

30 March 2016

Research Director Agriculture and Environment Committee  
Parliament House  
BRISBANE QLD 4000

By email: [aec@parliament.qld.gov.au](mailto:aec@parliament.qld.gov.au)

### **Environmental Protection (Chain of Responsibility) Amendment Bill 2016 – Submission**

We refer to the Agriculture and Environment Committee's (AEC) invitation to provide submissions relating to the proposed introduction of the Environmental Protection (Chain of Responsibility) Amendment Bill 2016 (the Bill) and provide below our submission in regard to the Bill.

#### ***Our Concern***

In its current form the Bill does not make specific provision as to how an External Administrator appointed pursuant to Chapter 5 of the Corporations Act 2001 (the Act) is to be treated.

The current drafting of the Bill may result in the Bill applying to individuals appointed as external administrator to an entity. Consequently the implications of the Bill may be such that it will deter external administrators from being prepared to accept an appointment in respect to an insolvent entity within the industries covered by the Bill.

#### ***Specific Issues Identified***

Based on our review of the Bill and feedback obtained from legal practitioners the Bill in its current form is potentially applicable to External Administrators (including Liquidators, Administrators and Receivers/Controllers as defined by s9 of the Act)

##### **External Administration**

- With regard to External Administrators application could occur for example by reason of s363AB (1) (c) as having a relevant connection and s363AB (2) (b) as having the ability to influence a company's conduct. Generally the External Administrator will assume control of the relevant company's affairs.
- By the nature of an appointment of an External Administrator there are typically insufficient assets to meet liabilities of the company.
- An environmental protection order (EPO) could, adopting the Bill, be issued to the individual appointed as an External Administrator of a company. As a consequence the External Administrator may become personally liable to meet the EPO for acts committed by the company prior to their appointment. Further it is probable there would be insufficient assets available under their statutory indemnities to meet such EPO.

***Further action recommended***

External Administrators are required to meet certain obligations in order to be appointed in their role to an entity including registration with the Australian Securities and Investment Commission as a registered and/or official liquidator. Consequently External Administrators are specifically qualified to take control and administer the affairs of companies that may be or may become insolvent. The appointment of an appropriately qualified person to manage and in certain circumstances wind up the affairs of an insolvent entity is essential for creditors and the efficient management of corporate regulation in Australia.

Placing External Administrators in a position whereby they may become personally liable for shortfalls in environmental compliance caused by Companies prior to the External Administrators appointment is likely to result in a reluctance to accept an appointment as External Administrator in the first instance. Implementing legislation that may result in the reluctance of registered or official liquidators accepting an appointment may result in greater inefficiencies in corporate regulation, could create further losses for creditors and give rise to potential further environmental risk by not having anyone in control of an insolvent entity.

We would welcome an opportunity to discuss our concerns in greater detail should the AEC require. Thank you for the opportunity to provide our submission and we trust that the AEC will consider the wider implications and impact the Bill may have including the issues raised above.

Should you have any queries please do not hesitate to contact the writer on [REDACTED]

  
Yours faithfully

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