

ENVIRONMENT PROTECTION (SITE CONTAMINATION) AMENDMENT BILL

The Hon. A.L. EVANS: I rise to indicate Family First support for the second reading of this bill. Family First is keen to ensure that our houses and other building developments are safe for our children and free from contamination. We are also attracted to the proposition that those who cause contamination should be the ones responsible for cleaning it up. The current Environment Protection Act 1993 has insufficient powers to deal with land contaminated before 1995 and, broadly, this bill remedies that deficiency. The bill provides extra powers to the EPA to serve site assessment orders and to order the persons responsible for contaminating sites to remedy those sites and surrounding land.

The bill also allows the transfer of risk from prior pollution from vendor to purchaser, enabling people to 'buy' pollution the same way schemes to buy carbon pollution are currently being discussed. As the Hon. Nick Xenophon noted last week, this bill will no doubt assist in the remediation of sites like Port Stanvac and help remedy situations such as those at the discussed development at Bowden and many other locations around the state.

Family First obtains legal advice on all proposed bills, which in this case has resulted in some concern about the practical operation of clause 103C, which provides that the person causing the contamination is responsible for cleaning it up. This is deemed to be the occupier at the time. We would imagine that, in many cases where pollution occurred long ago, that person may be very difficult to locate and it may also be difficult to prove when the pollution occurred on the land and the level of responsibility. Remediation of the land can often be very expensive, and I note from EPA explanatory reports for this bill a case where \$2.2 million was spent on remediation of a former sulphuric acid plant and a case where \$7.75 million was spent on remediation of land with nine metre deep pugholes.

There is also a case in this report where \$550 000 was spent on remediation of former residential land where white ant treatment had been used in the past. In cases where it is too difficult to locate or charge the cause of pollution, the bill simply transfers the liability to the current owner, pursuant to clause 103C(3). I can imagine many long court cases in the future as to who is responsible for the costs. In response to this concern, we are aware that Western Australia has set up a contamination sites management fund, although such a fund is not proposed in the bill before us today.

I note the submissions of Business SA in relation to this bill as part of the stakeholders consultation process. They had the same concern and made the insightful comment that pollution is not an isolated act occurring at one point of time. Pollution can remain ongoing, even when activity on a site has ceased. The land can be occupied by several people or businesses at once. Submissions from the Local Government Association contained a similar concern.

As I understand it, the earlier version of this bill sheeted home liability to the owner of the land, which would ignore cases of pollution by those leasing or otherwise occupying the land. That would have been even more concerning. I note from the most recent draft of the bill that the responsibility is sheeted home more appropriately to the occupier, but certain questions still remain. I ask the minister, when we reach committee, to address how in practice the government proposes to track down those responsible for pollution which may have occurred years previously. Further, I would appreciate the minister addressing whether an increased burden on our already burdened court system is envisaged.

Further, this is retrospective legislation, and I am sure that there may be cases where a person or corporation has bought contaminated land on the understanding that it was contaminated and envisaging that they would pay for the remediation. Does this retrospective legislation now mean that they may be able to sheet back the responsibility (perhaps to the person who sold the land to them) and profit from an unexpected windfall?

Proposed section 103F allows for a determination on this issue, but again I envisage a number of arguments as to whether or not the land was sold with the knowledge of the presence of what is defined in limiting terms as 'chemical substances'. Family First would appreciate an answer to these questions in committee. I reinforce that we are in agreement with the principles of the legislation. This bill brings South Australia into line with other states, and Family First supports its second reading.