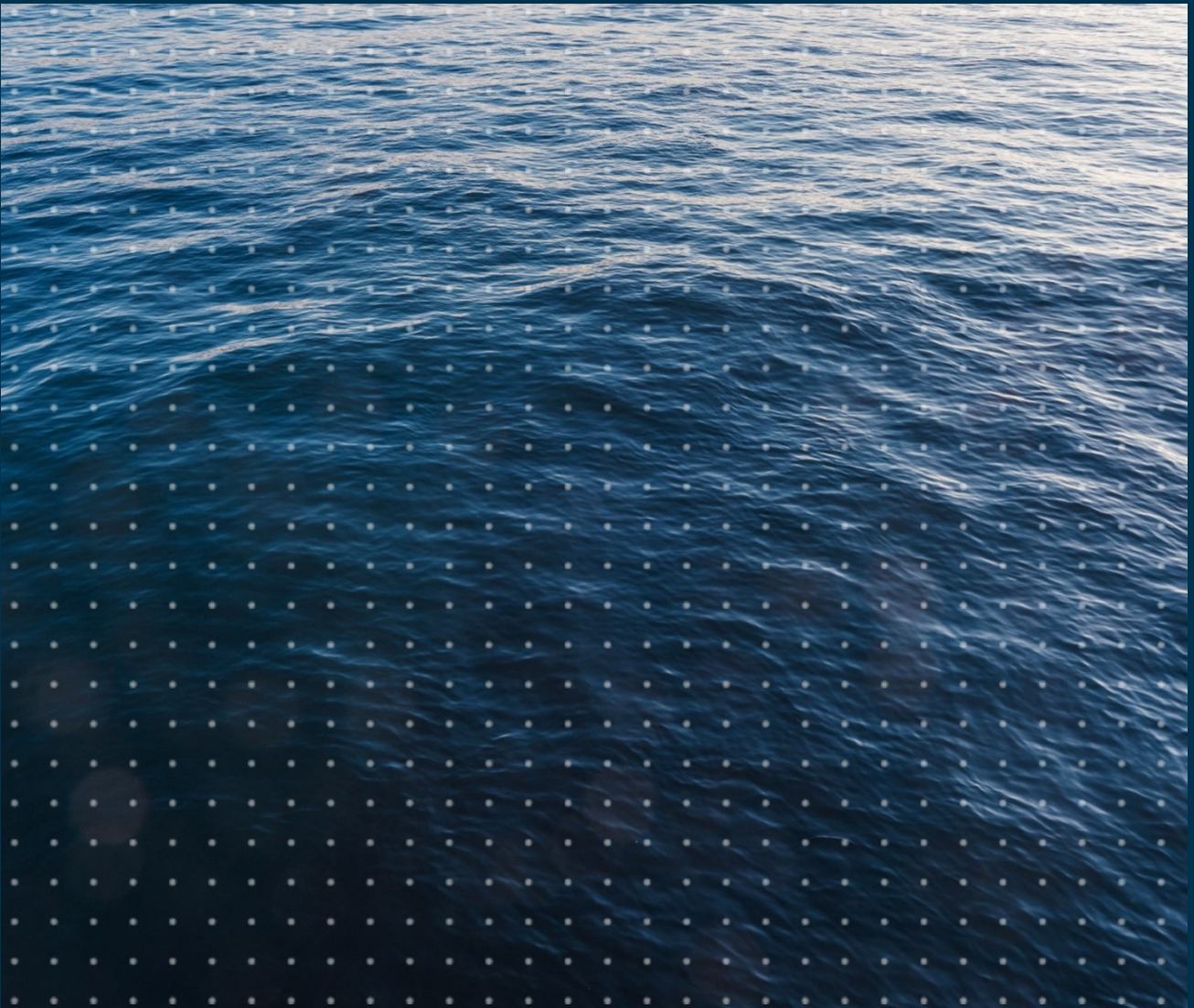




Environment Protection Authority

Better Regulation Statement

Environment Legislation Amendment Bill 2021



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Contents

Introduction	1
Purpose of this document	1
Purpose of the Environment Legislation Amendment Bill 2021	1
What is changing?	2
Who does the Bill apply to?	2
Consultation	2
1. Government action is necessary	3
1.1. Need for government action	3
1.2. Action taken by other governments	3
1.3. Environmental legislation	3
<i>Contaminated Land Management Act 1997</i>	4
<i>Pesticides Act 1999</i>	4
<i>Protection of the Environment Administration Act 1991</i>	4
<i>Protection of the Environment Operations Act 1997</i>	4
<i>Radiation Control Act 1990</i>	4
1.4. Objective of government action	5
1.5. Amendments proposed by the Bill	5
2. Impact of government action	5
2.1. Protection of the Environment Operations Act (POEO Act)	6
2.1.1. False or misleading information provisions	6
2.1.2. Increasing maximum penalty amounts	6
2.1.3. Illegal dumping and disposal of waste	8
2.1.4. Repeat waste offenders	9
2.1.5. Directors, managers and related companies	10
2.1.6. Transferring conditions of suspended, revoked or surrendered licences	11
2.1.7. Imposing restrictive or positive covenants to enforce licence conditions	12
2.1.8. Expand protections for authorised officers	13
2.2. Contaminated Land Management Act (CLM Act)	14
2.2.1. Issuing clean-up or prevention notices when site notified to the EPA	14
2.2.2. Enabling financial assurances under ongoing maintenance orders and covenants	15
2.2.3. Increasing maximum penalty amounts	16
2.3. Amendments to multiple Acts	16
2.3.1. Monetary Benefits Orders	16
2.3.2. Considering financial capacity when determining financial assurance	17
2.3.3. Aligning orders available to courts	18
2.3.4. Miscellaneous and consequential amendments	19

3. Benefits and costs of the Bill	19
4. Analysis and conclusion	20
4.1. Analysis	20
4.2. Conclusion	20
Appendices	21
Appendix A The Environment Legislation Amendment Bill 2021	21
<i>Protection of the Environment Operations Act 1997 (POEO Act)</i>	21
<i>Contaminated Land Management Act 1997 (CLM Act)</i>	22
<i>Pesticides Act 1999</i>	22
<i>Radiation Control Act 1990 (RC Act)</i>	23
<i>Land and Environment Court Act 1979</i>	23
<i>Protection of the Environment Administration Act 1991 (POEA Act)</i>	23
Protection of the Environment (General) Regulation 2021, Radiation Control Regulation 2013 and <i>Waste Avoidance and Resource Recovery Act 2001</i>	23

The Environment Legislation Amendment Bill 2021 varies several environmental Acts to improve the NSW Government's ability to:

- protect human health
- prevent, manage and remediate land contamination, pollution and illegal disposal of waste, and
- effectively enforce environmental legislation and ensure the polluter pays.

This Better Regulation Statement considers how the better regulation principles apply to the Environment Legislation Amendment Bill 2021.

Introduction

Purpose of this document

The *NSW Government Guide to Better Regulation* (2019) requires all significant new, and amending, regulatory proposals to demonstrate that the better regulation principles have been met. This ensures that the regulation is required, reasonable and responsive to the economic, social, and environmental needs of NSW.

The purpose of a Better Regulation Statement is to provide information for decision makers and ensure transparency and accountability in the regulatory development process for business and the community.

This Better Regulation Statement articulates how the Environment Legislation Amendment Bill 2021 meets the better regulation principles listed in the table below.

The Better Regulation principles	
Principle 1	The need for government action should be established. Government action should only occur where it is in the public interest, that is, where the benefits outweigh the costs
Principle 2	The objective of government action should be clear
Principle 3	The impact of government action should be properly understood, by considering the costs and benefits (using all available data) of a range of options, including non-regulatory options
Principle 4	Government action should be effective and proportional
Principle 5	Consultation with business, and the community, should inform regulatory development
Principle 6	The simplification, repeal, reform, modernisation or consolidation of existing regulation should be considered
Principle 7	Regulation should be periodically reviewed, and if necessary reformed, to ensure its continued efficiency and effectiveness

Purpose of the Environment Legislation Amendment Bill 2021

The Environment Legislation Amendment Bill 2021 (the Bill) proposes to amend several pieces of environmental legislation to strengthen the NSW Government's ability to:

- protect human health
- prevent, manage and remediate land contamination, pollution and illegal waste disposal, and
- effectively enforce environmental legislation and ensure the polluter pays.

The Bill will also modernise existing legislation to ensure it remains effective, efficient, meets best practice, and adopts or aligns with more contemporary regulatory powers and provisions available in other jurisdictions or other legislation in New South Wales.

What is changing?

The key changes will:

- hold related body corporates, directors and other persons concerned in the management of a company to account for environmental offences which they have benefitted from
- enhance the options available to mitigate the risk of future environmental liabilities, particularly those that pose a risk to human health, innocent landholders or the NSW economy
- enhance the Environment Protection Authority's (EPA) regulatory tools to ensure these are fit for purpose and can be more effectively utilised for the clean-up or long-term management of contamination or pollution and ensure those benefiting from environmental crimes are made to pay for their clean-up or long-term management, and
- increase the deterrent effect and consistency of environmental laws.

The key proposed changes are discussed in section 2 and further detail of the Bill is provided in **Appendix A**.

Who does the Bill apply to?

The Bill applies to persons or businesses who do not comply with environmental legislation.

Consultation

The EPA has consulted with other government agencies – including those holding environment protection licences or owning land that could be impacted by these proposals – and made reasonable adjustments to address any unintended consequences, and to increase the clarity of the proposed amendments.

However, consultation with the regulated community or businesses has not occurred as only those not complying with existing legislation will be impacted by the proposal. As the Bill will not impose complex proposals or unreasonable regulatory costs or impacts, the risk of unintended consequences is low. Existing EPA policies and guidelines further dictate consultation and procedural fairness in the exercising of current and proposed regulatory powers and enforcement provisions.

1. Government action is necessary

1.1. Need for government action

Environmental laws need to be continually improved to ensure they are an effective response or deterrent to environmental crimes or activities that could harm human health or the environment. These laws must also be maintained to ensure they prevent long-term liabilities for the government to manage.

Over time, certain industry sectors, businesses and individuals have established business practices enabling them to avoid enforcement, clean-up costs and payment of the waste levy. As a result, these entities have secured benefits from environmental crimes that impact on human health and the environment, while the government and innocent landholders are financially impacted and left managing their clean up or long-term management. Such practices are becoming more common. The serious nature and cost of such behaviours are now a significant liability for the NSW Government and communities across NSW.

The government is now spending millions each year to manage contamination and clean up illegal activities and is also estimated to have lost over \$17.8 million by people avoiding payment of the waste levy. Land has been sterilised from productive use, and innocent landholders are left with the costs of clean-up of illegally disposed contaminated waste or other forms of pollution.

Between late 2017 and early 2021, an estimated 132,215 tonnes of contaminated waste was illegally disposed of in NSW. Most of this illegal activity has left an ongoing legacy that the NSW Government or innocent landholders are left to manage, or is remaining in situ, impacting on the social and economic wellbeing of the community.

The EPA's enforcement powers and tools need to keep pace with emerging environmental crimes and criminal behaviours to provide an effective deterrent, and to ensure the polluter pays.

1.2. Action taken by other governments

Many of the proposals in the Bill bring NSW into line with most jurisdictions in Australia that have modernised their environmental legislation.

The Victorian and South Australian governments in particular have laws that consider changing criminal behaviours and complex corporate structures established to bypass responsibility for enforcement and clean up. This includes laws that enable those governments to hold directors and other persons concerned in the management of a company and related body corporates to account for environmental offences which they have benefitted from, and expanded regulatory powers and tools for the clean-up or long-term management of contamination or pollution.

The Bill also seeks to implement changes that will see NSW leading the way on deterring criminal behaviours, taking preventative action to address emerging criminal behaviour, and to enforce the specific environmental crimes occurring in NSW. These changes are either modelled on provisions afforded in other NSW Acts, or have been designed specifically to address the environmental crimes occurring in NSW.

1.3. Environmental legislation

The EPA has responsibilities and functions as the primary environmental regulator for New South Wales under the following pieces of NSW environmental legislation:

Contaminated Land Management Act 1997

The Contaminated Land Management Act enables the EPA to respond to contamination that it assesses is significant enough to warrant regulation.

The Act gives the EPA power to:

- declare land to be significantly contaminated land
- order a person to undertake a preliminary investigation of land that the EPA suspects to be contaminated
- order a person to take management action in relation to significantly contaminated land
- approve a voluntary proposal to manage significantly contaminated land
- provide for ongoing maintenance and management of a site
- require a financial assurance
- maintain the Accredited Site Auditor Scheme
- require a person whose activities have contaminated land to notify the EPA.

Pesticides Act 1999

The Pesticides Act controls and regulates the use of pesticides in NSW.

The Act prohibits the misuse of pesticides that harms people, property, animals or plants. Under the Act, the EPA can:

- issue a person with a clean-up notice, prevention notice and compliance cost notice
- make pesticide control orders which prohibit or control the use of pesticides, or which regulate the use or possession of restricted pesticides
- take enforcement action for the illegal use of pesticides, including use of unregistered pesticides or using pesticides contrary to the pesticide's approved label.

Protection of the Environment Administration Act 1991

The Protection of the Environment Administration Act establishes the EPA, the Board of the EPA (including Chairperson) and sets out the functions and objectives of the EPA.

Protection of the Environment Operations Act 1997

The Protection of the Environment Operations Act is the key piece of environment protection legislation administered by the EPA. The object of the Act is to achieve the protection, restoration and enhancement of the quality of the NSW environment.

The key features of the Act include, but are not limited to:

- licensing arrangements to limit harmful activities and ensure effective controls are in place
- notice powers to enable the clean-up, prevention and prohibition of activities that could or have caused pollution or are being carried out in an environmentally unsatisfactory manner
- powers to ensure the polluter pays
- offences and criminal penalties
- investigation powers to enable the enforcement of the Act and regulations.

Radiation Control Act 1990

The Radiation Control Act provides for the regulation and control of radioactive substances, radioactive sources and radiation apparatus. Its objectives are to protect human health and the environment from harmful effects of radiation while enabling its beneficial use.

1.4. Objective of government action

The Bill proposes amendments to various environmental legislation, so it keeps pace with emerging environmental and human health issues, community expectations, and changing criminal behaviours, industry practices and business models.

The proposed amendments broaden and strengthen the tools the EPA has available to take action against those who do not comply with the law.

They will put in place regulatory tools that provide immediate responses or deterrents to activities that are causing human health and environmental impacts or financial impacts on government, innocent landholders and the community. The proposed amendments will also provide the EPA with a greater range of tools for the management of long-term environmental liabilities. This suite of tools will enable the EPA to use the most effective and bespoke approach to each premises in consultation with licensees and landowners.

The Bill ensures the ongoing achievement of environmental legislation objectives of improved environmental and human health outcomes from an increased ability to prevent, manage and remediate pollution, enforce the laws, and ensure polluters pay. These changes also ensure the EPA's statutory objectives and duty to protect, restore and enhance the quality of the environment of NSW – and to reduce risks to human health and prevent the degradation of the environment – are achieved.

The Bill seeks to ensure the provisions of the Acts continue to meet current statutory and strategic government objectives, address evolving criminal behaviour and adopt regulatory innovations available in other jurisdictions and Acts.

1.5. Amendments proposed by the Bill

To address these issues, the Bill proposes to amend the:

1. *Contaminated Land Management Act 1997*
2. *Land and Environment Court Act 1979*
3. *Pesticides Act 1999*
4. *Protection of the Environment Administration Act 1991*
5. *Protection of the Environment Operations Act 1997*
6. Protection of the Environment (General) Regulation 2021
7. *Radiation Control Act 1990*
8. Radiation Control Regulation 2013, and
9. *Waste Avoidance and Resource Recovery Act 2001*

The key proposed changes are summarised in section 2 below and further details of the Bill are in **Appendix A**.

2. Impact of government action

The Bill proposes changes to existing provisions to improve their effectiveness to respond to changing criminal behaviours and maximise the deterrent effect of non-compliance with the law. For many environmental offences currently being observed, maintaining the current laws or taking non-regulatory responses are not appropriate and will not be effective in:

- deterring criminal behaviours currently being observed
- ensuring the polluter pays for their crimes and does not benefit from them
- efficient and effective enforcement action to enforce contamination and pollution to the timeframes and expectations of the public.

The regulatory impacts of the key changes proposed by the Bill, including the need for action, are outlined below. These changes are aimed at those who deliberately choose to circumvent the law for which there are no effective non-regulatory approaches. These changes are not adding an additional regulatory burden to the community or compliant businesses.

2.1. Protection of the Environment Operations Act (POEO Act)

2.1.1. False or misleading information provisions

Background

At the moment, it is only an offence under the POEO Act for a person to provide false or misleading information to the EPA if the person has been required to provide information to the EPA, or in particular circumstances. This does not cover general circumstances or where an individual or corporation voluntarily provides information to the EPA that is false or misleading.

Need for action

Providing for a general offence will enable the EPA to take action against those who provide false or misleading information in a broader range of circumstances, such as where information is given voluntarily or where the EPA cannot prove that the false or misleading information was provided knowingly.

Options considered

Option 1: The base case – do nothing

The EPA will continue to experience issues with individuals or corporations who voluntarily provide false or misleading information.

Although there is an offence in the NSW Crimes Act of knowingly providing false or misleading information to a public authority, from an enforcement perspective it is more expedient to have the provision in legislation administered by the EPA.

Option 2: Regulatory proposal – the Bill (preferred option)

The regulatory proposal is to amend the POEO Act to introduce new general offences of providing false or misleading information (whether voluntarily or otherwise) covering situations involving both strict liability and knowledge, which will have a 3-year time period in which to commence proceedings.

This will act as a deterrent for individuals or corporations that voluntarily provide information to the EPA that is false or misleading.

Having both strict liability and knowledge offences for providing false or misleading information means greater flexibility in prosecutions based on the type of offending conduct. The amendments provide that if a court finds that the knowledge element isn't met in proceedings for an offence, but the strict liability offence has been proven, the court may convict the offender of the strict liability offence. This is consistent with the existing offence under the Act of providing false or misleading information about waste.

2.1.2. Increasing maximum penalty amounts

Background

There is inconsistency in the maximum penalties available to the courts for false or misleading information offences within the POEO Act.

Need for action

Increasing the maximum penalties for certain false or misleading information offences in EPA-administered legislation will help ensure that maximum penalties are consistent for comparable offences, proportionate to the seriousness of the offence and sufficiently high to act as a deterrent. This will also help bring the maximum penalty for certain false or misleading environmental offences closer to the penalties for dishonesty offences under the *Crimes Act 1900*, *Corporations Act 2001* (Cth) and the *Australian Securities and Investments Commission Act 2001* (Cth).

Options considered

Option 1: The base case – do nothing

The maximum penalties available to the courts for similar false or misleading offences will remain inconsistent.

Option 2: Regulatory proposal – the Bill (preferred option)

The regulatory proposal is to amend the POEO Act to increase maximum penalties for false or misleading information offences under the POEO Act, which will increase consistency for comparable offences and differentiate between maximum penalties for strict liability and knowledge offences, including:

- the offence of providing false or misleading information about waste (section 144AA(1)) from:
 - o \$250,000 to \$500,000 (corporation); and
 - o \$120,000 to \$250,000 (individual)
- the offence of knowingly providing false or misleading information about waste (section 144AA(2)) from
 - o \$500,000 to \$1,000,000 (corporation); and
 - o \$240,000 to \$500,000 or imprisonment for 18 months (or both) (individual).

The proposed changes will increase consistency in maximum penalties for comparable offences across the POEO Act, including section 211, and the new general false or misleading information offences. The proposed increases will also help bring the penalties for these false or misleading environmental offences closer to the penalties for dishonesty offences in other NSW and Commonwealth legislation.

The Bill also proposes to introduce an imprisonment term as an alternative or additional penalty for individuals convicted of knowingly providing false or misleading information in certain contexts where this is not already provided for, to align with the existing penalty for comparable knowledge offences relating to false or misleading information in the POEO Act. Examples include knowingly providing false information in an audit and knowingly making a false or misleading statement in a report.

This regulatory proposal will increase the deterrent effect and consistency of environmental laws. The regulatory proposal is proportionate in reflecting the seriousness of knowingly providing false or misleading information, given the serious environmental consequences that may result, including from obstructing the EPA's investigations and directions to prevent or manage environmental harm.

2.1.3. Illegal dumping and disposal of waste

Background

Regulatory action can be taken against owners of vehicles involved in some environmental offences, such as littering or some noise offences. However, regulatory authorities can currently only take action against the driver of a vehicle involved in illegal waste dumping, not the vehicle's owner. Number plate identification is the simplest form of evidence collection associated with illegal dumping, rather than identifying the driver of the vehicle.

If there is a series of illegal waste dumping incidents by different persons, the EPA and councils may not be able to prove to the required standard who is responsible for each portion of dumped waste. In these cases, clean-up may be required from landowner(s) who are sometimes innocent victims. This clean-up can be a significant cost.

Need for action

The EPA has discontinued several investigations due to these limitations in the POEO Act. This includes a matter in Millers Forest where multiple trucks were observed disposing of contaminated waste. The registered owner of the vehicles denied culpability by claiming they leased the trucks and had no records of who was driving the vehicles. As a result, the cost of clean-up has fallen to the innocent landowner and the exposure of the community to potential health risks is prolonged.

In another case in 2019, over 400 tonnes of contaminated and toxic waste was illegally dumped on private properties in Riverstone in a series of events, impacting on local communities. Due to limitations in the POEO Act, the EPA was unable to pursue the multiple parties identified as being involved to clean up the waste and dispose of it correctly and the landholder was left with nearly \$2 million in clean-up costs.

Given such offences can have a significant impact on human health, government revenue and innocent landholders, it is necessary that vehicle owners take responsibility for crimes committed with their vehicles. The EPA also needs to be able to issue clean-up notices to a person who it reasonably suspects to have contributed to a pollution event rather than caused it, so that where multiple people have illegally deposited waste, one or all of them can be issued with a clean-up notice.

Options considered

Option 1: The base case – do nothing

The EPA and local councils will continue to face challenges when seeking regulatory action against the driver of a vehicle involved in illegal waste dumping. Vehicle owners will likely continue to deny responsibility for alleged offences or refuse to disclose or deny knowledge of who was driving their vehicles.

This will continue to cause significant impacts on human health, government revenue and innocent landholders. Where multiple people illegally deposit waste, and the regulatory authority cannot prove to the required standard who is responsible for each portion of dumped waste, the significant costs of clean-up may continue to fall to innocent landowners and prolong the exposure of the community to potential health risks.

Option 2: Regulatory proposal – the Bill (preferred option)

The regulatory proposal is to amend the POEO Act to:

- enable the appropriate regulatory authority to take regulatory action against a vehicle owner involved in illegal waste disposal, not just the driver of the vehicle
- amend clean-up powers to enable the appropriate regulatory authority to order persons who are reasonably suspected of having *contributed* to a pollution incident to take clean-up

actions after a pollution incident. Currently the regulatory authority must have a reasonable suspicion that the person *caused* the incident.

The amendments would enable the EPA and local councils to take regulatory action against the owners of vehicles used for the illegal dumping of waste. At present these regulatory authorities can only take regulatory action against the driver of a vehicle used in illegal waste dumping activities, not the owner. The EPA and councils rely on registration details of vehicles in investigating illegal dumping. This will be a strong deterrent to illegal waste dumping crimes, and if registered owners of vehicles are subject to regulatory action, they may be less likely to lease out their vehicles unless they know they will be used only for legal activities.

The amendments would also enable the appropriate regulatory authority to direct a person who contributed to a pollution incident to take clean-up action, even if more than one person contributed to the pollution (e.g. where multiple people separately, and without any relationship to one another, delivered polluted spoil or waste to a site). This is similar to the new Victorian Environment Protection Act which will allow for cost recovery from contributors. Under those new laws, a person in management or control of land may seek to recover the costs of complying with an environmental action notice from any person responsible for causing, or contributing to, contamination of the land.

2.1.4. Repeat waste offenders

Background

The POEO Act currently provides for up to 2 years' imprisonment for two waste offences:

- section 144AA(2) – knowingly providing false or misleading information about waste
- section 144AB – repeat waste offenders.

Need for action

Section 144AB of the POEO Act makes it an additional offence to commit a waste offence within 5 years of a prior conviction for a waste offence. The section defines 'waste offence' as an offence against specified provisions of the Act, but the following offences relating to waste are currently not included:

- the offence of wilful or negligent disposal of waste (section 115); and
- the offence of providing false or misleading information about waste (section 144AA).

Options considered

Option 1: The base case – do nothing

The omission of the waste offences of wilful or negligent disposal of waste, and of providing false or misleading information about waste, from the scope of the repeat waste offence creates an inconsistency in the legislative framework. Repeat waste offenders who repeatedly dispose of waste either wilfully or negligently, or repeatedly provide false or misleading information about waste, will continue to receive a lesser punishment for these offences compared to the types of offences that are already included in the category of repeat waste offences.

Option 2: Regulatory proposal – the Bill (preferred option)

The regulatory proposal is to amend the POEO Act to expand the repeat waste offence to include the Tier 1 offence of wilful or negligent disposal of waste, and the offence of providing false or misleading information about waste. This amendment will bring these offences in line with other waste offences under the POEO Act.

2.1.5. Directors, managers and related companies

Background

Industry operators are increasingly establishing complex corporate structures to deflect accountability and avoid pollution clean-up, management and compliance costs. This includes establishing separate companies for each licensed site, which are then dissolved, to avoid enforcement action. This is particularly apparent in the waste sector where large companies set up multiple smaller companies, each holding a separate licence, and which are wound up when enforcement action is pursued.

Many licensees or potential licensees are corporations that are part of complex corporate structures. Currently, the EPA cannot take into account any non-compliances by related companies of a licensee or proposed licensee, or consider the conduct of former directors of the company or current and former directors of related companies.

Need for action

Where a company establishes complex corporate structures to avoid pollution clean-up, management and compliance costs, it is important for the EPA to be able to require clean-up and recover costs from a related company or a current or former director of the company.

When exercising its licensing functions, such as granting, suspending or revoking a licence, the EPA must consider whether a person is a 'fit or proper' person, but currently it cannot consider whether related entities of the licensee or applicant (e.g. the parent company), are also 'fit and proper' persons. This restricts the EPA's ability to refuse or revoke a licence relating to a subsidiary company even if the parent or a related company that would financially benefit from the activities at the premises would not be a 'fit and proper' person. This is unnecessarily exposing communities and the government to human health risks and financial impacts.

It is essential for the EPA to get in front of this emerging issue and be able to consider whether related bodies corporate of a licensee or applicant, and current or former directors of the company and related bodies, are 'fit and proper' persons in exercising its licensing functions. There is often a pattern of non-compliance across related companies and there is an emerging risk where waste offences of related or former companies cannot be taken into consideration in licensing decisions.

Other NSW legislation, such as the *Petroleum (Onshore) Act 1991* and the *Mining Act 1992*, enables the conduct of related bodies corporate to be considered in approval decisions, including for fit and proper person consideration decisions.

Options considered

Option 1: The base case – do nothing

The EPA and appropriate regulatory authorities will continue to be unable to hold current or former directors, managers and related bodies corporate benefiting from environmental crimes to account. Under this option, the EPA and appropriate regulatory authorities will continue to be limited in their ability to pursue clean up and recover costs leading to financial and human health liabilities for the NSW Government. This limitation will enable current or former directors and other relevant persons to benefit from environmental crimes and will incentivise such activities.

The EPA is also unable to use past performance or regulation of related bodies corporate and current and former directors of these related bodies to guide its assessment of 'fit and proper persons' when considering new licence applications. As a consequence, licences may be required to be issued despite the cavalier attitude to compliance of these related companies, and the risk that they won't take responsibility for non-compliance or impacts on the health of local communities.

Option 2: Regulatory proposal – the Bill (preferred option)

The Bill proposes to amend the POEO Act to reflect changes in criminal behaviours and business models by extending existing notice provisions to current and former directors, related bodies corporate, or to a class of premises or persons so those deliberately circumventing the law can be shut down and held responsible.

The proposed amendments will allow the EPA and appropriate regulatory authorities to hold current or former directors and other relevant persons who benefit from environmental crimes to account by enabling the EPA and appropriate regulatory authorities to issue environment protection notices to current or former directors/managers and related bodies corporate when a company fails to comply with an environment protection notice. This will enable the EPA and appropriate regulatory authorities to take enforcement action or require clean up or cost recovery, despite directors deregistering their companies to avoid responsibility. This will help disincentivise such activities and reduce the NSW Government's financial and human health liabilities. These proposed amendments are broadly consistent with Queensland's *Environment Protection Act 1994*, Tasmania's *Environmental Management and Pollution Control Act 1994* and Victoria's new Environment Protection Act.

The amendments will also enable the Minister to issue a prohibition notice in relation to a class of premises (which could include numerous sites operated by the same person or corporate group) or to a person carrying on an activity that is not necessarily at a specific premises. This will deter poor performers from moving to different premises. Similar provisions exist under the *Children (Education and Care Services) National Law (NSW)* and the *NSW Fair Trading Act 1987*.

The amendments will also enable the EPA to consider whether related bodies corporate and current, and former directors of a company and related companies, are 'fit and proper' persons in making licensing decisions. These matters may be considered in these kinds of decisions under other NSW legislation, including the *Petroleum (Onshore) Act 1991* and the *Mining Act 1992*.

2.1.6. Transferring conditions of suspended, revoked or surrendered licences

Background

Increasingly former industrial land is being remediated and sold off for residential or commercial development. Not all contamination can be removed from the site and may need to be undisturbed, managed or monitored into the future.

There is a need to clarify and improve existing requirements and ensure regulatory actions can be taken to ensure long-term management actions for the remaining liabilities are complied with, inappropriate development does not occur on contaminated areas, and there is no risk to human health.

Need for action

Part 3.3 of the POEO Act provides for the issue, transfer and variation of licences. A licence may currently only be transferred while it is in force, and not while suspended, revoked or surrendered.

A licence suspension, revocation or surrender may be conditional. Those conditions will continue to attach to the former licence holder and might relate to matters such as remediation (s71) or post-closure requirements (s76). Once scheduled activities on the site have ceased, it isn't always appropriate or possible for the EPA to issue a new licence to a transferee of land subject to the same conditions. Therefore, the conditions of a suspended, revoked or surrendered licence should be able to be transferred.

The ability to transfer the ongoing conditions of surrendered licences will become increasingly relevant as large industrial uses cease and sites are passed on to developers looking to introduce new, more sensitive land uses to the site. These can often happen safely as long as pollution from former uses (such as a capped landfill) is properly monitored and managed.

Options considered

Option 1: The base case – do nothing

Where remediated land is sold off for residential or commercial development with long-term management requirements remaining, the EPA will continue to be unable to transfer and directly impose these post-closure requirements, such as ongoing monitoring and reporting conditions, to a new transferee of land, even though they will have day-to-day management of the site. Inappropriate development may therefore occur on contaminated areas, resulting in risks to human health.

Option 2: Regulatory proposal – the Bill (preferred option)

The Bill proposes to amend the POEO Act to enable the EPA to transfer the conditions of suspended, revoked and surrendered licences, where required, to manage long-term issues at a site.

This will ensure that ongoing maintenance conditions, required after licensed activities have ceased, can continue to be enforced (especially where long-term environmental liabilities need to be managed), despite changes in land ownership or occupation.

This will protect the land from inappropriate development occurring on contaminated areas which may result in risks to human health.

2.1.7. Imposing restrictive or positive covenants to enforce licence conditions

Background

Part 3.5 of the POEO Act provides non-exclusive examples of conditions that can be placed on licences. Some conditions, such as conditions requiring financial assurance, may be imposed as conditions of the suspension, revocation or surrender of a licence (section 70). Section 81 also provides that the EPA may impose conditions on the surrender, revocation or suspension of a licence.

There is a risk that if land is subdivided or sold, or if a licence is surrendered – particularly following the cessation of operations/licensing at a premises – unscrupulous landowners may seek to avoid responsibility for the ongoing management of contaminated sites. These ongoing responsibilities and financial liabilities for maintaining contaminated land may instead be left to the government or innocent landholders.

Need for action

An additional means of enforcing licence conditions is required to give the EPA additional options for the long-term management of environmental liabilities, particularly following the cessation of operations/licensing at a premises. This is needed to close a current loophole that allows unscrupulous landowners to avoid responsibility for managing contamination and refusing to consent to a covenant on title. The Bill will allow the EPA to register a restrictive or public positive covenant on the land title for the purpose of enforcing outstanding licence conditions (including conditions of a surrender, suspension or revocation of a licence). The EPA will then be able to take action to enforce these conditions against the most appropriate person as assessed by the EPA, be it the landowner, a lessee or a mortgagee.

Options considered

Option 1: The base case – do nothing

The EPA will continue to be limited in its options to manage long-term environmental liabilities, particularly following the cessation of operations/licensing at a premises. Unscrupulous landowners may avoid responsibility for managing pollution and refuse to consent to a covenant. The

responsibility and financial burden for management of ongoing contamination may fall to government revenue and taxpayer money as a result.

Option 2: Regulatory proposal – the Bill (preferred option)

The Bill proposes to enable the EPA to impose restrictive or positive covenants to enforce licence conditions, including conditions of suspension, revocation or surrender. This new provision will enable the EPA to impose a restriction on use or a public positive covenant on land which is the subject of the licence (including a suspended, revoked or surrendered licence), under section 88E of the *Conveyancing Act 1919*, with or without consent of the landholder.

The restriction or covenant would be for the purpose of enforcing specified conditions of the licence (including conditions of any suspension, revocation or surrender) enabling the conditions to run with the land. This will only apply to a revoked or surrendered licence if it contains ongoing conditions to which the revocation or surrender is subject. Conditions, and corresponding provisions in a restriction or covenant, may be amended as required or removed as they are satisfied.

This avenue will be the last resort for the EPA and only utilised after other regulatory powers or tools have been determined not to be appropriate. This will ensure responsibility for management of ongoing pollution is maintained and enforceable, that remediated land can be safely put to other uses, that taxpayer money is not used to address ongoing pollution, and that the financial burden should follow those who are most liable.

The proposed provision is modelled on section 29 of the *Contaminated Land Management Act 1997*. This will align the POEO Act with NSW contaminated land legislation and assist in long-term management of residual pollution (often in-perpetuity) where land changes ownership or occupation (or is subdivided) over time.

2.1.8. Expand protections for authorised officers

Background

Current provisions limit the EPA's ability to prosecute successfully where authorised officers have been threatened.

Need for action

During an inspection of a premises in October 2019, an EPA officer was threatened with a nail gun by the owner of the premises. The owner was prosecuted by the NSW Police under section 13(1) of the *Crimes (Domestic and Personal Violence) Act 2007*. The Local Court dismissed the charge as the requirement to demonstrate that the offender intended to cause physical or mental harm was not met.

The creation of a strict liability offence will provide the EPA with greater options to prosecute where threats are made against authorised officers. There is a similar strict liability offence of assaulting, threatening or abusing an authorised officer in the *Biodiversity Conservation Act 2016* (section 12.22(5)).

Options considered

Option 1: The base case – do nothing

The protections for authorised officers and the EPA's ability to prosecute where authorised officers have been threatened will continue to be limited.

Option 2: Regulatory proposal – the Bill (preferred option)

The regulatory proposal is to expand s211(3) of the POEO Act to make it an offence to wilfully assault, threaten or intimidate an authorised officer, in addition to the current offence of wilfully delaying or obstructing an authorised officer.

The regulatory proposal is to also increase the maximum penalties for a section 211(3) offence:

- from \$1,000,000 to \$2,000,000 and, in the case of a continuing offence, a further penalty of \$240,000 for each day the offence continues (corporation), and
- from \$250,000 to \$500,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues (individual).

The regulatory proposal is to also introduce an additional, strict liability offence covering the actions in section 211(3) as amended to make it an offence to delay, obstruct, assault, threaten or intimidate an authorised officer.

The penalties for wilful offences relating to authorised officers have been increased to differentiate between wilful and other conduct against authorised officers.

This will increase the EPA's ability to prosecute successfully where authorised officers have been threatened and will act as a deterrent against intimidating behaviour towards authorised officers.

2.2. Contaminated Land Management Act (CLM Act)

2.2.1. Issuing clean-up or prevention notices when site notified to the EPA

Background

The EPA is limited in how quickly it can require clean-up or preventive action when notified of contamination under the CLM Act.

In December 2019, the EPA was notified that petroleum storage tanks in a small regional town had contaminated the groundwater used for domestic purposes by the regional town, potentially impacting on the health of the local community and their agricultural businesses. The local council was the regulatory authority until the EPA completed its assessment and declared the site to be significantly contaminated, which took nearly 8 months. The EPA was prevented from taking immediate action to require clean-up of the site and manage the off-site contamination due to limitations in the Acts, resulting in extended government support and cost so the community could access clean water.

Need for action

The EPA's main powers relating to contaminated land apply if and when it declares the land to be significantly contaminated land. However, in some cases, action to clean-up contamination is required before a full assessment and/or declaration can be completed, which can take many months. This generally applies when the source of the contamination is still active or contaminated groundwater or vapours may be impacting nearby properties. Being unable to order urgent clean-up or preventive action presents a risk to the environment and human health.

Options considered

Option 1: The base case – do nothing

The EPA will continue to be limited in how quickly it can respond when notified of contamination under the CLM Act. This presents a risk to the environment and human health where clean-up of contamination is required before a full assessment or declaration can be completed.

Option 2: Regulatory proposal – the Bill (preferred option)

The Bill proposes to amend the CLM Act to enable the EPA to issue a clean-up or prevention notice, as soon as a site is formally notified to the EPA and, while undertaking further assessment, it forms the view that action needs to be taken immediately to address the source of contamination and prevent its spread to avoid further harm.

This will enable the EPA to issue clean-up or prevention notices to operators of a site while it is assessing whether the contamination is significant enough to warrant regulation. This will enable swift action to stop any active source of contamination from impacting human health or the environment.

2.2.2. Enabling financial assurances under ongoing maintenance orders and covenants

Background

Cleaning up pollution and remediating contamination is expensive, often far outweighing the value of the business which caused the pollution. Businesses unable to pay for remediation often go into liquidation, leaving the NSW Government and innocent landholders to manage and remediate the environmental impacts.

Need for action

The EPA has discretionary powers to require a financial assurance under the POEO, CLM and Radiation Control Acts to guarantee funding for clean-up if a regulated party defaults on their responsibilities. However, under the CLM Act, a financial assurance can only be required from the holder of a management order, not a person subject to an ongoing maintenance order or public positive covenant which regulates residual contamination over the long term. This is often the period in which funding for ongoing management of residual contamination is critical. Ongoing maintenance orders and public positive covenants may only be imposed in relation to land that the EPA has assessed and determined to be significantly contaminated land, which has then been remediated under a management order or voluntary management proposal.

Options considered

Option 1: The base case – do nothing

The EPA will continue to be unable to require a financial assurance where residual contamination is regulated over a long time under an ongoing maintenance order or public positive covenant. This increases the risk that businesses that are unable to pay for remediation may go into liquidation and expose the NSW Government and innocent landholders to environmental liabilities.

Option 2: Regulatory proposal – the Bill (preferred option)

The Bill proposes to amend the CLM Act to enable the EPA to require a financial assurance under an ongoing maintenance order or a public positive covenant under the *Conveyancing Act 1919*.

This will enable a financial assurance to be required under both ongoing maintenance orders and public positive covenants and allow the EPA to lift the declaration of significantly contaminated land for a site, while ensuring financial security for ongoing management and maintenance requirements.

2.2.3. Increasing maximum penalty amounts

Background

The maximum penalty amounts in the CLM Act have not changed since that Act was introduced in 1997.

Need for action

Maximum penalties available to the courts following the conviction of a person for offences under the CLM Act should increase to align them with comparable POEO Act maximum penalties.

Option 1: The base case – do nothing

Failure to update the penalties in line with comparable offences in other environment legislation will mean these penalties are inconsistent with contemporary expectations on the seriousness of these offences.

Option 2: Regulatory proposal – the Bill (preferred option)

The Bill proposes to increase the maximum penalties across the CLM Act to align them with the maximum penalties for equivalent offences in the POEO Act, where it is appropriate. Some maximum penalties will increase significantly from \$66,000 for a corporation to \$1 million and for an individual from \$33,000 to \$250,000.

These increases are appropriate, given the harm that can be caused to human health, and will provide a strong deterrent to non-compliance with environmental legislation. These amendments will also enable the court to impose a financial penalty that adequately reflects the seriousness of the crime when a person or company is found guilty of an offence.

2.3. Amendments to multiple Acts

2.3.1. Monetary Benefits Orders

Background

Environmental legislation has not kept pace with changes in criminal behaviour and business models impacting on the efficient use of regulatory tools such as monetary benefits orders which seek to strip offenders of the financial advantage they gained from breaking environmental laws.

Currently environmental legislation allows the EPA to seek monetary benefits orders against convicted offenders, but this has proven to be insufficient.

Need for action

In a recent court case, a monetary benefits order could not be sought as it was the parent company, not the licensee company, which benefited financially from the non-compliance. The EPA was also unable to seek a monetary benefits order against a subsidiary of the large waste management company where they received waste over five times its licensed limit at its waste processing facility.

Options considered

Option 1: The base case – do nothing

The EPA will continue to be limited in its ability to recover monetary benefits from directors and related bodies corporate of an offender when they benefit from environmental crime. This does not

incentivise compliance behaviour to ensure proper precautions are taken to comply with environmental legislation and protect the environment.

Option 2: Regulatory proposal – the Bill (preferred option)

The Bill proposes to amend the POEO, CLM and Radiation Control Acts to reflect changes in criminal behaviours and business models by making it an offence for current and former directors and related bodies corporate of a convicted offender to have received monetary benefits from the commission of an offence. This will enable the recovery of those monetary benefits in separate proceedings. As an alternative, in some cases it may be appropriate to recover these benefits through civil proceedings against the related entities following a conviction against the original offending company. The Bill will enable both criminal and civil proceedings to ensure that companies and directors benefiting from a related company's environmental crime will not obtain monetary benefits from that offence.

The proposal will enable the EPA to recover monetary benefits obtained from the commission of an environment crime:

- accruing to a director, manager or related body corporate of a person convicted of an offence (including persons who were directors of the company or a related company at the time of the offence), by making it an offence to receive those benefits, thereby giving the court power to make a monetary benefits order following conviction
- in separate civil proceedings against directors, managers and related bodies corporate of a convicted offender (including persons who were directors of the company or a related company at the time of the offence). The court will only be able to make a monetary benefits order if it is satisfied that monetary benefits were acquired by the directors or related bodies corporate from the environmental offence.

The proposal will also extend provisions to enable restraining orders to be obtained in situations where it is likely that a monetary benefits order will be sought.

This will act as a strong deterrent for possible future offenders and an incentive for related entities benefitting from the crime to take proper steps to comply with environmental laws. This will also help to level the playing field so operators who do the right thing are not financially disadvantaged.

The Bill makes consequential changes to the *Land and Environment Court Act 1979* to give effect to these proposals.

2.3.2. Considering financial capacity when determining financial assurance

Background

Cleaning up pollution and remediating contamination is expensive, often far outweighing the value of the business which caused the pollution. Businesses unable to pay for remediation often go into liquidation, leaving the NSW Government and innocent landholders to manage and remediate the environmental impacts.

The financial health of a regulated party is an important consideration in determining whether potential environmental liabilities may become the responsibility of the NSW Government. Under the EPA's current legislation, the EPA must consider the remediation work that may be required when determining if a financial assurance is required, however the EPA cannot consider the regulated person or business' financial capacity to carry out that work.

The EPA received several submissions during consultation on its draft financial assurance policy that supported the EPA considering the financial risk of a company/person in determining if a financial assurance might be required.

Need for action

If a person fails to undertake required actions under a licence, order or instrument administered by the EPA (e.g. due to lack of financial capacity) or deregisters a company holding the licence or instrument, the government may need to step in to address outstanding environmental liabilities. Enabling the EPA to consider the financial capacity of a person in determining whether to require a financial assurance means access to funds can be secured before liabilities significantly increase.

For example, the NSW Government has spent over \$10 million to prevent toxic PFAS contaminated groundwater leaving the former waste oil refinery site “Truegain” near Maitland after the company went into administration and abandoned the site. In addition to these ongoing containment costs, the government will incur remediation costs of up to \$10 million for the site. This may have been prevented if the Acts enabled the EPA to consider the financial capacity of the licence holder and seek a financial assurance before significant liabilities accrued.

Options considered

Option 1: The base case – do nothing

The EPA will continue to be unable to consider a person or business’ financial capacity when deciding whether a financial assurance is justified. Businesses unable to pay for remediation often go into liquidation. Significant liabilities may continue to be accrued, leaving the NSW Government and innocent landholders to manage and remediate the environmental impacts, or leaving toxic legacies to impact on the community.

Option 2: Regulatory proposal – the Bill (preferred option)

The Bill proposes to amend the POEO, CLM and Radiation Control Acts to expand the matters the EPA is able to consider when requiring a financial assurance to include the financial capacity of the regulated person or company.

This will enable the EPA to require a financial assurance based on its assessment of a person or business’ financial capacity to carry out work. This will allow the Government to step in and intervene before the liabilities exceed the value of the polluter’s business, then call on the financial assurance to recoup the Government’s costs of the intervention. This will help to mitigate the risk of significant liabilities being left to the NSW Government and innocent landholders where regulated persons or businesses lack the financial capacity to meet their obligations.

2.3.3. Aligning orders available to courts

Background

The POEO and Radiation Control Acts already provide that courts may consider a range of non-monetary orders when determining the appropriate penalty for an offender where an offence has been proved. In addition to a monetary penalty, or as an alternative, courts may consider ordering an offender to, for example, undertake a training course, carry out environmental restoration or enhancement, or publicise the offence. Other legislation administered by the EPA has more limited options for court orders relating to convicted offenders, with no good policy rationale for the limitations.

Need for action

It is appropriate to align the orders that courts may make in sentencing offenders across different environment legislation, for regulatory consistency and flexibility.

Options considered

Option 1: The base case – do nothing

The courts will continue to be unable to include certain orders, such as training orders, as part of sentencing options for some prosecutions. This means prosecutions may not achieve optimal environmental and human health outcomes. EPA-administered legislation will continue to remain inconsistent in this regard.

Option 2: Regulatory proposal – the Bill (preferred option)

The Bill will amend the CLM and Pesticides Acts to provide the courts with a range of orders as part of sentencing options, including training orders.

The Bill will ensure the suite of powers under the CLM Act align with existing court order powers in the POEO Act and will enable a court to:

- order the offender to carry out a specified environmental audit of activities carried on by the offender
- order the offender to pay a specified amount to the Environmental Trust established under the *Environmental Trust Act 1998*, or a specified organisation, for the purposes of a specified project for the restoration or enhancement of the environment or for general environmental purposes
- order the offender to attend, or to cause an employee or employees or a contractor or contractors of the offender to attend, a training or other course specified by the court.

The Bill will also enable a court to make publication, restorative justice and notification orders. This will ensure the Pesticides Act has the full range of orders available under other legislation.

2.3.4. Miscellaneous and consequential amendments

The Bill amends the *Protection of the Environment Administration Act 1991* to formalise the separation of the roles of the EPA CEO and Chairperson of the Board. Consequential amendments are made to each of the Acts in the Bill to give effect to these amendments.

The Bill also proposes minor and mechanical changes, including changes of a ‘statute law revision’ nature. These amendments do not result in significant policy changes.

3. Benefits and costs of the Bill

The Bill will not impose any additional regulatory or administrative costs on business or the community. Only businesses or persons who break the law will be impacted financially.

The Bill will fill gaps in the legislation and allow the EPA to get ahead of business models used to deflect accountability for environmental crimes. Maximum penalties available to the courts in sentencing offenders, where maximum penalties have not been adjusted since the legislation was introduced or are inconsistent with penalties for equivalent offences, will also be increased or aligned. As the Bill is largely updating existing provisions to respond to evolving criminal activity, the proposal is unlikely to result in increased compliance costs or regulatory costs on those who comply with environmental Acts.

Cleaning up pollution and remediating contamination is expensive, often far outweighing the value of the business which caused the pollution. Over the past three years, the gaps in environmental legislation have resulted in:

- the NSW government losing over \$17.8 million in waste levy revenue

- over 132,000 tonnes of contaminated waste being illegally dumped in communities
- land being sterilised from productive use, and
- either the government or innocent landholders being left with substantial costs to manage or remediate contaminated sites to avoid impacts on human health or the environment.

In addition, the EPA's ability to enforce environmental legislation to ensure polluters pay is compromised, with a significant number of investigations either not proceeding or being discontinued due to loopholes in the legislation.

A lack of government action will undermine the effectiveness of the regulatory frameworks and incur increased costs for the NSW Government to regulate and address contamination and pollution that is impacting human health and the environment now and into the future.

4. Analysis and conclusion

4.1. Analysis

Of the options evaluated, the regulatory proposal (the Bill) is the preferred option as it will provide the greatest benefit to NSW.

The Bill will address gaps in existing legislation by broadening and strengthening the tools the EPA has to take action against those who do not comply with the law, particularly those who illegally dispose of waste or provide false or misleading information. The proposed amendments will also provide the EPA with a greater range of tools for the management of long-term environmental liabilities. The suite of tools will enable the EPA to use the most effective and bespoke approach to each premises in consultation with licensees and landowners.

There are existing EPA policies and guidelines that are used in exercising regulatory tools and in taking enforcement action to ensure procedural fairness and that regulatory actions are appropriate to address a pollution incident, contamination of land or other environmental breach. These include the NSW EPA Compliance Policy and Prosecution Guidelines. These provide clarity to the public and industry on the regulatory options available and their use.

The Bill has been informed by compliance and enforcement information, and a comparison of similar legislation across other jurisdictions or NSW Acts. The Bill takes a measured approach that is generally consistent with other jurisdictions or other NSW Acts, and provides greater flexibility in regulatory action to provide scope for innovation in how the EPA can prevent, manage and remediate contaminated land and pollution, and recover these costs from those that have benefitted financially from crime.

The Bill will also modernise existing legislation to ensure it remains effective, efficient, meets best practice and adopts or aligns with more contemporary regulatory powers and provisions available in other jurisdictions or other NSW Acts.

4.2. Conclusion

There are gaps in the ability of environmental legislation to respond to and enforce environmental crimes that impact on human health and the environment.

The Bill is a critical step towards continually improving legislation to address evolving criminal behaviours or gaps in the existing legislation, and will be further complemented by a range of non-regulatory, regulatory and economic reforms over the next 3 years to ensure environmental regulation is efficient, effective, flexible to enable innovation and delivering public value.

This Better Regulation Statement clearly demonstrates that the proposed reforms are in the public interest and will provide a considerable net benefit for NSW society, the environment and human health.

Appendices

Appendix A The Environment Legislation Amendment Bill 2021

The Environment Legislation Amendment Bill 2021 proposes to make the following amendments:

Protection of the Environment Operations Act 1997 (POEO Act)

The Bill proposes to amend the POEO Act to:

- allow the Environment Protection Authority (EPA) and appropriate regulatory authorities to direct any current or former director or manager and related bodies corporate to take action when a company fails to comply with environment protection notices, to ensure those benefitting from environmental crimes take responsibility for them and make it a strict liability offence for failure to comply with such a direction with equivalent maximum court penalties and executive liability as currently applies to failures to comply with environment protection notices.
- enable the EPA to consider if related bodies corporate of a licensee or proposed licensee, and current and former directors of those related bodies corporate, are 'fit and proper' persons in exercising licensing functions, including when suspending and revoking licences, so that non-compliances by related companies and their directors may be considered in licensing decisions.
- enable the EPA to approve the transfer of the conditions of a licence suspension, revocation or surrender, to ensure licences reflect changes in land ownership or occupation, especially where long-term liabilities need to be managed.
- enable the EPA to enforce conditions of a licence, including conditions of a licence surrender, revocation or suspension, by imposing a restriction on use or a public positive covenant on land subject to the conditions, through execution by the EPA without needing the agreement of any other person, to enable long-term responsibility for environmental liabilities to run with the land.
- enable a class of premises, or specified persons carrying on an activity that is not necessarily at specific premises, to be subject to a prohibition notice to deter poor performers from moving to different premises.
- enable the EPA to order clean-up action without having to prove the required clean-up is directly linked to a specific pollution incident, particularly where a person is reasonably suspected of having contributed to a pollution incident, and expand cost recovery provisions accordingly.
- expand the existing offence for repeat waste offenders to include consideration of the offence of wilful or negligent disposal of waste, and the offence of providing false or misleading information about waste.
- create new general offences of providing false or misleading information to the EPA (whether voluntarily or otherwise) covering situations involving both strict liability and knowledge. Prescribe both offences with a 3-year limitation period, and the strict liability offence as an executive liability offence.
- expand the offences against authorised officers to extend to wilful assault, threats and intimidation, and create a new strict liability offence of delaying, obstructing, assaulting, threatening or intimidating an authorised officer.
- increase the consistency in maximum penalties within certain sections and for similar false or misleading information offences.

- enable provisions relating to investigations and criminal and other proceedings to be extended to other environment protection legislation by regulation and extend the timeframe to commence executive liability offence proceedings.
- enable the EPA to take regulatory action against owners of vehicles used for the illegal dumping of waste.
- enable the EPA to recover monetary benefits accruing to a director, manager or related body corporate of a company convicted of an offence, or a person who was a director of the company convicted or a related body corporate at the time of the offence, by making it an offence to receive those benefits, thereby giving the court power to make a monetary benefits order against a director, manager or related body corporate following a company's conviction. Additionally, expand provisions relating to restraining orders to cover situations where a monetary benefits order is likely to be sought, and enable the EPA to recover monetary benefits in separate civil proceedings against directors, managers and related bodies.
- extend the matters the EPA is able to consider before requiring a licensee to provide a financial assurance to include the financial capacity of the licensee or licence applicant, to expand when financial assurances can be required from polluters to ensure that government funds are accessed as a last resort.
- allow regulations to implement national environment protection measures.

Contaminated Land Management Act 1997 (CLM Act)

The Bill proposes to amend the CLM Act to:

- allow the EPA to require a person subject to an ongoing maintenance order, a public positive covenant or a restriction on use of land, to provide a financial assurance to protect the NSW Government from having to pay for environmental liabilities.
- allow the EPA to issue a clean-up or prevention notice as soon as it is notified of contamination in relation to a site to expedite the containment and clean-up of contamination.
- increase penalties to align with penalties for similar or equivalent offences and include the full suite of court orders available under the POEO Act in connection with offences.
- clarify that an approved use for contaminated land assessment purposes is development that does not need further approval, consent or a complying development certificate under planning legislation.
- enable the EPA to recover monetary benefits accruing to a director, manager or related body corporate of a company convicted of an offence, or a person who was a director of the company convicted or a related body corporate at the time of the offence, by making it an offence to receive those benefits, thereby giving the court power to make a monetary benefits order against a director, manager or related body corporate following a company's conviction. Additionally, enable the EPA to recover monetary benefits in separate civil proceedings against directors, managers and related bodies corporate.
- extend the matters the EPA is able to consider before requiring a financial assurance to include the financial capacity of the regulated body.

Pesticides Act 1999

The Bill proposes to amend the Pesticides Act to include relevant court orders available under the POEO Act in connection with offences, remove the need for Ministerial approval to make a pesticide control order, and provide for a new offence and civil proceedings to recover monetary benefits accruing to a director, manager or related body corporate of a company convicted of an offence, or a person who was a director of the company convicted or a related body corporate at the time of the offence.

Radiation Control Act 1990 (RC Act)

The Bill proposes to amend the RC Act to:

- enable the EPA to recover monetary benefits accruing to a director, manager or related body corporate of a company convicted of an offence, or a person who was a director of the company convicted or a related body corporate at the time of the offence, by making it an offence to receive those benefits, thereby giving the court power to make a monetary benefits order against a director, manager or related body corporate following the company's conviction. Additionally, enable the EPA to recover monetary benefits in separate civil proceedings against directors, managers and related bodies corporate.
- extend the matters the EPA must consider before requiring a licensee to provide a financial assurance to include the financial capacity of the licensee or former licensee.

Land and Environment Court Act 1979

The Bill proposes consequential amendments to the Land and Environment Court Act to give effect to the proposal relating to monetary benefit orders.

Protection of the Environment Administration Act 1991 (POEA Act)

The Bill proposes to amend the POEA Act to:

- better reflect the current management structure of the EPA, including establishing the Chief Executive Officer (CEO) as head of the EPA, as a statutory public service position and as an ex-officio non-voting member of the EPA Board, with the CEO being responsible for day-to-day management and control of EPA operations subject to directions of the EPA Board and Minister; provide that the CEO is to retain the EPA's seal, may act in the name of the EPA and delegate their powers. increase the flexibility for future Board appointments to include up to seven members with an expanded range of expertise.
- strengthen the EPA's independence by limiting the Minister's power to control and direct the EPA which aligns with other regulators.
- clarify the EPA Board's role includes organisational governance and risk management.
- enable additional legislation to be prescribed as environment protection legislation for which the EPA has responsibility in the regulations.
- improve personal liability protection for the Minister, the EPA's CEO and EPA officers.

Protection of the Environment (General) Regulation 2021, Radiation Control Regulation 2013 and Waste Avoidance and Resource Recovery Act 2001

The Bill makes minor statute law amendments and consequential amendments to give effect to the substantive changes proposed in the Bill, including the separation of EPA Board Chairperson and EPA CEO roles.