



## Office of the Hon Gabrielle Upton MP

Minister for the Environment  
Minister for Local Government  
Minister for Heritage

DOC18/871003-01

Andrew Doig  
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Australian Sustainable Business Group  
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Dear Mr Doig

I refer to your letter to the Minister for the Environment, the Hon Gabrielle Upton MP, and Mark Gifford, Acting Chair and CEO, NSW Environment Protection Authority (EPA), about the proposed Protection of the Environment Operations Amendment (Asbestos Waste) Bill 2018. Your letter has been referred to me and I have been asked to reply.

I note that on behalf of the Australian Sustainable Business Group, you raise a number of concerns with proposed section 241(f) of the Bill, which has added as a consideration "*the presence of asbestos in the environment*".

It may be helpful to clarify that it is a court only that can consider this as an aggravating factor when sentencing for an offence found proven beyond reasonable doubt. Section 241(f) is not available to the EPA, nor does it mean a change in their regulatory approach.

When the court applies the sentencing consideration, a prosecutor and a defendant may also choose to make submissions to the court about whether the presence of asbestos, when considered along with other sentencing factors in section 241, is a serious factor that influences the gravity of the conduct and of any penalty that a court should impose.

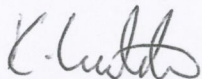
I also note that during the debate on the Bill in the Legislative Council the Christian Democrat Party proposed an amendment to delay the commencement of section 241(f) for 12 months following the assent of the Act. It was proposed due to concerns that the change has the potential to impact on local government.

The Government did not oppose this amendment. However, it should be noted that legitimate operators have nothing to fear from these changes. The EPA's Prosecution Guidelines focuses the EPA's prosecutions on matters involving a deliberate flouting of the law or where operators failed to put in place measures to prevent serious environmental harm.

The existing sentencing factors current in the Act will apply to court sentencing hearings that occur in the meantime.

I hope this clarification assists in addressing the concerns you raised. However, if you have any further questions please feel free to contact Carmen Dwyer, Acting Executive Director Waste and Resource Recovery – Operations and Programs, on 6883 5866 or at [carmen.dwyer@epa.nsw.gov.au](mailto:carmen.dwyer@epa.nsw.gov.au).

Yours sincerely



**Kevin Wilde**  
Chief of Staff