ENVIRONMENTAL PROTECTION (CHAIN OF RESPONSIBILITY) AMENDMENT BILL 2016

Resolve consider that the changes proposed by the Queensland Government by introducing the ***Environmental Protection (Chain of Responsibility) Amendment Bill 2016*** may have considerable and unforeseen consequences to the Queensland Resource Industry which would be undesirable to all Queenslanders.

In entering this submission, Resolve supports and advocates a system whereby mining companies are held accountable for their actions and the work that is undertaken when they are the holders of the Environmental Authority (EA). Resolve feel strongly that sufficient financial assurances and oversights are put in place that there is no socialisation of any clean-up costs onto the taxpayers, at either state or federal level.

That said, the proposed changes to the Environmental Protection Act have a number of implications which will do damage far and beyond what we consider to be the designed scope.

1. Liability Implications

A lack of definition exists around who can potentially be liable for any environmental breaches and subsequent costs. Without a protection firmly in place for smaller investors, there remains in place a potential for this to cause a flight from any publicly owned miners. Even if a shareholder sold the shares in a company the legislation is retrospective and therefore all shareholders past and present in companies at risk could be liable. There is no demarcation in the legislation of who is a "related person". A major shareholder who is completely independent of company management and simply an investor could be liable in the case of a breach and the judgement of who is a related person is accountable to DEHP, with no provision for appeal.

With regard to 363AB(2)(b), the seems to be written in a way which could also find consultants, particularly those in a geotechnical or engineering capacity, to be a related person to the company.

2. Conduct & Compensation Agreements and Social licensing.

In the case of mining and exploration activities, a conduct and compensation agreement (CCA) is required before activities can proceed. We can see nothing within this legislation that excludes landholders from also sharing potential liabilities (in the event of financial failure of a company with projects over their land). If this is the case, and the risks are not fully understood, it will make the completion of a fair and sensible CCA very hard to accomplish.

3. Queensland Investment Implications

The impact of this legislation in its present form is likely to be the extinction of any private investment in Queensland in any business that has any environmental risk in its activities, which covers all agriculture, manufacturing, tourism development, real estate development infrastructure development and mining in Queensland. Anyone currently considering investing in a Queensland initiative/business must now reassess the potential personal exposure that could arise out of such an arrangement. Several industries,

such as mining are already finding investment and finance extraordinarily difficult. It can only be assumed that with these environmental amendments in place, investors will take into account this additional and unknown risk and walk away.

4. DEHP Excessive power & Conflict of Interest

Extending the DEHP powers of cost recovery, investigation and enforcement is a drastic step, given the framework and scope in which the Amendment allows it to work. While it is important that those who are genuinely negligent and complicit in harmful environmental breaches are held fully accountable, it is also sensible that this power is not sufficient to scare away stakeholders or potential stakeholders.

Resolve also considers that within the scope of the Amendment, DEHP is positioned as whistle-blower, judge, jury and witness. Consider in any large project, such as a mine or major development, the DEHP has already had input in the permitting and approvals stage. Historically, DEHP have overseen the environmental management of various enterprises and has, in many cases, made errors or been complicit in poor decision making that has resulted in the current environmental outcomes.
DEHP would have a conflict of interest and the inability to be unbiased and neutral in the appointment of who is rightfully to blame for environmental damages/issues, where the DEHP or another government department may have had a hand. In this instance it is certainly inappropriate for the DEHP to act as judge, but rather an independent panel/regulating body.

5. Insurance

Companies would be required to fully insure all members of board, senior management and even potentially their key investors in order to secure a pathway forward under this new legislation. If these insurance costs become prohibitively expensive, which for juniors, both privately and publicly funded they will almost certainly be, then they will have no other option but to not proceed with any activities which carries any inherent risk of an environmental breach.

6. The Bill is not fit for purpose

The rationale behind this legislation is understood, however, it is arguable as to whether it will successful in prosecuting the wealthy individuals or large scale corporations. This is largely due to the fact these entities will have the means to fight and challenge such prosecutions in the high court. Indeed, it will have the unintended consequence of imposing a prejudicial legal process on small and mid-tier operators and landholders.

7. Appeal

In the bill as presented, it is rather vague as to what right of appeal a relevant person has to challenge any issued penalty in relation to an alleged breach of an Environmental Order.