



New South Wales

Protection of the Environment Operations Amendment (Prosecutions) Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to transfer the power to prosecute serious environmental offences from the Environment Protection Authority to the Director of Public Prosecutions and the Attorney General. That object is achieved by:

- (a) requiring the Environment Protection Authority to inform the Director of Public Prosecutions if, as a result of the Authority's investigations, there is a prima facie case in relation to a serious environmental offence, and
- (b) providing that serious environmental offences can be prosecuted only by the Director of Public Prosecutions or the Attorney General.

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 the date of assent to the proposed Act.

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

Schedule 1 [1] requires the Environment Protection Authority to inform the Director of Public Prosecutions if, as a result of the Authority's investigations, there is a prima facie case in relation to a serious environmental offence (a tier 1 offence under Part 5.2 of the *Protection of the Environment Operations Act 1997*). Should the Authority not be able to determine whether or not

a serious environmental offence has been committed, the proposed amendment requires the Authority to advise the Director of Public Prosecutions of that fact. The Director will determine the appropriate offence for which an alleged offender is to be prosecuted and is empowered to commence proceedings (in the case of a tier 1 offence).

Schedule 1 [2] provides that tier 1 offences can be prosecuted only by the Director of Public Prosecutions or the Attorney General.

Schedule 1 [3] and [4] make consequential amendments, so that existing provisions about who may institute proceedings for offences apply only to offences that are not tier 1 offences.



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Protection of the Environment Operations Amendment (Prosecutions) Bill 2013

No. , 2013

A Bill for

An Act to amend the *Protection of the Environment Operations Act 1997* to transfer the power to prosecute serious environmental offences from the Environment Protection Authority to the Director of Public Prosecutions and the Attorney General; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Protection of the Environment Operations Amendment (Prosecutions) Act 2013</i> .	3
	4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Protection of the Environment Operations Act 1997 No 156	1
		2
[1] Section 212F		3
Insert after section 212E:		4
212F EPA to inform DPP of results of investigations of possible tier 1 offences		5
(1) The EPA must inform the Director of Public Prosecutions if, as a result of the EPA's investigations, the EPA is of the view that there is a prima facie case against a person in relation to an offence arising under Part 5.2.		6 7 8
(2) If, as a result of the EPA's investigations, the EPA is unable to determine whether or not there is a prima facie case against a person in relation to an offence arising under Part 5.2, the EPA must advise the Director of Public Prosecutions of that fact.		9 10 11 12
[2] Part 8.2, Division 1A		13
Insert after Division 1:		14
Division 1A Who may institute proceedings for tier 1 offences		15
216A DPP and Attorney General may institute proceedings for tier 1 offences		16
Proceedings for offences arising under Part 5.2 may be instituted by:		17
(a) the Director of Public Prosecutions, or		18
(b) the Attorney General.		19
[3] Part 8.2, Division 2		20
Insert " tier 2 and tier 3 " after " for " in the heading to the Division.		21
[4] Section 216B		22
Insert before section 217:		23
216B Division applies to tier 2 and tier 3 offences		24
This Division applies to offences arising under this Act or the regulations that are not offences arising under Part 5.2.		25 26