The New South Wales Land and Environment Court exercises its ‘repeat waste offender’ powers in landmark gaol sentence

Date : July 24, 2018

On 31 May 2018 Chief Justice Preston of the Land and Environment Court recently convicted serial offender Mr Dib Hanna Abdallah Hanna of five offences against the *Protection of the Environment Operations Act 1997* under its relatively new ‘repeat waste offenders’ powers, and sentenced Mr Hanna to a three year gaol sentence.

Introduction of repeat waste offender provisions:

The *Protection of the Environment Operations Amendment (Illegal Waste Disposal) Bill 2013* introduced section 144AB(2) which stipulates the following:

144AB Repeat waste offenders

(2) A person commits an offence against this section if the person is an individual who:

(a) has been convicted of a waste offence, and

(b) commits a waste offence on a separate subsequent occasion within five years after that conviction.

Maximum penalty: The maximum monetary penalty provided by this Act for the commission of the waste offence by an individual or imprisonment for two years, or both.

(3) A reference in this section to a conviction for a waste offence includes a conviction before or after the commencement of this section and a conviction for an offence against this section.

(4) If the court is satisfied that a person charged with an offence against this section is not guilty of that offence but is satisfied on the evidence that the person is guilty of the waste offence to which the charge relates, the court may find the person guilty of the waste offence, and the person is liable to punishment accordingly.

(5) Proceedings for an offence against this section may not be dealt with before the Local Court despite section 215.

Purpose of the provision:

The purpose of the introduction of the above provisions was made evident in its second hand reading speech where it was noted that before these provisions the ‘*monetary incentive to break the law often outweighs the existing penalties’*. This mindset was made evident by Mr Hanna

had already previously been found guilty of illegally disposing of waste. The provisions aim was to toughen up the LEC stance on these issues, and to act as a deterrent to prevent future offences.

Offences committed and the Court's order:

The Environment Protection Authority brought 8 breaches of s144AB(2) of the *Protection of the Environment Operations Act* against Mr Hanna. Given that Mr Hanna had previously been charged under the Act, the EPA sought to prosecute him under 2(a) and 2(b).

Mr Hanna entered a guilty plea to five of the eight charges brought against him, in which the breakdown was:

1. One count of transporting waste to a place that cannot be used as a waste facility
2. Four counts of polluting land

Due to the Defendants lack of remorse, repeated disregard for the law and premeditated nature of the offences committed, Chief Justice Preston felt like there was no penalty other than imprisonment that was appropriate.

The Court ordered the following:

1. A three year total term of imprisonment (with a non-parole period of two years and three months)
2. The Defendant to pay the Prosecutor's costs of the proceedings
3. The restoration of the environment as agreed between the EPA and the Defendant
4. The Defendant to publish advertisements in newspapers publicising the detection, prosecution and punishment of the offences.

Read full case here: https://www.caselaw.nsw.gov.au/decision/5b0de196e4b074a7c6e1fac4