



LOCK THE GATE ALLIANCE LTD

[REDACTED]
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To the Chairperson,
Agriculture and Environment Committee
Queensland Parliament
George Street,
Brisbane, QLD, 4000

Environmental Protection (Chain of Responsibility) Amendment Bill 2016

The Lock the Gate Alliance is a national grassroots organisation made up of over 70,000 supporters and more than 250 local groups who are concerned about unsafe coal and gas mining. These groups are located in all parts of Australia and include farmers, traditional custodians, conservationists and urban residents.

Our **vision** is of healthy, empowered communities which have fair, democratic processes available to them to protect their land and water and deliver sustainable solutions to food and energy needs.

The **mission** of the Lock the Gate Alliance is to protect Australia's natural, cultural and agricultural resources from inappropriate mining and to educate and empower all Australians to demand sustainable solutions to food and energy production.

The Lock the Gate Alliance believes recent amendments to the Environmental Protection Act 1994 – proposed in the *Environmental Protection (Chain of Responsibility) Amendment Bill 2016* - represent an important step in ensuring that Queensland taxpayers are protected when mining, oil, gas and metal processing companies fail to adequately manage their financial obligations in regards to the cost of clean-up and site rehabilitation.

The number of legacy sites resulting from mining and minerals processing continues to grow – there are currently in excess of 15,000 abandoned mines alone – and while these amendments are not a panacea for the whole question of inadequate mine and mineral processing site rehabilitation, they deserve strong support as an important step in

ensuring the list of abandoned mines and other un-rehabilitated industrial facilities does not increase.

Broadly speaking Lock the Gate is very supportive of the objectives of the amendments which are to:

- Facilitate enhanced environmental protection for sites operated by companies in financial difficulty, and
- To avoid the State bearing the costs for managing and rehabilitating sites in financial difficulty.

More specifically Lock the Gate strongly supports the following amendments and associated initiatives;

1. ***Provides Department of Environment and Heritage Protection (DEHP) with extended power to amend an environmental authority (EA) on the transfer of the EA to require the provision of financial assurance, or where an environmental protection order (EPO) has been amended or withdrawn.***
 - a. This is necessary to ensure that DEHP have the power to seek financial assurances from new operators who have taken over an EA, so that the State is protected against new operators not fulfilling their rehabilitation requirements for the site they take over.
 - b. Many EAs don't contain a condition enabling DEHP to require financial assurance from the holder. Without financial assurances being held by DEHP, there are very few powers to ensure that environmental obligations under the EA are met, including rehabilitation requirements.

We note that the associated changes to the Financial Assurance Guidance Guideline (V3 – March 2016) expand the list of prescribed ERAs to include metal smelting and refining and metal processing. Processing, refining and smelting of ore is highly polluting given the processes essentially concentrate toxic substances that are removed from the desired products. These concentrated substances are generally stored in tailings storage facilities which, if not appropriately designed and managed, represent a serious environmental risk. In regards to their rehabilitation, these facilities are likely to become perpetual liabilities requiring on-going management, maintenance and monitoring by the responsible party which in turn will require adequate resourcing. For this reason alone it is important companies plan in advance for the long-term management of this waste and provide adequate funding mechanisms to facilitate their appropriate management.

Given the nature of this liability, protecting Queensland's taxpayers from this large scale liability is vitally important. Requiring adequate financial assurance from metal processors is an important first step. We therefore strongly support the complementary changes to Financial Assurance Guidance Guideline (V3 – March 2016)

2. **Facilitating greater environmental protection for sites in financial difficulty and assisting in avoiding costs being incurred by the State for the environmental management and clean-up of such sites.** We support the provisions in this Bill which achieve the following desired policy outcomes:
- Allowing environmental protection orders to be issued to a party that has a relevant relationship to the company that is in financial difficulty, where there is environmental harm occurring or at risk of occurring: *Clause 7*
 - Providing the DEHP with the capacity to require the recipient of the order to pay the costs of taking action stated in the order or monitoring compliance with the order: *Clause 7*
 - Enabling the DEHP to amend environmental authorities when they are transferred to impose a condition requiring the provision of financial assurance: *Clause 3*
 - Ensuring that authorised officers under the EP Act have powers to access relevant sites: *Clause 9*
 - Expanding the ability of the DEHP to access information for evidentiary purposes: *Clauses 10 & 11*

3. **Defining ‘relevant persons’ in chain of responsibility.** The amendments for the first time define who a relevant person is which we commend. The amendments also take great care to confine the definition to the following (as per the explanatory notes);

‘A person will have a ‘relevant connection’ to the company carrying out the activity where the person has either benefited financially from the relevant activity or was in a position to influence the company’s compliance with its environmental obligations. A person with a relevant connection bears some responsibility for the environmental harm caused, or likely to be caused, as a result of a company’s activities and should bear responsibility for action to address such harm.’

We believe the definition of “relevant connection” to be adequate to hold those responsible to account while at the same time protecting those connected to but not directly involved in managing these companies.

4. **Early intervention in the event of corporate financial distress.** The amendment seeks to define a ‘high risk company’ consistent with the *Corporations Act 2001* (Cth), as well as companies which are related entities to such companies (Clause 7). This definition is designed to capture where the operator of an “environmentally relevant activity” is in administration and therefore at risk of failing to comply with its environmental and rehabilitation obligations. This amendment blocks attempts to avoid responsibility for clean-up and rehabilitation by transferring operation of the relevant activity from an externally administered company to another member of its corporate group or other associated entity.

We commend this amendment. The instances of the abandoned Texas silver mine and the sale of the Callide mine to a junior mining company with limited

capitalisation and most recently, the financial collapse of Queensland Nickel's Yabalu refinery, all demonstrate the serious environmental harm posed through these operators not being able to meet their financial responsibilities. These examples demonstrate that it is essential that the Government holds the power to ensure operators, or related parties sufficiently connected to and/or benefiting from their operations, take responsibility for their environmental obligations, rather than leaving the Government to clean-up after them.

In summary, Lock the Gate is very supportive of the amendments as drafted. Further we are supportive of any legislative and policy amendments that;

- Protect the Queensland taxpayer from inadequate or failed mine and mineral processing site rehabilitation through better planning, regulatory oversight and financial provisioning;
- Provide a positive incentive through tightened policy settings and legal requirements for companies to adopt leading practice rehabilitation for mine and mineral processing sites;
- Review and amend the State's financial assurance calculation methodology to ensure the full cost of mine and mineral processing rehabilitation is internalised within companies and therefore is fully provisioned; and
- Shift mines out of "convenient" or "perpetual" care and maintenance into rehabilitation, thus delivering increased employment and investment opportunities in rural and regional Queensland.

Finally Lock the Gate believes a review of financial assurances and the associated calculator is necessary. Adequate financial assurance is essential if the State and the taxpayer is to be protected and must cover all costs and expenses incurred by the State in ensuring a site is rehabilitated to the point where any residual risk is deemed "acceptable" and that the site can be safely transferred to a third party. The Lock the Gate Alliance supports the findings of the 2014 Auditor General's report into the Regulation of the Resources and Waste Industries, which found that historically financial assurances have been inadequate. We would urge the Committee to recommend that a full review of the current financial assurance calculator is undertaken as it relates to mining and minerals processing to ensure that the amount of financial assurance for mines and mineral processing facilities reflects the real cost of clean-up and rehabilitation.

We would welcome the opportunity to present to the Committee at the hearing of this Bill and discuss any of these or other issues in greater detail.

Regards
Rick Humphries and Drew Hutton
Co-ordinators
Mine Rehabilitation Reform Campaign