

# **Natural Resources and Other Legislation Amendment Bill (No. 2) 2010**

## **Explanatory Notes for Amendments to be moved during Consideration In Detail by the Honourable Stephen Robertson MP**

### **Title of the Bill**

Natural Resources and Other Legislation Amendment Bill (No. 2) 2010

### **Objectives of the Amendments**

The proposed amendments are necessary to ensure that the amendments in the Bill meet the policy intent of the provisions.

### **Achievement of the Objectives**

Three amendments are needed to ensure the effective operation of the amendments.

### **Alternative Ways of Achieving Policy Objectives**

Legislative amendments are the only means of achieving the policy objectives.

### **Estimated Cost for Government Implementation**

The amendments do not change the estimated cost for government implementation.

### **Consistency with Fundamental Legislative Principles**

Any potential breaches of fundamental legislative principles have been addressed as part of the Notes on Provisions.

No potential breaches of fundamental legislative principles have been identified for the remainder of the amendments in this Bill.

## **Consultation**

### **Rio Tinto Special Agreement Acts - relocation of water rights amendments**

#### **Government**

Department of Premier and Cabinet and the Office of Parliamentary Counsel have been consulted on the amendments.

#### **Community and Industry**

Rio Tinto Aluminium Limited has been consulted in the development of the amendment.

### **Environmental Protection Act – BTEX ban and notification requirements**

#### **Government**

Department of Premier and Cabinet and the Office of Parliamentary Counsel have been consulted on the amendments.

#### **Community and Industry**

These amendments are primarily made as a result of consultation with affected industry.

## **Notes On Provisions**

### **Clause 1**

### **Clause 14 (Insertion of new schs 2 and 3)**

This clause amends clause 14 of the Bill which inserts new schedules 2 and 3. This amendment relates only to the new schedule 3.

The Bill inserts Schedule 3 Proposed Further Agreement into the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957*.

An unnecessary clause has been included in this Further Agreement.

Schedule 3 Proposed Further Agreement currently includes clause 3 which states that Governor in Council approval has been obtained for the further amendment to the Principal Agreement.

However section 4 of the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* is also being amended by the Bill to remove the requirement for Governor in Council to approve such amendments to the Principle Agreement. Therefore there is no requirement to seek Governor in Council approval for the proposed amendment to the Principal Agreement, and accordingly this approval was never sought.

This clause was included inadvertently in the Schedule 3 Proposed Further Agreement and therefore is omitted by the amendment.

**Clause 2**                      **Clause 14 (Insertion of new schs 2 and 3)**

This clause renumbers clause 4 of the Further Agreement to be clause 3. This amendment is necessary as a consequence of the omission of clause 3 of the Further Agreement by clause 1 of the amendments to be moved during consideration in detail.

**Clause 3**                      **Clause 14 (Insertion of new schs 2 and 3)**

This clause renumbers clause 5 of the Further Agreement to be clause 4. This amendment is necessary as a consequence of the omission of clause 3 of the Further Agreement by clause 1 of the amendments to be moved during consideration in detail.

**Clause 4**                      **Clause 16 (Insertion of new s 312W)**

This clause inserts in the new section 312W of the *Environmental Protection Act 1994*, a reference to amounts of BTEX prescribed by regulation. This amendment is necessary as trace amounts of BTEX chemicals may contaminate fracking fluids, even though the fracking fluids do not consist of BTEX chemicals. BTEX chemicals may be found in trace amounts in a wide range of other compounds (e.g. benzene contamination can occur through atmospheric deposition from motor vehicle emissions). Accordingly, it is not practically possible to require zero readings of BTEX chemicals and some trace amounts will be acceptable.

Consequently, section 312W is being amended to insert a regulation making power for maximum amounts of BTEX chemicals. This will allow a standard to be set to maintain water quality characteristics while allowing trace amounts of BTEX chemicals.

## **Clause 5      Clause 17 (Amendment of s 320 (Duty to notify environmental harm))**

This clause inserts a heading for the current section 319 of the *Environmental Protection Act 1994*, deletes the amendments to section 320 of the *Environmental Protection Act 1994* which are in clause 17 of the Bill and replaces section 320 with a new division in the *Environmental Protection Act 1994* about the duty to notify of environmental harm. This amendment is necessary to ensure that the notification requirements are workable for industry, while ensuring that the community is kept informed by the person responsible for the incident.

## **Division 2      Duty to notify of environmental harm**

### **Subdivision 1      Preliminary**

#### **Section 320      Definitions for div 2**

This section defines the terms ‘affected land’, ‘employer’, ‘occupier’, ‘primary activity’, ‘public notice’ and ‘registered owner’ for the purposes of this division.

#### **Section 320A      Application of sdiv 2**

This section replicates subsections (1) and (2) of the current section 320 of the *Environmental Protection Act 1994*, except that the requirement to notify of a negative impact on, or interconnection with, aquifers (which was in clause 18 of the Bill) has been added. This removes duplication between the two duties to notify.

The application of the duty to notify serious and material environmental harm remains unchanged.

## **Subdivision 2 Duty of person carrying out an activity**

### **Section 320B Duty of employee to notify employer**

This section replicates subsections (3)(a) and (5) of the current section 320, except that the employee must notify the employer within 24 hours after becoming aware of the event.

### **Section 320C Duty of other persons to notify particular owners and occupiers**

Subsections (1) and (2) of this section replicate subsections (3)(b) and (5) of the current section 320, except that the person must notify the administering authority within 24 hours after becoming aware of the event, and the penalty has been increased to 500 penalty units.

Subsection (3) of this section contains the new requirement to notify affected occupiers which was inserted by clause 17. The requirement has been amended so that:

- the notice may be given to either the occupier or the registered owner of the land; and
- the notice may be given by public notice.

Public notice is defined in the new section 320. It may include, for example, a radio or television broadcast.

These amendments are necessary to respond to issues raised by industry about the ways in which an affected occupier can be notified to ensure information can be provided in the most timely and effective way.

These amendments, together with the amendments in section 320E, give more flexibility about how notice is given.

As the explanatory notes for clause 17 of the Bill note, the penalty has been increased to 500 penalty units for failure to notify serious or material

environmental harm because the Department of Environment and Resource Management has experienced a number of situations where notification has not happened in a timely fashion or at all in accordance with this section. Accordingly, the maximum penalty for this section is being increased to 500 penalty units. This penalty is an interim amount between the existing maximum penalty of 100 penalty units and maximum penalties under section 480 for providing false and misleading information. This is justified on the grounds that failure to give notice can significantly increase the risk of a serious or irreversible incident. The current maximum penalty of 100 penalty units does not provide a sufficient incentive to report an environmental incident if a person fears liability or prosecution may result. Failure to notify an interconnection retains the current maximum penalty of 100 penalty units since this may not cause serious or material environmental harm.

### **Subdivision 3 Duty of employer**

#### **Section 320D Duty of employer to notify particular owners and occupiers**

Subsections (1) and (2) of this section replicate subsection (3)(b) of the current section 320.

Subsection (3) of this section contains the new requirement to notify affected occupiers which was inserted by clause 17. The intention was that the requirement to notify the affected landowner/occupier should attach to the same person who is required to notify the administering authority. The person who is required to notify the administering authority is the employer, not the employee or contractor. However, due to a drafting error, the obligation was placed on the employee or contractor, rather than the employer. This section corrects that error.

In addition, the requirement has been amended so that:

- the notice may be given to either the occupier or the registered owner of the land; and
- the notice may be given by public notice.

Public notice is defined in the new section 320. It may include, for example, a radio or television broadcast. If there is potentially a large number of

affected landowners/occupiers due to the widespread nature of the incident, the notice may be initially given via public notice. The detail of when and how public notice can be used as an alternative to formal written notice will be contained in the regulation.

These amendments are necessary to respond to issues raised by industry about the ways in which an affected occupier can be notified to ensure information can be provided in the most timely and effective way.

These amendments, together with the amendments in section 320E, give more flexibility about how notice is given.

The maximum penalty of 500 penalty units for failure to notify of serious or material environmental harm is the same as the penalty for failing to notify the administering authority. This penalty is an interim amount between the existing maximum penalty of 100 penalty units and maximum penalties under section 480 for providing false and misleading information. This is justified on the grounds that failure to give notice can significantly increase the risk of a serious or irreversible incident. Failure to notify an interconnection retains the current maximum penalty of 100 penalty units since this may not cause serious or material environmental harm.

## **Subdivision 4    Miscellaneous**

### **Section 320E        Notice to occupiers of affected land**

This section, together with the amendments in section 320C, gives more flexibility about how notice is given.

Notice to an occupier of affected land may be given in any number of ways and need not be addressed to a particular person, but maybe addressed to “The Occupier/s” and can be given to the occupiers via post or personal delivery or left in a prominent place if no-one is home. This will assist with immediate notification as letter drops can be done.

### **Section 320F        Defences and excuses for div 2**

Subsection (1) of this section inserts a new defence for failing to give notice to the owners or occupiers of affected land. While a person may make all reasonable efforts to identify the affected land, or the owner or

occupier of the affected land, and to give each owner or occupier of affected land a notice, some owners or occupiers may not receive a notice. The onus is on the person who failed to give the notice to prove that they made reasonable efforts.

Subsection (2) of this section replicates subsection (6) of the current section 320.

## **Section 320G            Use of notice in legal proceedings**

This section replicates subsections (7) and (8) of the current section 320.

### **Clause 6                    Clause 18 (Insertion of new s 320A)**

This clause deletes clause 18 of the Bill which included a new section requiring notification where an activity negatively affected the water quality of an aquifer or the interconnection of aquifers. This requirement is now contained in the new section 320A (Application of sdiv 2) in the new Division 2.

### **Clause 7                    Clause 25 (Amendment of s 464 (Insertion of new pt 19, div 13, sdiv 2))**

This clause amends clause 25 of the Bill which amends section 464 of the *Geothermal Energy Act 2010* to ensure that the provision accurately reflects the policy intent. Amendment 4 provides for the omission of the words ‘that the holder started before the commencement’ and replaces them with ‘stated in the notice’ for the purposes of section 780(2)(b) of the *Mineral Resources Act 1989*. It clarifies that entry notices current at the time of commencement of the new legislation may be renewed only for activities that were stated in the entry notice.

### **Clause 8                    Clause 25 (Amendment of s 464 (Insertion of new pt 19, div 13, sdiv 2))**

This clause amends clause 25 of the Bill which amends section 464 of the *Geothermal Energy Act 2010* to ensure that the provision accurately



reflects the policy intent. Amendment 5 provides for the insertion of the words 'including any renewed term' in section 781(2) of the *Mineral Resources Act 1989*. It clarifies that the conduct and compensation agreement requirement under schedule 1 does not apply to the holder for any converted entry notice and subsequent renewal, up until either 6 months after the anniversary date of the grant of the tenure or 1 September 2011.

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