PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT (NOTIFICATION OF POLLUTION INCIDENTS) BILL 2011

Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Cate Faehrmann.

Second Reading

The Hon. CATE FAEHRMANN [10.54 a.m.]: I move:

That this bill be now read a second time.

I present The Greens' Protection of the Environment Operations Amendment (Notification of Pollution Incidents) Bill 2011, which is a very simple yet very important bill. The intent of the bill is clear. It amends the Protection of the Environment Operations Act 1997 to expedite the notification of pollution incidents that cause or threaten material harm to the environment. As members will no doubt be aware, this bill has been inspired by the recent accident at the Orica Limited Kooragang Island facility, which manufactures ammonium nitrate. A plume of hexavalent chromium was released on Monday 8 August at approximately 6.00 p.m. The plume settled in the nearby residential area of Stockton. Hexavalent chromium is one of the more potent carcinogens and presents a real risk to human beings when inhaled or digested.

Over recent weeks serious questions were raised not only about how the accident happened but also about the inadequate response from both the company and the Government. One of the most troubling issues is that Orica took 16 hours to notify the Office of Environment and Heritage. Notification did not occur until 10:30 a.m. on Tuesday 9 August. During this time, and for several days afterwards, children played outside and people collected vegetables from their garden. One resident told me that she juiced the spinach and beetroot leaves from her garden each morning, for her and her husband, as per usual, until they found out about the incident. That is three whole mornings that this woman and her husband were drinking the juice of vegetable leaves after the highly carcinogenic chemical hexavalent chromium was released into the atmosphere and no doubt settled on every leaf in their garden. This is clearly unacceptable.

The Greens bill will restore some level of community confidence that they will be told when accidents like this occur. This confidence is extremely important to all communities that reside near polluting businesses and industry, not just to Stockton residents. This Greens bill is a simple and effective measure that can be taken immediately to expedite the notification of pollution incidents that cause or threaten material harm to the environment and to communities. The definition of "material harm to the environment" is contained in part 5.7 of the Protection of the Environment Operations Act. Section 147 states:

> (1) For the purposes of this Part:
> (a) harm to the environment is material if:
> (i) it involves actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial, or
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> (ii) it results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding $10,000 (or such other amount as is prescribed by the regulations), and

> (b) loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment.
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> (2) For the purposes of this Part, it does not matter that harm to the environment is caused only in the premises where the pollution incident occurs.

At present, section 148 of the Protection of the Environment Operations Act 1997 requires any such pollution incident to be notified to the appropriate regulatory authority as soon as practicable after the persons associated with the activity that has caused the incident become aware of the incident. Section 149 of that Act enables the regulations to prescribe the manner or form of notifying those pollution incidents. The purpose of this bill is to amend that Act to replace "as soon as practicable" with "immediately" so as to require the immediate notification of those pollution incidents which cause, or threaten to cause, material harm to the environment. Part 3 of the Work Health and Safety Act 2011, "duty to notify of notifiable incidents", states:

> A person who conducts a business or undertaking must ensure that the regulator is notified immediately after becoming aware that a notifiable incident arising out of the conduct of the business or undertaking has occurred.

It states that notice must be given in accordance with this section and by the fastest possible means and that notice must be given by telephone or in writing. Clearly, a serious chemical spill that has the potential to harm human health, either through the inhalation of airborne particles or the drinking of contaminated water, or some such other means, has the potential to be of a similar serious nature to warrant immediate notification, as is allowed for in the Work Health and Safety Act.

Clause 101, notification of pollution incidents, of the Protection of the Environment Operations (General) Regulation 2009 states that, for the purposes of section 149 of the Act, a pollution incident that is required to be notified to the Environment Protection Authority under part 5.7 of the Act is to be notified verbally to the Environment Protection Authority by telephoning the authority's environment line, followed by notification in writing within seven days of the date on which the incident occurred. The Environment Protection Authority has a phone line established for the reporting of incidents where the Office of Environment and Heritage staff can be contacted 24 hours a day via its pollution line on 131 555. This bill makes no change to that reporting mechanism.

The bill essentially makes it clear to companies that when an accident or failure occurs at their business or operation which has the potential to cause material harm to the environment, and hence communities, it is their duty to notify authorities immediately after becoming aware of the incident. Given we now live in a world blessed with mobile technology, this is not an onerous requirement on an employee or employer. Immediate notification means that the authorities can set about notifying potentially affected residents and assisting with the clean-up, if necessary.

I want to refer to examples of the difference between "as soon as practicable" and "immediate" in other pieces of legislation. "As soon as practicable" appears often in regulation, but it does not seem appropriate when we are considering the notification of pollution incidents that cause or threaten material harm to the environment. The pattern appears to be that "as soon as practicable" allows for normal practices to continue. A chemical incident such as the one at Stockton clearly is not one where normal practices

continue. Looking at comparisons in law, a broadcaster who broadcasts under a statutory licence under section 47A of the Commonwealth Copyright Act 1968 is required "as soon as practicable" after such a broadcast is completed to make a record, either in writing in the prescribed form or in such other manner as is prescribed. In the Northern Territory under the Health and Community Services Complaints Act 1998, once two medical practitioners certify that a person is mentally ill, the medical superintendent must bring that person before a magistrate "as soon as practicable".

Pursuant to the Commonwealth Corporations Act 2001 and its regulations, the Health and Community Services Complaints Commission must notify any complaint concerning a registered provider to the relevant national board "as soon as practicable" and consult with the board as to whether the complaint should be referred to the commissioner or to the board. Pursuant to the Commonwealth International Monetary Agreements Act 1947, a drawee institution must pay or dishonour a duly presented cheque "as soon as reasonably practicable". According to the Queensland Retail Shop Leases Act 1994, once a retail tenancy dispute is referred to the chief executive by either a mediator or a party to the dispute, the chief executive must "as soon as reasonably practicable" refer the dispute to a Retail Shop Lease Tribunal legal member to hold a directions hearing.

In case law the definitions of "as soon as practicable" and "immediately" also have been discussed. Richards and Schutt in 1978 in the Supreme Court of Australia held that the words "as soon as practicable" allow for normal factors of police practice and for the lapse of some time, provided it is a short time, while any other necessary action is being taken. David Hay's fourth edition of *Words and Phrases Legally Defined* explores the term "practicable". He states that "practicable" means reasonably practicable, having regard, amongst other things, to local conditions and circumstances, to the financial implications and to the current state of technical knowledge. In situations that can seriously risk the health of the community and the environment, immediate notification, not "as soon as practicable" surely must apply. The seriousness with which this Parliament takes failure to notify is important. During the second reading of the original Protection of the Environment Operations Act in 1997, then environment Minister Pam Allan stated:

> The bill consolidates as well as simplifies the complexities of the existing environmental offence provisions and imposes a new duty to notify the Environment Protection Authority or councils of a pollution incident that causes or threatens to cause material environmental harm. Failure to notify is a new offence. The Government has doubled the penalties for what are known as tier 2 offences, with the maximum penalty increasing from $125,000 to $250,000 for companies and from $60,000 to $120,000 for individuals. Not only does this bring the penalties in line with the Marine Pollution Act, but the Government clearly wants to send a signal to perpetrators and to the courts that significant penalties should be applied to those who flout the law.

The fines have since increased. Now, failure to notify an incident that causes material harm to the environment carries a maximum penalty of $1 million in the case of a continuing offence of a corporation and a further penalty of $120,000 for each day the offence continues. In the case of an individual the fine is $250,000 and $60,000 for each day the offence continues. These are serious fines for the serious incident of failure to notify the authorities of an incident that causes material harm to the environment and, obviously, communities. The Greens argue that delays in notification also should be regarded as a serious offence.

It is not only the recent situation at Orica where delays in notification have occurred. Delays

in notification by companies also occurred under a Labor government. The media have shown strong interest in the delays in notification in relation to the Orica incident—that is, the delay in the environment Minister, Robyn Parker, being informed, the delay in the Minister notifying the public and the delay in her department notifying the Minister. But this also happened under Labor. Therefore, changes to the law are absolutely necessary. We will continue to see companies breach licence conditions and fail to notify government unless they are required to do so by law.

I will give a few examples of the delays that have occurred. I make the point that they also occurred under the previous Government. The Protection of the Environment Operations Act has been in force for a long time, many companies have environment protection licences and, unfortunately, many companies breach those licences, often with serious consequences for the surrounding environment, particularly waterways and air. The examples I refer to are all incidents of material harm where the regulator was notified later than the day of the incident. All these examples would be covered under this amendment to the Act.

In December 2002 a company did not notify then environment Minister Bob Debus for 37 days after an incident of material harm. Again, two incidents occurred where then environment Minister Bob Debus was not notified for nine days and eight days. An incident occurred where then environment Minister Verity Firth was not notified for six days. Then environment Minister Phil Koperberg was not notified for two days and in 2007 for one day of incidents of material harm. So this occurred under a number of environment Ministers. When I was working at the Nature Conservation Council I became sick of briefing environment Ministers on the same issue every six months, it seemed, because a new environment Minister had been appointed. I do not know what actions those environment Ministers took once they were notified. A series of provisions must be changed in the environment protection laws to remedy this situation.

This bill makes one simple amendment to the Protection of the Environment Operations Act, which brings it into line with the Work Health and Safety Act. It will address all the issues, not only the Orica contamination, which has become a political issue. Labor is using this incident for political point scoring. I am disappointed that Labor does not seem to have the same passion about reforming our environmental protection laws to achieve good outcomes, rather than good headlines. I wish this was about improving our environmental laws rather than about bashing the other side. Delays in notification in the Orica spill meant that children played in playgrounds for three days following the incident and people ate vegetables from their garden and went about their daily lives completely oblivious to their potentially toxic environment. That is unacceptable—just as the delays that occurred when Labor was in government and we had the same laws were unacceptable.

I remind the House that Orica has breached its licence conditions 131 times in the past 10 years. I concede that some of those licence breaches were not very serious, but every year, bar one, over the past 10 years Orica has failed to meet its licence conditions. The Environment Protection Authority website reports that Orica's facility in Newcastle alone has breached its pollution licence 88 times since 2000, including unlawful releases of arsenic in 2009 and hexavalent chromium in 2006. That all happened under Labor's watch and it has happened under the Coalition Government's watch. Here is a very good opportunity for us to tighten environmental laws to protect our waterways, the air and our community's health. Such an event could happen again—it could happen again tomorrow or in six months—and next time it might not be Orica that is responsible.

While I support the inquiry that is taking place, and I look forward to being on that committee

and seeing the report of Brendan O'Reilly handed down on 30 September, I know that more measures will be required. This amendment is an extremely simple but important step and it can be taken immediately to restore confidence in companies' activities. The main concerns of the Stockton community were about pollution laws and why the company waited so long before it notified the authorities. When I spoke to residents about how simple this amendment is and how it is similar to that covered by the Work Health and Safety Act, they said to me that surely everyone would support such an amendment. I have also heard the Minister for the Environment say that such a change is necessary. In conversations I have had with people from all sides I get a sense that this is a simple amendment to a very important Act but that it will make a big difference for pollution laws in this State and will restore community confidence in the Government to monitor companies and what they do to our environment. I commend the bill to the House.

Debate adjourned on motion by the Hon. Dr Peter Phelps and set down as an order of the day for a future day.