

**ENVIRONMENTAL OFFENCES AND PENALTIES
(AMENDMENT) BILL 1990***

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are to amend the Environmental Offences and Penalties Act 1989 (“the Principal Act”) and certain other Acts, so as:

- (a) to vary the provisions concerning existing offences under the Principal Act and, in particular, to increase the maximum penalty for offences committed by individuals from \$150,000 to \$250,000; and
- (b) to consolidate provisions concerning the protection of the environment into the Principal Act; and
- (c) to provide that it is an offence to do or omit to do anything outside New South Wales that results in a substance coming into New South Wales and causing harm to the environment of New South Wales; and
- (d) to increase the penalties for various environmental offences from their current maximum of \$40,000 (in the case of a corporation) and \$20,000 (in the case of an individual) to a new maximum of \$125,000 (in the case of a corporation) and \$60,000 (in the case of an individual); and
- (e) to transfer to the Principal Act the provisions of the Local Government Act 1919 in relation to littering; and
- (f) to include penalty notice provisions in the Principal Act; and
- (g) to provide for the enforcement, as a civil debt, of certain orders under the Justices Act 1902 that relate to environmental offences; and
- (h) to provide a right of appeal to the Land and Environment Court against a conviction under the Justices Act 1902 in relation to environmental offences; and
- (i) to make other minor, consequential and ancillary amendments.

Clause 1 specifies the short title of the proposed Act.

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

* Amended in committee - see table at end of volume.

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Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

Clause 4 is a formal provision that gives effect to the Schedule of consequential amendments to other Acts.

Clause 5 continues the provisions of the Justices Act 1902 in relation to appeals to the District Court in respect of certain environmental offences pending the commencement of the provisions of proposed Schedule 2 in relation to appeals to the Land and Environment Court in respect of such offences.

Schedule 1 contains amendments to the Principal Act.

Schedule 2 contains consequential amendments to the following Acts:

- Clean Air Act 1961
- Clean Waters Act 1970
- Criminal Appeal Act 1912
- Environmentally Hazardous Chemicals Act 1985
- Justices Act 1902
- Land and Environment Court Act 1979
- Local Government Act 1919
- Noise Control Act 1975
- State Pollution Control Commission Act 1970

Variation of provisions concerning existing offences under the Principal Act

It is proposed to vary the provisions concerning existing offences in several ways. The ancillary offences (dealing with attempts, aiding and abetting and conspiracy) currently apply to the offence of disposing of waste without lawful authority (section 5). Those offences are now to apply to the offence of causing substances to leak or spill (section 6) and to the offence of causing the emission of ozone depleting substances (section 6A—to be inserted by the Ozone Protection Act 1989). The offence of causing substances to leak or spill is to be extended to include all leaks and spills rather than (as is currently the case) merely leaks and spills from containers. It is also proposed to impose liability on the owner of a substance the subject of any of those offences rather than (as is currently the case) merely the offence of causing substances to leak or spill. Certain changes are to be made in the wording of the provisions concerning those offences: in particular, the expressions “harm” and “environment”, fundamental to the operation of those provisions, are to be expressly defined. As already mentioned, the maximum penalty for an offence committed by an individual is to rise from \$150,000 to \$250,000.

Consolidation of provisions concerning the protection of the environment

The provisions concerning the protection of the environment are currently to be found not only in the Environmental Offences and Penalties Act 1989 but also in various other Acts. Those provisions create offences, provide for procedural matters Concerning the initiation and conduct of proceedings for offences and empower the making of ancillary orders in relation to persons convicted of offences. It is proposed to gather all those provisions under the Principal Act and, at the same time, to standardise them. The Acts from which these provisions are to be drawn are the Clean Air Act 1961, the Clean Waters Act 1970, the Noise Control Act 1975 and the State Pollution Control Commission Act 1970.

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Acts and omissions outside New South Wales

It is proposed to insert a new section 4A into the Principal Act (Schedule 1 (3)) which will provide that a person is guilty of an offence against that Act if he or she does or omits to do anything while outside New South Wales that causes any substance that could harm the environment to come within New South Wales and that would, if done or omitted within New South Wales, have given rise to such an offence.

Penalties

The penalties for offences, like the provisions creating the offences, are distributed among various Acts. It is proposed to provide for a uniform scale of penalties within the Principal Act. The monetary penalties for an offence against the existing sections 5, 6 and 6A of the Principal Act are currently \$1,000,000 (in the case of a corporation) and \$150,000 (in the case of an individual). It is proposed to increase the penalty in the case of an individual to \$250,000. The penalties for other offences are currently \$40,000 (in the case of a corporation) and \$20,000 (in the case of an individual). It is proposed to increase these penalties to \$125,000 (in the case of a corporation) and \$60,000 (in the case of an individual). Lesser penalties for particular offences will also be included in the Principal Act (Schedule 1 (23)—proposed Schedule 1).

Littering

Littering is currently dealt with by the provisions of Division 5A of Part 10 of the Local Government Act 1919. It is proposed to repeal those provisions and to re-enact them, with minor modification, in the Principal Act (Schedule 1 (11)—proposed section 8F).

Penalty notices

Penalty notices for the offences brought into the Principal Act are to be governed by new provisions (Schedule 1 (12)—proposed section 8G and Schedule 1 (23)—proposed Schedule 2). The persons authorised to issue penalty notices and the penalties payable under such notices are to be included in the proposed Schedule. A consequential amendment is to be made to the Justices Act 1902 so as to apply the provisions of that Act to the penalty notices issued under the principal Act. Persons who elect to be dealt with by a court in relation to an offence for which a penalty notice has been issued will be liable to a maximum penalty not exceeding 3 times the amount payable under the notice or the maximum penalty otherwise payable in respect of the offence, whichever is the lesser.

Enforcement orders

An enforcement order is currently issued under the Justices Act 1902 to enable amounts unpaid under penalty notices to be recovered. It is proposed to amend that Act so as to provide that, in the case of environmental offences, the amount specified in an enforcement order may be recovered as a debt in a court of competent jurisdiction. Recovery in this manner is to take the place of enforcement by way of warrant of commitment to prison, which is the manner in which unpaid fines (and other unpaid enforcement orders) are currently enforced.

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Right of appeal to the Land and Environment Court

The Justices Act 1902 currently provides for a right of appeal to the District Court against convictions for offences dealt with summarily under that Act. It is proposed that, in relation to environmental offences, the right of appeal will be instead to the Land and Environment Court. Consequential amendments are to be made to the Land and Environment Court Act 1979 to confer on it the appropriate jurisdiction to hear such appeals. These amendments will result in that Court having a sixth Division (the Environmental Offences Appeals Division) to which such appeals will be assigned. A further amendment to the Criminal Appeal Act 1912 is to be made so as to enable the Court of Criminal Appeal to hear cases stated to it by the Land and Environment Court relation to such appeals. Such a provision already exists in relation to cases stated by the District Court.
