Submission No. 70 - supplementary

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Research Director
Agriculture and Environment Committee
Parliament House, Qld
Sent via email to: aec@parliament.qld.gov.au

Dear Mr Chair and Committee Members

SUPPLEMENTARY SUBMISSION: Environmental Protection (Chain of Responsibility) Amendment Bill 2016

We refer to our submission dated and provided to the committee on 31 March 2016 **(primary submission)** in their inquiry into the Environmental Protection (Chain of Responsibility) Amendment Bill 2016 **(Chain of Responsibility Bill)**

Thank you for inviting EDO Qld to appear at the committee hearing on 5 April 2016 with respect to your inquiry into this Bill.

This letter constitutes supplementary submissions to the committee to clarify in writing some points raised at the committee hearing.

Limitations on 'relevant person'

We were asked a question at the hearing with respect to the kinds of entities that might be captured by the scope of this Bill.

By way of clarification, we consider the limitations as to who can be considered to have a 'relevant connection' to a company to have been sufficiently framed in subsection 363AB(4) to avoid those without a sufficiently relevant extent of control, or obtaining significant financial benefit, from being held liable for remediation or avoidance of environmental harm caused by the relevant activity. This was stated in our primary submission.

However, to avoid any doubt, we agree that the framing of 'relevant person' to include a person who owns land on which the activity is carried out, provided in subsection 363AB(1)(b) is not subject to these limitations.

We understand that there have been concerns raised by submitters to the committee that this is unfairly exposing landholders to liability for activities which they might not have control over on their site. In response, we submit that it is necessary for DEHP to have some power to order the assistance of landholders to respond to environmental harm posed on their land, particularly in the event that DEHP is not able to ensure that the company itself, or others with a 'relevant connection' as defined in the Bill, take action themselves to respond to the harm posed.

This might happen, for instance, if the site has been effectively abandoned by the operators and DEHP does not have sufficient evidence to track down 'relevant persons' to the company responsible. In this instance, the government will be the one required to respond if the landholder is not made to take the necessary, and often urgent, action. Further, landholders should have contractual arrangements with the operators on their site such that they ensure the operator themselves remain responsible for avoiding or remediating environmental harm on the site, and therefore that liability could return to the operator.

In order to give more certainty to landholders that they will not be unduly targeted under this legislation, we suggest that some clarification could be provided to the effect of limiting the exposure of landholders to the particular powers they are exposed to under the Bill to only those circumstances where those directly responsible, or who classify as 'relevant persons' to the entity directly responsible, for environmental harm are not able to be made responsible for addressing the environmental harm within the timeframe necessary to avoid the harm occurring.

Future improvements needed to improve industry regulation to prevent environmental harm

We would also like to put in writing some of the various work we consider must still be undertaken to improve the regulation of environmentally relevant activities, to avoid environmental harm and to ensure that the appropriate people can be made responsible for this harm. These points were raised orally in our submissions at the hearing. This is not a comprehensive list; we look forward to an occasion in the future to further progress this.

1. Extend power to amend environmental authorities so not dependent on transfer

The power to amend environmental authorities should extend to being able to amend all relevant environmental authorities which pose environmental risks of a certain level, so that they are in line with updated Financial Assurance guidelines of the Department of Environment and Heritage Protection (**DEHP**), without this power being dependent on being able to be exercised only on the transfer of an environmental authority to a new operator.

Some industries which pose environmental impacts were not previously required to provide financial assurances. However through the evolution of DEHP's financial assurance framework and environmental regulation, there has been a realisation that financial assurances should be required for a broader range of industries, such as refineries.[1] Environmental authorities which currently require financial assurances could be reviewed and amended by DEHP if their assurance is found to be inadequate.[2] It is therefore fair that those who have not been subject to a financial assurance requirement but which pose a high environmental risk should be subject to a power held by DEHP to amend their environmental authority to require the financial assurance.

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[1] For detail as to the amendments made by the current government to the financial assurance guidelines, see here: https://www.business.qld.gov.au/business/running/environment/licences-permits/financial-assurance-rehabilitation/financial-assurance-security-deposit

[2] *Environmental Protection Act 1994* (Qld) section 215.

2. Provide power to refuse grant or amendment of an environmental authority where proponent is not financial sound

DEHP and the Land Court should have the power to refuse an operator the grant, transfer or amendment of an environmental authority where the proposed environmental authority recipient is not financially sound. While the *Mineral Resource Act 1989* (Qld) provides the ability to consider the financial capability of a proponent in assessing an application for a mining lease, this is not a criteria for consideration by decision makers, or the Land Court, under the *Environmental Protection Act 1994* (Qld).

Example: Cockatoo Coal Baralaba Coal Mine extension

Cockatoo Coal applied for an amendment to their environmental authority in November 2014 to allow them to extend their mining operations. They received a draft environmental authority in December 2014. Objections to the application and draft environmental authority were referred to the Land Court, including an objection which raised concern as to the financial viability of the proponent, and the proponent's consequent ability to meet rehabilitation requirements. While the Land Court hearing was still being determined, Cockatoo Coal went into voluntary administration in November 2015. On 15 December 2015 the Land Court subsequently recommended approval of the authority. To our knowledge the final environmental authority has not yet been granted by DEHP, however DEHP would have the power to grant the authority even with the company in voluntary administration. There can be little certainty provided to the community that only responsible and worthy proponents will be granted environmental authorities when companies in voluntary administration can obtain environmental authorities.

3. Extend time period within which a person can be considered a 'relevant person'

The time period by which a person can be considered a 'relevant person' (subsection 363AB(2)(b)) should be extended longer than 2 years, due to the risk that a mine, for example, can remain in 'care and maintenance' for far longer than 2 years. Poor management practices which were commenced at the start of the 'care and maintenance' period can therefore remain in place for many years, with the responsible entity moving on to other projects, leaving the site in a hazardous management arrangement. Given the Queensland Audit Office's report states that some mines have been in care and maintenance since 1998,[3] we suggest that a period of 10 to 20 years would be appropriate.

Invitation to clarify questions from the committee members

We received a question from Mr Stephen Bennett MP which I was not certain I understood during the hearing and was therefore regrettably unable to answer. We invite the committee members to provide any further questions they may seek our opinion on with respect to this Bill and we will happily send through our responses to these questions.

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[3] Queensland Audit Office, Environmental regulation of the resources and waste industries, Report 15: 2013-2014, p.42, https://www.qao.qld.gov.au/files/file/Reports%20and%20publications/Reports%20to%20Parliament%202013-14/RtP15Environmentalregulationoftheresourcesandwasteindustries.pdf

We are also happy to provide more information or clarify any submissions we have made to the Committee at any time.

Yours faithfully
Environmental Defenders Office (Qld) Inc

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