFENCES AND PENALTIES BILL 1989

### NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to supplement other laws which protect the environment from pollution:

- (a) by creating additional offences relating to:
    - (i) the disposal of waste without lawful authority; and
    - (ii) the leaking, spillage and escape of substances from their containers, by which harm is or is likely to be caused to the environment; and
  - (b) by enabling the imposition of penalties for the additional offences of:
    - (i) up to \$1,000,000 in the case of a corporation; and
    - (ii) up to \$150,000 or 7 years imprisonment, or both, in any other case; and
  - (c) by enabling courts to make orders restricting the disposition of property or other dealings with property by a person against whom proceedings have been brought under the proposed Act so as to ensure that the person has sufficient assets to pay:
    - (i) the costs of cleaning up environmental pollution caused by the person; and
    - (ii) any other damages which may be awarded against the person in respect of that environmental pollution.
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**PART 1 - PRELIMINARY**

**Clause 1** specifies 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.

**Clause 3** sets out the object of the Act.

**Clause 4** defines terms used in the proposed Act.

**PART 2 - OFFENCES**

**Clause 5** creates offences relating to the disposal of waste, without lawful authority, in a manner which harms or is likely to harm the environment.

**Clause 6** creates offences relating to the leaking, spillage or escape of a substance from its container in a manner which harms or is likely to harm the environment. An offence is committed by the person who wilfully or negligently caused the leak, spill or escape, the person in possession of the substance, the owner of the substance, the owner of the container, and the owner and occupier of the land on which the container is located at the time of the leak, spill or escape.

**Clause 7** provides defences to the offences created under clauses 5 and 6. It is a defence if:

- (a) it was not reasonably practicable to comply with the relevant provision of the proposed Act; or
- (b) the commission of the offence was due to causes over which the defendant had no control and against the happening of which it was impracticable for the person to make provision.

**Clause 8** provides that a corporation that commits an offence against the proposed Act may be fined up to \$1,000,000. A person, not being a corporation, who commits such an offence may be fined up to \$150,000 or imprisoned for up to 7 years, or both.

**Clause 9** sets out the matters which a court is to consider when imposing a penalty for an offence. These include the extent of the harm to the environment and the extent to which the person committing the offence could have taken practical measures to prevent it from occurring.

**Clause 10** enables the directors of a corporation to be prosecuted in certain circumstances for offences committed by the corporation.

**PART 3 - PROCEEDINGS FOR OFFENCES**

**Clause 11** provides that proceedings for an offence against the proposed Act may be dealt with summarily before a Local Court or the Land and Environment Court or on indictment before the Supreme Court. The penalties which may be imposed in proceedings dealt with summarily are reduced to \$10,000 or 2 years imprisonment, or both, in the case of a Local Court and, if the defendant is not a corporation, to

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\$150,000 or 2 years imprisonment, or both, in the case of the Land and Environment Court.

Clause 12 provides that proceedings dealt with summarily must be commenced not later than 3 years after the commission of the offence.

Clause 13 provides that proceedings may only be instituted with the consent of specified persons.

**PART 4 - RESTORATION, COMPENSATION AND DAMAGES**

Clause 14 provides that the court may order a person convicted of an offence against this Act to "clean-up" after the offence and to compensate any public authority or person for any "clean-up" costs it has incurred or damage it has suffered as a result of the offence.

Clause 15 enables public authorities and other persons to take proceedings for loss or damage suffered by them as a consequence of the commission of an offence.

Clause 16 makes provision for cases in which there is a real risk that an offender may dispose of his or her property in order to avoid having to pay "clean-up" costs or damages. The person bringing proceedings may apply to a court for an order restraining the defendant from disposing of his or her property and restricting the defendant in dealing with his or her property.

Clause 17 provides that if a court makes a restraining order it may make any ancillary orders it considers appropriate. These include an order for the examination of a person on oath to find out such matters as the nature and location of the property of the defendant.

Clause 18 provides that if, in relation to a defendant against whom a court has made a restraining order, the defendant is ordered to pay "clean-up" costs or damages, a charge is created on the property the subject of the restraining order.

Clause 19 provides for the registration of restraining orders as a means of giving notice to third parties of the existence of the order.

Clause 20 makes it an offence to knowingly contravene a restraining order. It also makes provision for a court to set aside any dealing in property in contravention of such an order.

Clause 21 gives the court the power to revoke a restraining order in certain circumstances.

Clause 22 provides that a restraining order ceases to have any effect if the defendant is acquitted or if the charge is withdrawn.

**PART 5 - GENERAL**

Clause 23 provides that the proposed Act binds the Crown.

Clause 24 provides that if certain public bodies exercise their functions under an Act or statutory rule in such a way as to harm the environment, the Governor-in-Council may appoint another person to exercise those functions. Unless sooner revoked, the appointment ceases to have effect after the expiration of

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21 sitting days of the Legislative Assembly from the date on which the appointment was made. The clause applies only to local and county councils and other public bodies constituted under an Act which are not subject to Ministerial control.

**Clause 25** enables the Minister to bring proceedings to restrain a breach, or a threatened or apprehended breach, of any Act or statutory rule which might harm the environment. The Court is empowered to make whatever order it thinks fit in the circumstances, including an order suspending pollution control licences or authorities.

**Clause 26** gives the Minister the power to suspend or revoke such licences or authorities if the holder is convicted of a pollution offence.

**Clause 27** provides for the appointment of analysts for the purposes of the proposed Act. It also provides for the findings of such an analyst to be given in evidence in court by means of a certificate signed by the analyst.

**Clause 28** provides for the making of regulations.

**Clause 29** makes a consequential amendment to the Land and Environment Court Act 1979.

**Clause 30** makes consequential amendments to the State Pollution Control Commission Act 1970. It also amends section 17P (2) of the Act which relates to information which the holder of a pollution control licence or authority is required to provide to the Commission in accordance with a condition of the licence or authority. The amendment will mean that the holder must furnish the information even if it tends to incriminate the holder and that the information may in fact be used to incriminate the holder.

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