



New South Wales

# Protection of the Environment Operations Amendment (Illegal Waste Disposal) Bill 2013

## Explanatory note

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

## Overview of Bill

The objects of this Bill are to amend the *Protection of the Environment Operations Act 1997* for the following purposes:

- (a) to create an offence of knowingly supplying false or misleading information about waste in the course of dealing with the waste that will be punishable by a maximum period of imprisonment of 18 months as an alternative or in addition to a maximum fine of \$500,000 for a corporation and \$240,000 for an individual (at present the offence is a strict liability offence that is punishable only by a maximum fine of \$250,000 for a corporation and \$120,000 for an individual),
- (b) to create an offence of committing a strict liability waste offence (which includes polluting waters with waste, polluting land, illegally dumping waste or using land as an illegal waste facility) within 5 years of any previous conviction for such an offence that will be punishable by a maximum period of imprisonment of 2 years as an alternative or in addition to a fine (at present a strict liability waste offence is punishable only by a fine),
- (c) to authorise the EPA to seize a motor vehicle or vessel it has reason to believe has been used to commit any such repeat waste offence and to enable the Land

- and Environment Court to order the forfeiture of the motor vehicle or vessel to the State if it convicts the person of the repeat waste offence,
- (d) to extend the offence of using land as a waste facility without lawful authority to using any place so as to cover illegally using a body of water as a waste facility,
  - (e) to remove from the Act the exemption from payment of the contribution by licensees of waste facilities used for the re-using, recovering, recycling or processing waste other than liquid waste, so that the operation of any such exemption can be dealt with in the regulations,
  - (f) to enable the regulations to prescribe a protocol that is to be used in determining the amount that represents the monetary benefit acquired by the offender in committing an offence and that the offender may be ordered to pay as an additional penalty for the offence,
  - (g) to make consequential or related amendments.

## 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]** amends section 88 of the Act to give effect to the object outlined in paragraph (e) of the Overview above.

**Schedule 1 [2]** amends section 144 of the Act to give effect to the object outlined in paragraph (d) of the Overview above. **Schedule 1 [7]** makes a consequential amendment.

**Schedule 1 [3]** amends section 144AA of the Act to give effect to the object outlined in paragraph (a) of the Overview above. **Schedule 1 [4]** makes a consequential amendment.

**Schedule 1 [5]** inserts proposed section 144AB into the Act to give effect to the object outlined in paragraph (b) of the Overview above.

**Schedule 1 [6]** inserts proposed Part 7.6A into the Act to give effect to the object outlined in paragraph (c) of the Overview above.

**Schedule 1 [8]** amends section 249 of the Act to give effect to the object outlined in paragraph (f) of the Overview above.

**Schedule 1 [9]** enables savings and transitional provisions to be made consequent on the enactment of any Act that amends the *Protection of the Environment Operations Act 1997* (including the proposed Act).

**Schedule 2      Amendment of Protection of the  
Environment Administration Act 1991  
No 60**

**Schedule 2** makes a consequential amendment relating to the objects outlined in paragraphs (a) and (b) of the Overview above.





New South Wales

# Protection of the Environment Operations Amendment (Illegal Waste Disposal) Bill 2013

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New South Wales

# Protection of the Environment Operations Amendment (Illegal Waste Disposal) Bill 2013

No. , 2013

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## A Bill for

An Act to amend the *Protection of the Environment Operations Act 1997* relating to the prevention of illegal waste disposal and other offences against the Act; and for related purposes.

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|   |        |
|---|--------|
| <b>The Legislature of New South Wales enacts:</b>   | 1      |
| <b>1    Name of Act</b>   | 2      |
| This Act is the <i>Protection of the Environment Operations Amendment (Illegal Waste Disposal) Act 2013</i> . | 3<br>4 |
| <b>2    Commencement</b>  | 5      |
| This Act commences on a day or days to be appointed by proclamation.  | 6      |



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|-------------------|--|----------------------|
| <b>Schedule 1</b> | <b>Amendment of Protection of the Environment Operations Act 1997 No 156</b>   | 1                    |
|                   |  | 2                    |
|                   |  | 3                    |
| <b>[1]</b>        | <b>Section 88 Contributions by licensee of waste facility</b>  | 4                    |
|                   | Omit “, but it does not apply to a facility that the EPA determines is used solely for the purposes of re-using, recovering, recycling or processing waste other than liquid waste” from section 88 (1).   | 5<br>6<br>7          |
| <b>[2]</b>        | <b>Section 144 Use of place as waste facility without lawful authority</b>   | 8                    |
|                   | Omit “land” wherever occurring. Insert instead “place”.  | 9                    |
| <b>[3]</b>        | <b>Section 144AA False or misleading information about waste</b>   | 10                   |
|                   | Omit section 144AA (1) and (2). Insert instead:  | 11                   |
|                   | (1) A person who supplies information about waste to another person in the course of dealing with the waste, being information that is false or misleading in a material respect, is guilty of an offence.   | 12<br>13<br>14       |
|                   | It is a defence in any proceedings against a person for an offence under this subsection if the person establishes that the person took all reasonable steps to ensure that the information was not false or misleading in a material respect.                             | 15<br>16<br>17<br>18 |
|                   | Maximum penalty:   | 19                   |
|                   | (a) in the case of a corporation—\$250,000, or   | 20                   |
|                   | (b) in the case of an individual—\$120,000.  | 21                   |
|                   | <b>Note.</b> An offence under subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 169A.                                    | 22<br>23<br>24<br>25 |
|                   | (2) A person who supplies information about waste to another person in the course of dealing with the waste, being information that the person knows is false or misleading in a material respect, is guilty of an offence.  | 26<br>27<br>28<br>29 |
|                   | Maximum penalty:   | 30                   |
|                   | (a) in the case of a corporation—\$500,000, or   | 31                   |
|                   | (b) in the case of an individual—\$240,000 or imprisonment for 18 months, or both.   | 32<br>33             |
|                   | (2A) If the court is satisfied that a person charged with an offence under subsection (2) is not guilty of that offence but is satisfied on the evidence that the person is guilty of an offence under subsection (1), the court may find the person guilty of the offence | 34<br>35<br>36<br>37 |

|                                     |  |                                  |
|-------------------------------------|--|----------------------------------|
|                                     | under subsection (1), and the person is liable to punishment accordingly.  | 1<br>2                           |
| (2B)                                | Proceedings for an offence under subsection (2) may not be dealt with before the Local Court despite section 215.  | 3<br>4                           |
| <b>[4] Section 144AA (5A)</b>       |  | 5                                |
|                                     | Insert after section 144AA (5):  | 6                                |
| (5A)                                | In this section, <i>supply information</i> includes cause or permit information to be supplied.  | 7<br>8                           |
| <b>[5] Section 144AB</b>            |  | 9                                |
|                                     | Insert after section 144AA:  | 10                               |
| <b>144AB Repeat waste offenders</b> |  | 11                               |
| (1)                                 | For the purposes of this section, a <i>waste offence</i> is an offence against any of the following provisions of this Act:  | 12<br>13                         |
|                                     | (a) section 120 (1) (where waters are polluted by waste),  | 14                               |
|                                     | (b) section 142A (1),  | 15                               |
|                                     | (c) section 143 (1),   | 16                               |
|                                     | (d) section 144 (1).   | 17                               |
| (2)                                 | A person commits an offence against this section if the person is an individual who:   | 18<br>19                         |
|                                     | (a) has been convicted of a waste offence, and   | 20                               |
|                                     | (b) commits a waste offence on a separate subsequent occasion within 5 years after that conviction.  | 21<br>22                         |
|                                     | Maximum penalty: The maximum monetary penalty provided by this Act for the commission of the waste offence by an individual or imprisonment for 2 years, or both.  | 23<br>24<br>25                   |
| (3)                                 | A reference in this section to a conviction for a waste offence includes a conviction before or after the commencement of this section and a conviction for an offence against this section.   | 26<br>27<br>28                   |
| (4)                                 | If the court is satisfied that a person charged with an offence against this section is not guilty of that offence but is satisfied on the evidence that the person is guilty of the waste offence to which the charge relates, the court may find the person guilty of the waste offence, and the person is liable to punishment accordingly. | 29<br>30<br>31<br>32<br>33<br>34 |
| (5)                                 | Proceedings for an offence against this section may not be dealt with before the Local Court despite section 215.  | 35<br>36                         |

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|---|----|
| <b>[6] Chapter 7, Part 7.6A</b>   | 1  |
| Insert after Part 7.6 of Chapter 7:   | 2  |
| <br>  |    |
| <b>Part 7.6A Seizure of motor vehicles or vessels used to commit repeat waste offences</b>  | 3  |
|   | 4  |
| <b>210A Definitions</b>   | 5  |
| (1) In this Part:   | 6  |
| <i>repeat waste offence</i> means an offence against section 144AB, and includes any such offence that there are reasonable grounds for believing has been committed.   | 7  |
|   | 8  |
|   | 9  |
| (2) A power conferred by this Part to seize a motor vehicle or vessel includes a power to remove the motor vehicle or vessel from the place where it is found and to secure the motor vehicle or vessel from interference.  | 10 |
|   | 11 |
|   | 12 |
|   | 13 |
| <b>210B Seizure of motor vehicles or vessels used to commit repeat waste offences</b>   | 14 |
|   | 15 |
| (1) The EPA may seize a motor vehicle or vessel that the EPA has reason to believe has been used for the purpose of committing a repeat waste offence.  | 16 |
|   | 17 |
|   | 18 |
| (2) The State, the EPA or any other person is not liable for a seizure under this Part for which there was reasonable cause.  | 19 |
|   | 20 |
| <b>210C Forfeiture of motor vehicles or vessels by order of court</b>   | 21 |
| (1) The Land and Environment Court may order the forfeiture of a motor vehicle or vessel that has been seized under this Part in connection with a repeat waste offence if the Court convicts a person of the offence.  | 22 |
|   | 23 |
|   | 24 |
|   | 25 |
| (2) The Land and Environment Court is not to order the forfeiture of the motor vehicle or vessel if it is satisfied that the motor vehicle or vessel was used without the authority of its owner or that its owner did not have reasonable cause to suspect that the motor vehicle or vessel would be used to commit the offence. | 26 |
|   | 27 |
|   | 28 |
|   | 29 |
|   | 30 |
| (3) To avoid doubt, a forfeiture order is not a monetary penalty for the purposes of the provision of this Act that provides for the maximum monetary penalty that may be imposed by a court in proceedings for a repeat waste offence.   | 31 |
|   | 32 |
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|-------------|---|----|
| <b>210D</b> | <b>Return of seized motor vehicle or vessel</b>   | 1  |
| (1)         | If any motor vehicle or vessel has been seized under this Part in connection with a repeat waste offence and:   | 2  |
|             |   | 3  |
| (a)         | proceedings for the offence are not commenced in the Land and Environment Court within 28 days after the seizure, or  | 4  |
|             |   | 5  |
|             |   | 6  |
| (b)         | any such proceedings are commenced but are dismissed without a conviction for the offence, or   | 7  |
|             |   | 8  |
| (c)         | the Land and Environment Court convicts a person of the offence but does not order the forfeiture of the motor vehicle or vessel,   | 9  |
|             |   | 10 |
|             |   | 11 |
|             | the EPA must return the motor vehicle or vessel to its owner.   | 12 |
| (2)         | If a person disputes the seizure of a motor vehicle or vessel under this Part, the EPA may allow the motor vehicle or vessel to be delivered to the person disputing the seizure, subject to the person giving security to pay its value to the EPA should it be forfeited. | 13 |
|             |   | 14 |
|             |   | 15 |
|             |   | 16 |
| (3)         | The EPA may, at any time, return a motor vehicle or vessel seized under this Part to its owner on such conditions (if any) as the EPA thinks fit. This subsection has effect whether forfeiture has taken place or not.   | 17 |
|             |   | 18 |
|             |   | 19 |
|             |   | 20 |
| (4)         | A motor vehicle or vessel that is seized is returned to its owner for the purposes of this Part if it is returned to the person who owns it or to a person from whose possession it was seized.   | 21 |
|             |   | 22 |
|             |   | 23 |
| (5)         | If the owner of the motor vehicle or vessel or any such person has died, the motor vehicle or vessel may be returned to the legal personal representative of the owner or person.   | 24 |
|             |   | 25 |
|             |   | 26 |
| <b>210E</b> | <b>Forfeited motor vehicles or vessels become the property of the State</b>   | 27 |
|             |   | 28 |
| (1)         | A motor vehicle or vessel ordered by the Land and Environment Court to be forfeited under this Part (or the proceeds of sale of any such motor vehicle or vessel) becomes the property of the State.  | 29 |
|             |   | 30 |
|             |   | 31 |
|             |   | 32 |
| (2)         | Any such motor vehicle or vessel may (subject to the regulations) be sold or disposed of in such manner as the EPA thinks fit.  | 33 |
|             |   | 34 |

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|--|--------------|
| <b>[7] Section 216 Time within which summary proceedings may be commenced</b>  | 1<br>2       |
| Omit “(Permitting land to be used unlawfully as waste facility)” from paragraph (c) of the definition of <i>prescribed offence</i> in section 216 (6).                                   | 3<br>4       |
| Insert instead “(Use of place as waste facility without lawful authority)”.  | 5            |
| <b>[8] Section 249 Orders regarding monetary benefits</b>  | 6            |
| Insert after section 249 (2):  | 7            |
| (2A) The regulations may prescribe a protocol to be used in determining the amount that represents the monetary benefit acquired by the offender or accrued or accruing to the offender. | 8<br>9<br>10 |
| <b>[9] Schedule 5 Savings, transitional and other provisions</b>   | 11           |
| Insert at the end of clause 2 (1):   | 12           |
| any other Act that amends this Act.  | 13           |

**Schedule 2      Amendment of Protection of the  
Environment Administration Act 1991  
No 60**

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2  
3

**Section 17 Environment Counsel to Board**

4

Insert at the end of section 17 (8):

5

For the purposes of this definition, an offence created by section 144AA (2) or 144AB of the *Protection of the Environment Operations Act 1997* is taken to be a tier 1 offence under that Act.

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