

ENVIRONMENTAL PROTECTION AMENDMENT BILL 2010

First Reading

Bill read a first time, on motion by **Dr G.G. Jacobs (Minister for Water)**.

Explanatory memorandum presented by the minister.

Second Reading

DR G.G. JACOBS (Eyre — Minister for Water) [12.55 pm]: I move —

That the bill be now read a second time.

The illegal dumping of waste in bushland and other areas, particularly on the outskirts of our towns and cities, not only detracts from the beauty of our natural heritage and reduces our enjoyment of it, but also poses a hazard to the environment and often to public health and safety. The existing offences in the Environmental Protection Act 1986, known as the EP act, do not adequately allow for the control of dumping waste, as the requirements of those offences may make prosecution difficult. As a result, offences such as this are frequently dealt with as littering. However, the existing offence provisions in the Litter Act 1979 are directed at minor incidents of littering and billposting and the penalties, which limit fines to \$1 000 for an individual, are inadequate to provide deterrence. In order to rectify these deficiencies and create a real deterrent to this antisocial and environmentally destructive practice, the government is introducing the Environmental Protection Amendment Bill 2010 to create an offence that clearly prohibits “dumping waste”.

The bill introduces a new section 49A of the Environmental Protection Act, which creates an offence of discharging or abandoning waste into water to which the public has access or into any other place. “Place” is defined to include a vehicle or receptacle. The bill also provides that it is a defence to a charge of discharging or abandoning waste on land if the accused person can show that he or she had the consent of the person in control or management of the place. This defence is not available for a charge of dumping waste into water to which the public has access as there is not always an identifiable person in “control or management” of a public waterway. The offences will be tier 2 offences, with a maximum penalty of \$62 500 for individuals and \$125 000 for corporations, providing a very significant deterrent against dumping and encouraging waste minimisation and recycling.

The Environmental Protection Act already includes a broad definition of “waste”, which is capable of including all manner of materials. It is necessary to retain a broad definition in order to capture the wide range of types of materials and objects that are unlawfully dumped. A simplistic approach, such as relying on the quantity or specified types of waste, is inadequate. Depending on the circumstances, small quantities of material can be regarded as serious acts of dumping if those materials pose an environmental or safety hazard—for example, where a quantity of green waste contains noxious weed seeds or where a small number of paint cans contain harmful chemicals and solvents. Conversely, innocuous materials such as paper can amount to a serious offence if dumped in sufficiently large quantities to despoil the landscape.

Although the definition appears to overlap with the offence of littering under the Litter Act 1979, the offence of dumping waste is not intended to apply to actions that involve the deposit of very small quantities of non-harmful material such as individuals dropping food wrappings or papers. A decision whether to apply a charge of dumping waste or a charge of littering to a particular unlawful act will be governed by the department’s enforcement and prosecution policy and a specific littering and dumping waste enforcement guideline. The littering and dumping waste enforcement guideline will stipulate that a decision to treat an offence as dumping waste rather than littering would be based on consideration of the size and quantity of the waste, whether the waste was deposited from a truck or utility trailer as opposed to being deposited by a person on foot or thrown from a vehicle window, and whether the waste is or includes substances that are hazardous to human health or the environment. Where waste is discharged in quantities sufficiently small to have been readily deposited by an individual on foot or thrown from a vehicle window, and where the nature of the waste is such that it does not pose a significant hazard to human health or the environment, it will be treated as littering under the Litter Act 1979 rather than dumping waste.

It is not unprecedented for different offences to overlap and for decisions as to which charge to apply to be made according to an appropriate enforcement policy or administrative guideline. For example, the serious offences of causing pollution or an unreasonable emission potentially overlap with the comparatively minor offences of causing an unauthorised discharge or emitting unreasonable noise. A decision as to which charge to apply is determined by application of the enforcement and prosecution policy. The same principle will apply to the offences of littering and dumping waste.

The amendments also provide inspectors or authorised persons with the power to stop and inspect any vehicle or vessel in order to ascertain whether there are reasonable grounds for suspecting that an offence has been or is likely to be committed. A major objective of the new offence is to prevent and punish the dumping of trailer loads of waste in nature reserves, state forests and other publicly accessible areas. At present Department of Environment and Conservation inspectors are unable to intercept trucks or vehicles with trailers entering or leaving reserves and state forests even when there are clear grounds for suspecting that dumping waste or pollution has occurred. The inclusion of this power will enable DEC inspectors to intercept these vehicles in order to investigate actual or suspected offences against the act. It will not affect lawful activities.

This power is comparable with other powers of regulatory officers in the Agriculture and Related Resources Protection Act 1976, the Fertilizers Act 1977 and the Fish Resources Management Act 1994. The power will also provide inspectors with the ability to investigate potential breaches of other provisions of the Environmental Protection Act, such as causing pollution or environmental harm.

The bill will also enable modified penalty notices to be issued for offences of dumping waste and will enable police officers and local government CEOs to institute prosecutions for dumping waste with the consent of the CEO of the Department of Environment and Conservation. The bill also provides that the existing defences in sections 74 and 74A of the Environmental Protection Act will be available in cases of dumping waste.

I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.