

31 March 2016

Research Director  
Agriculture and Environment Committee  
Parliament House  
BRISBANE QLD 4000

Dear Research Director

The Chamber of Commerce and Industry Queensland (CCIQ) writes to express its concern with the Environmental Protection (Chain of Responsibility) Amendment Bill 2016 (The Bill).

The Bill amends the *Environmental Protection Act 1994* (EP Act) to enhance environmental protection for sites operated by companies in financial difficulty to avoid the State bearing the costs for managing and rehabilitating sites in financial difficulty.

CCIQ notes that the intent of the Bill is to address the fact that the Department of Environment and Heritage Protection has had increasing difficulties in ensuring that sites operated by companies in financial difficulty continue to comply with their environmental obligations. This has included sites such as the Yabulu Nickel Refinery, Texas Silver Mine, Collingwood Tin Mine and Mount Chalmers Gold Mine. This is a commendable intention.

However CCIQ believes the Bill represents a significant overreach on the part of the State Government and will undermine investment in Queensland not only in the resources sector but for any business that is defined as an environmental authority holder.

CCIQ wishes to raise the following concerns in relation to the consultation, drafting and severe unintended consequences.

### **Consultation**

No consultation has occurred by the Department of Environment and Heritage Protection on the Bill and this is coupled with the absence of a Regulatory Impact Statement. This is unacceptable to the business community and is directly at odds with the recent Committee of Legislative Assembly Report No 17 Review of the Parliamentary Committee System and best practice to the development of regulation.

Furthermore the Bill was introduced in Parliament on 15 March 2016 with submissions due by the 31 March 2016. This has required submissions to be prepared within 10 working days that denies the Chamber the ability to adequately canvas the implications of the Bill with our membership.

CCIQ can only interpret the absence of any consultation and the timeframe associated with the Bill to be an attempt on the part of the State Government to gag or muzzle ample consideration of the Bill. In short the consultation associated with the Bill redefines the inadequacy of Government regulatory development and actioning of new legislation in this State.

### **Overview**

CCIQ understands that the objectives of the Bill are to ensure that the Department of Environment and Heritage Protection can effectively impose a chain of responsibility so that companies in financial difficulty and their related parties bear the cost of managing and rehabilitating sites to comply with their environmental obligations.



The Bill allows the chief executive to issue environmental protection orders against both an environmental authority holder and any person who is a "related person" of the environmental authority holder (where the environmental authority holder is a company). Both the environmental authority holder and the related person are then required to take the necessary steps to comply with the environmental protection order.

A related person of an environmental authority holder is:

- a holding company of the environmental authority holder,
- a person who owns land on which the environmental authority holder carries out, or has carried out, a relevant activity, or
- a person who the chief executive decides has a "relevant connection" to the environmental authority holder.

## **Land Owners**

CCIQ is concerned at the unfair treatment of underlying landowners. The relevance of how land ownership constitutes a relationship with the environmental authority is not adequately detailed in the Bill or its explanatory notes.

Mines and other resource activities are regularly located on rural land that is owned by family farmers for example. The term 'owner' also has an extremely broad existing meaning under the EP Act Schedule 4 and even includes native title holders or mortgagees.

It is unreasonable that landowners are automatically categorised as a related person, particularly where a landowner is unrelated to the resource authority holder and has no control over the activities conducted on the land. It is unjust that a landowner could qualify as a related person, even where they may have been unsupportive or objected to the project.

Land owners, faced with potentially significant liabilities which are entirely outside their control, will be looking at ways to manage this liability. This will inevitably give rise to further complications in the operator/land owner relationship that will delay or impede projects.

## **Relevant Connections**

The relevant connection test has the potential to be applied very broadly. A person will be a related person if the chief executive is satisfied that:

- the person is capable of benefiting financially, or has benefited financially, from the carrying out of a relevant activity by the environmental authority holder, or
- the person is, or has been at any time during the previous two years, in a position to influence the company's conduct in relation to the way in which, or the extent to which, the environmental authority holder complies with its obligations under the EP Act.

At its broadest, the Bill could potentially hold any relatable person with substantial financial resources accountable, despite not having any control over the activities that caused the environmental harm, in the event that the environmental authority defaults. While this may not be the intent of the legislation, it is open for such an interpretation to be formed.

While the Minister stated in his first reading speech of the Bill that "the chain of responsibility will not attach itself to genuine arm's length investors, be they merchant bankers or mum-and-dad investors", the terms of the legislation potentially allows for those persons to be targeted.

The Bill provides that certain factors are to be considered by the chief executive when determining whether a person is a related person such as:

- the extent of a person's financial interest (e.g. a mum-and-dad shareholder); and
- the extent to which dealings are at arm's length (e.g. banks or financiers)

However, the legislation does not exclude these people from ever being classified as a related person and as such will not be protected by the Bill as of right. Whether such persons are considered related persons will ultimately be a policy decision made by the government of the day.

Additionally, the Bill omits the provision of requiring the administering authority to pursue the 'most' related person or the person with the 'most' relevant connection. Therefore, any or all related persons may be equally liable. Further, there would appear to be no recourse of one related person against any other related persons for a contribution to any environmental costs in the event that the chief executive decided to pursue only one person.

### **Retrospective application**

The Bill proposes that Environmental Protection Orders issued to 'related persons' has been introduced with retrospective application. CCIQ is of the view that laws that retrospectively change legal obligations are wrought with uncertainty and unreliability; two principles small businesses rely heavily upon for business investment decisions and confidence in the business operating environment more broadly.

Governments are, on the whole, encouraged to adopt truly prospective legislation as a central principle of good governance. The need for stability and predictability is fundamental to the operation of the law and indeed to the operation of running a small business in Queensland.

That being said CCIQ understands that in some cases retrospective application cannot be avoided. CCIQ stress that while there will need to be some retrospective application, the Bill must first amend the sections on who constitutes a related person and the relevant connections test to avoid holding unrelated individuals liable.

### **Unique requirement for Queensland**

The Bill is specific to Queensland and is not consistent with related legislation in other State jurisdictions. This will place Queensland at a competitive disadvantage for the attraction and retention of investment.

For the above reasons CCIQ has serious concerns over the implications of this Bill in particular its undoubted undermining of confidence and negative impact on investment and jobs in Queensland. CCIQ does not support the Bill and urges substantial changes to address the above matters.

CCIQ thanks the Committee for the opportunity to provide comment and welcome any feedback. Please contact myself for matters relating to this submission.

Yours sincerely

A black rectangular redaction box covering the signature of Nick Behrens.

Nick Behrens  
**Director - Advocacy**