



30 March 2016

Research Director
 Agriculture and Environment Committee
 Parliament House
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**CCA SUBMISSION – ENVIRONMENTAL PROTECTION (CHAIN OF RESPONSIBILITY)
 AMENDMENT BILL 2016**

Cement, Concrete and Aggregates Australia (CCA) is the peak industry body representing the \$12 billion-a-year heavy construction materials industry in Australia. Our members are involved in the extraction and processing of quarry products, as well as the production and supply of cement, pre-mixed concrete and supplementary materials. We welcome the opportunity to make a submission to the Agriculture and Environment Committee in relation to the *Environmental Protection (Chain of Responsibility) Amendment Bill 2016* (the Bill), particularly in relation to the heavy construction materials industry.

The heavy construction materials industry is continually striving to ensure its processes and practices are consistent with the principles of sustainable development. The industry is committed to work with governments and communities to protect the environment and minimise its environmental impacts.

CCA understands that the key objectives of the Bill are to ensure sites operated by companies in financial difficulty continue to comply with their environmental obligations. In particular, the Bill will enable the Queensland Department of Environment and Heritage Protection (EHP) to:

- Issue environmental protection orders (EPOs) to entities and individuals who are related to, or have a relevant connection with, a person undertaking an environmentally relevant activity;
- Impose or amend the amount of financial assurance required for a project whenever an environmental authority is transferred; and
- Increase its' scope of enforcement and investigation powers including the ability to enter land with respect to Environmental Relevant Activity (ERA).

In general, CCA supports the overall intent of the Bill, however, due to the limited time for analysis, and lack of consultation prior to its introduction into Parliament, we feel unable to fully explore the potential implications and unintended consequences of the Bill. As the proposed legislation appears to apply to all holders of environmental authorities, CCA believes that the Bill may also have significant implications for the heavy construction materials industry.

Issue of EPOs to a 'related person' of a company

CCA notes that the Bill proposes a new part of the *Environmental Protection Act 1994* (EP Act) that will expand EHP's power to issue an environmental protection order to a 'related person' of a company that is, or was, carrying out an ERA. Under the proposed amendments, an entity or individual will be considered a 'related person' of a company if:

- The entity is a holding company of the company;
- The entity or person owns land on which the company carries out, or has carried out, a relevant activity; or
- If EHP determines that the person has a "relevant connection" with the company.



Under the proposed legislation it appears that a person will have a “relevant connection” to the company carrying out the ERA, either if the person has benefited financially from the activity or is, or has been at any time during the previous two years, been in a position to influence the company’s compliance with its environmental obligations.

CCAA believes that the definition of a “related person” appears very broad and may include a wide range of individuals and companies with an interest in the relevant company, including landowners, executive officers, financiers, investors, parent companies and holding companies. The Bill may therefore provide EHP with the ability pursue any entity financially equipped to rehabilitate or rectify any environmental damage, even though the entity may not have been extensively involved in the matter.

Amendments to financial assurance requirements when transferring an environmental authority

CCAA also has concerns regarding the amendments to proposed financial assurance requirements when transferring environmental authority proposed in the Bill. Under the proposed legislation, EHP may be able to amend existing environmental authorities when they are transferred to specifically include financial assurance requirements, or where there is existing financial assurance in place, to amend the level of assurance given.

In addition, the proposed provisions in the Bill will have a retrospective effect and will, for example, enable EHP to require financial assurance from companies no longer holding an relevant environmental authority but who have previously benefited from the operation of a site.

Historically, EHP has rarely required FA (through a bank guarantee) for quarries in Queensland, unlike the mining industry. Only about 5% of quarry operations currently have FA requirements from EHP. Local Governments have been more likely to impose Financial Assurance - about 30% currently have such requirements from local government authorities.

The reason why FA has rarely been applied for our industry is due to several distinct characteristics about our industry, which counters the need for FA. Such factors include:

- Unlike mining, quarrying is generally undertaken on free-hold land, which means that quarry operators have a greater incentive to ensure the property is rehabilitated and maintained for post-quarry use.
- Quarries are strategically positioned near areas of high demand for construction materials, and constitute significantly lower financial and end-use risk than remoter mining operations with their inherent greater volatility.
- Typically, as part of an extractive industry development application process, the company (applicant) would submit a rehabilitation strategy / plan and be legally bound to implement the plan by the conditions of that approval.
- Quarrying is undertaken on a much smaller scale than mining – the average open cut coal mine is 10 times the size of an average hard-rock quarry.

Whilst CCAA believes there are circumstances where financial assurances may be appropriate for the extractive industry, these cases need to be based on proper criteria, and reflect the true environmental risk to the State. Therefore, the proposed legislative changes could provide a substantial expansion of EHP’s existing powers in relation to the application of financial assurances, including the retrospectivity proposed by the transitional provisions of the Bill.

Amendments to EA conditions

In addition, under the provisions of the draft Bill, it appears that there will be the ability for EHP to amend EA conditions which may not have directly resulted in the EPO being issued. That is, EA conditions regarding noise may be amended even though the EPO was in relation to water contamination.

Expanded enforcement and investigation powers

The Bill also proposes a number of changes to increase the scope of EHP's enforcement and investigation powers. Currently, EHP can enter a site to which an EA relates but only where the entry is made when the activity is being carried out, or where the site is open for the conduct of business, or the place is otherwise open for entry. The Bill proposes to substantially extend this power, whereby, EHP will now be allowed to simply enter a place to which an EA relates. EHP will also be allowed to enter land to which an EA has applied to, even if the EA has ceased to have effect.

In addition, it appears that the Bill provides that it is not a "reasonable excuse" to refuse to answer a question on the basis that it might lead to self-incrimination. CCAA believes that the existing powers under the EP Act are extensive and already include numerous enforcement mechanisms and power to compel the provision of information and answering of questions.

Transitional arrangements

The Bill also appears to provide for a number of provisions which will apply retrospectively to persons and activities undertaken prior to the commencement of the Bill which could provide significant implications to EA holders.

Lack of consultation

Due to the significant consequences associated with the proposed legislation, including the retrospectivity provisions, CCAA is also concerned with the lack of consultation provided by the Government in relation to the Bill. CCAA notes that though it appears that the impetus behind the introduction of the Bill was to amend the EP Act to assist EHP when dealing with the operators of a few select sites in the resource industry, the amendments appear to apply to all proponents with environmental authorities. Therefore, CCAA believes that as the consequences of the proposed legislation may be significant, and with numerous implications, that additional time is required to fully comprehend the Bill and any unintended consequences provided by the draft legislation.

CCAA thanks you for the opportunity to provide feedback on the *Environmental Protection (Chain of Responsibility) Amendment Bill 2016*. To further discuss any of the issues raised in the submission, please contact me on [REDACTED]

Yours sincerely

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