



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

Main Committee

**ENVIRONMENT AND
HERITAGE LEGISLATION
AMENDMENT (APPLICATION
OF CRIMINAL CODE) BILL 2000**

Second Reading

SPEECH

Wednesday, 7 March 2001

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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Questioner
Speaker Billson, Bruce, MP

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Mr BILLSON (Dunkley) (6.17 pm)—I commend the member for Wills for his contribution and look forward to the test we are all going to have afterwards about the provisions of the Environment and Heritage Legislation Amendment (Application of Criminal Code) Bill 2000. Let me just acknowledge the contribution from Hamish Campbell of Environment Australia and Jeremy Johnson from my own office. Hamish's legal background and Jeremy's former life with the police force helped me to live these provisions a little bit, because it is not always extremely clear to a non-legal type like myself exactly what the provisions provide for. But I am enlightened now and I am grateful for that, and I have benefited from the contribution of the member for Wills as well.

The bill before us today is an important bill. The fact that so few have spoken on it does not diminish the importance of the bill. It is true to say that it is very much a technical bill which revises the criminal offences in the legislation administered by the Department of the Environment and Heritage to correspond with the principles of criminal responsibility contained in chapter 2 of the Criminal Code Act 1995. However, the importance of this bill is in the fact that it maintains the currency of criminal offences and avoids, as a result of the application of the Criminal Code, a subtle change or variation in the nature of those offences in the way environmental legislation is administered. As the precarious and, at times, fragile nature of our environment becomes more understood, the importance of having legislation that supports the proper care and management of these natural systems and provides for proper recourse to the legal system where parties act contrary to the legislation becomes more apparent. Clearly, with any system of sanctions the correct balance needs to be found between the carrots and sticks, between encouragement to act in the best interests of the environment and punishment for wilful noncompliance with environment regulation.

This bill can rightly be seen as furthering the work the Howard government started in 1999 with the Environment Protection and Biodiversity Conservation Bill. What the government began then and continues to work to do now is to develop a comprehensive, effective and efficient approach to environmental management. How we handle offences and the sanctions that follow is a part of that. This approach ensures that resources are focused on delivering the best environmental outcomes possible at all levels. The bill enhances this work by ensuring that the penalties which are attached to various environmental laws operate efficiently and as intended. Importantly, it combines the reforms the government is implementing through the Criminal Code and reforms undertaken to environment legislation more generally to ensure that the system of laws we administer achieves what it aims to achieve. This system clearly articulates the rights and responsibilities of people carrying out activities covered by environmental laws. Most importantly, it is a clear, logically defined, regulatory approach that ensures the best outcome for our environment.

Some of the criminal offences covered by the various environmental bills which this legislation covers are known—as has been described very eloquently by the parliamentary secretary—as strict liability offences. Strict liability offences do not require the prosecution to prove the intention of the defendant to commit the offence, only that the offence occurred. These are the *actus reus* or physical elements of the offence. Other offences require that the *mens rea* or fault elements of the offence be proved—that is, the elements relating to the defendant's state of mind; for example their intention, knowledge, recklessness or negligence. The bill ensures that the intention of the original legislation in terms of these different types of offences is maintained, while harmonising various environment acts with the Criminal Code Act 1995.

I sought to obtain, with the help of Hamish and others, a practical living example. The example I draw from is item 20 in schedule 1, which will amend section 16 of the Antarctic Marine Living Resources Conservation Act. Section 16 deals with the power of inspectors. The item inserts new subsection 16(6A) and subsection 16(6B) into section 16 of this particular act. Under subsection 16(6), a person who, without reasonable excuse, fails to comply with a requirement made of him or her by an inspector under section 16 is guilty of an offence. This is a strict liability offence—simple noncompliance amounts to an offence. The amendments made to the section ensure that it remains a strict liability offence by specifically indicating that this is the case.

The new subsection 16(6B) also provides for subsection (6) not to apply. In other words, it will not be an offence if the person has a reasonable excuse, and indicates that the defendant bears an evidentiary burden in relation to that matter. As an offence of strict liability it will not be necessary to establish intention on behalf of the defendant; it will only be necessary to establish the physical elements of the offence. I am certain we all feel better knowing that that is being maintained into the future. If, for example, the inspector under subsection 16(3) (b) required a person to produce a permit when the inspector found that person doing an act for which a permit was required, and the person failed to comply with that requirement, it would not be necessary to prove that they intentionally failed to comply with the requirement in order to secure a conviction. If the person in the above example can discharge the evidential burden in relation to establishing a reasonable excuse, then the prosecution will have to prove that the person did not have a reasonable excuse before the person can be found guilty of an offence. You can see why legislation draftspersons are very serious individuals, Mr Deputy Speaker.

Clearly, if the application of the Criminal Code Act were to result in the offence changing from a strict liability offence to an offence requiring proof of fault, then this would be an unsatisfactory outcome or a change in the law in its application and intent. Likewise, changing offences requiring the proof of fault to strict liability offences would also be unsatisfactory. So these technical amendments are important. Criminal offences are an integral part of the environment legislation, although they must always be incorporated with a degree of caution. The use of physical element or strict liability offences and fault element offences in relation to various environmental acts provides for varying degrees of offences and so enables them to be graduated and to be used and applied when trying to get the balance right when dealing with persons offending against environmental legislation.

The difficulty when considering criminal offence provisions relating to environmental legislation is the wide variety of potential offences and the varying degrees of seriousness of the breaches of provisions of environmental acts. It is necessary to formulate offences for the dumping of rubbish, as an example, which cover the dumping of household waste on a small scale—perhaps showing an indifference to our environment—compared to a systematic dumping of large and at times commercial amounts of rubbish, where the outcome is not only disrespect for our environment but also financial gain. The dumping of household rubbish on a small scale may be motivated by a desire to escape tip fees, a disregard for the important ways of disposing of these wastes or simple laziness. The dumping of large amounts of waste is more likely to be to avoid paying the costs associated with the disposal and for commercial gain.

In the future it will become even more expensive to dispose of waste properly and, as the amount of waste increases and the availability of suitable dumping sites decreases, we will have an increasingly significant challenge for our legislatures. By maintaining this distinction between the nature and intent of the offender and the penalties that follow, we can get that balance right so that we are not being too heavy handed when minor breaches occur. A reasonable punishment that is aimed at the lower end of the offence spectrum may not be a sufficient deterrent for someone motivated by commercial gain.

Unfortunately, our environment cannot always sustain the damage that is inflicted on it when environmental legislation is ignored. If we are not very careful, the costs associated with the damage to our environment and natural systems will be borne not only by this generation but also the next. This legislation is important because it takes us a little step closer to ensuring that the criminal offence provisions of our environmental legislation are relevant, are as meaningful as possible and do what they were intended to do when the legislation was enacted.

The government will continue to ensure that the legislative framework within our nation operates in a user-friendly, predictable, transparent and as fair as possible manner while providing the protection that is required: protection that, in the case of environment legislation, is vitally important to the future health of our nation's natural systems. I hope that provides some explanation as to what we are debating. I commend the bill to those gathered.