

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

Amendments agreed to during Consideration

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

Page 20, lines 24 to 26—

omit.

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

Page 20, line 28, ‘4.’—

omit, insert—

‘3.’.

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

Page 21, line 34, ‘5.’—

omit, insert—

‘4.’.

4 Clause 16 (Insertion of new s 312W)

Page 23, lines 21 to 23—

omit, insert—

‘purpose of stimulation, including fracturing, that contain the following chemicals in more than the maximum amount prescribed under a regulation—

- (a) petroleum hydrocarbons containing benzene, ethylbenzene, toluene, or xylene;’.

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

Page 24, lines 1 to 31—

omit, insert—

‘17 Insertion of new ch 7, pt 1, div 1, hdg

Chapter 7, part 1, before section 319—

insert—

‘Division 1 Duty to prevent and minimise environmental harm’.

‘18 Replacement of s 320 (Duty to notify environmental harm)

Section 320—

omit, insert—

‘Division 2 Duty to notify of environmental harm

‘Subdivision 1 Preliminary

‘320 Definitions for div 2

‘In this division—

affected land means land on which an event has caused or threatens serious or material environmental harm.

employer see section 320B(1).

occupier, of affected land, means a person who lives or works on the affected land.

primary activity see section 320A(1).

public notice means a notice given in the way, and under the circumstances, prescribed under a regulation.

Example—

a radio or television broadcast

registered owner, of affected land, means—

- (a) the registered owner of the land under the *Land Title Act 1994*; or
- (a) the lessee of the land under the *Land Act 1994*.

'320A Application of div 2

- '(1) This division applies if a person—
 - (a) while carrying out an activity (the *primary activity*), becomes aware that an event has happened that causes or threatens serious or material environmental harm because of the person's or someone else's act or omission in carrying out the primary activity or another activity being carried out in association with the primary activity; or
 - (b) while carrying out a chapter 5A activity (also the *primary activity*), becomes aware of the happening of 1 or both of the following events—
 - (i) the activity has negatively affected, or is reasonably likely to negatively affect, the water quality of an aquifer;
 - (ii) the activity has caused the connection of 2 or more aquifers.
- '(2) However, this division does not apply if the event is authorised to be caused under—
 - (a) an environmental protection policy; or
 - (b) a transitional environmental program; or
 - (c) an environmental protection order; or
 - (d) an environmental authority; or
 - (e) a development condition of a development approval; or
 - (f) a standard environmental condition of a code of environmental compliance for a chapter 4 activity; or
 - (g) an emergency direction; or
 - (h) an accredited ERMP.

‘Subdivision 2 Duty of person carrying out an activity

‘320B Duty of employee to notify employer

- ‘(1) This section applies if the person is carrying out the primary activity during the person’s employment or engagement by, or as the agent of, someone else (the *employer*).
- ‘(2) The person must, no later than 24 hours after becoming aware of the event and unless the person has a reasonable excuse—
 - (a) notify the employer of the event, its nature and the circumstances in which it happened; or
 - (b) if the employer can not be contacted—give the administering authority written notice of the event, its nature and the circumstances in which it happened.

Maximum penalty—100 penalty units.

‘320C Duty of other persons to notify particular owners and occupiers

- ‘(1) This section applies if the person is not carrying out the primary activity during the person’s employment or engagement by, or as the agent of, someone else.
- ‘(2) The person must, no later than 24 hours after becoming aware of the event and unless the person has a reasonable excuse, give the administering authority written notice of the event, its nature and the circumstances in which it happened.

Maximum penalty—

- (a) for an event mentioned in section 320A(1)(a)—500 penalty units; and
 - (b) for an event mentioned in section 320A(1)(b)—100 penalty units.
- ‘(3) The person must, as soon as reasonably practicable after becoming aware of the event and unless the person has a reasonable excuse, give—

- (a) written notice of the event, its nature and the circumstances in which it happened to any combination of the following for the affected land—
 - (i) any occupier of the affected land;
 - (ii) any registered owner of the affected land; or
- (b) public notice of the event, its nature and the circumstances in which it happened to persons on the affected land.

Maximum penalty—

- (a) for an event mentioned in section 320A(1)(a)—500 penalty units; and
- (b) for an event mentioned in section 320A(1)(b)—100 penalty units.

‘Subdivision 3 Duty of employer

‘320D Duty of employer to notify particular owners and occupiers

- ‘(1) This section applies if the employer has been notified under section 320B(2) of the event.
- ‘(2) The employer must, no later than 24 hours after becoming aware of the event and unless the employer has a reasonable excuse, give the administering authority written notice of the event, its nature and the circumstances in which it happened.

Maximum penalty—

- (a) for an event mentioned in section 320A(1)(a)—500 penalty units; and
 - (b) for an event mentioned in section 320A(1)(b)—100 penalty units.
- ‘(3) The employer must, as soon as reasonably practicable after becoming aware of the event and unless the person has a reasonable excuse, give—

- (a) written notice of the event, its nature and the circumstances in which it happened to any combination of the following for the affected land—
 - (i) any occupier of the affected land;
 - (ii) any registered owner of the affected land; or
- (b) public notice of the event, its nature and the circumstances in which it happened to persons at the affected land.

Maximum penalty—

- (a) for an event mentioned in section 320A(1)(a)—500 penalty units; and
- (b) for an event mentioned in section 320A(1)(b)—100 penalty units.

‘Subdivision 4 Miscellaneous

‘320E Notice to occupiers of affected land

- ‘(1) Without limiting the ways in which a person or employer may give written notice to an occupier of affected land under this division, a person or employer is taken to have given written notice under this division to an occupier of affected land if the notice is—
 - (a) left with someone who is apparently an adult living or working on the affected land; or
 - (b) if there is no-one on the affected land or the person has been denied access to the affected land—left on the affected land in a position where it is reasonably likely to come to the occupier’s attention; or
 - (c) posted to the affected land.
- ‘(2) Written notice that is posted to, or left at, affected land may be addressed to ‘The Occupier’.

‘320F Defences and excuses for div 2

- ‘(1) In a proceeding for an offence against a provision of this division, it is a defence for a person or employer to prove that, despite failing to comply with the provision, the person or employer made reasonable efforts to identify the affected land and give written notice to each registered owner or occupier of the affected land.
- ‘(2) It is not a reasonable excuse for a person or employer to fail to comply with an obligation under this division on the ground that the written notice, or the giving of the written notice, might tend to incriminate the person or employer.

‘320G Use of notice in legal proceedings

- ‘(1) A written notice given by a person or employer under this division is not admissible in evidence against the person or employer in a prosecution for an offence against this Act that is constituted by the act or omission that caused the event under the notice.
- ‘(2) This section does not prevent other evidence obtained because of the written notice, or the giving of the written notice, being admitted in any legal proceeding against the person or employer.’.

6 Clause 18 (Insertion of new s 320A)

Page 25, lines 1 to 30 and page 26, lines 1 to 11—

omit.

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

Page 28, line 7, ‘after’—

omit.

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

Page 28, line 27, '*omit*,'—
omit.

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