

08 April 2016

Mr Rob Hansen
Research Director
Agriculture and Environment Committee
Parliament House
BRISBANE QLD 4000

By email to: aec@parliament.qld.gov.au

Dear Mr Hansen,

Environmental Protection (Chain of Responsibility) Amendment Bill 2016

The Australian Bankers' Association (ABA) is writing in relation to the Committee's inquiry into the Environmental Protection (Chain of Responsibility) Amendment Bill 2016. I understand the due date for submissions to this inquiry has passed, however, the ABA wishes to ensure the Committee is aware of its concerns in relation to the Bill before it finalises its report to the Parliament.

We understand the Bill is intended to ensure that the owners or occupiers of major industrial or mining sites always take a responsible approach to fulfilling their environmental obligations, particularly when operated by companies in financial difficulty and which are externally administered within the meaning of section 9 of the Corporations Act.

In doing this the Bill would extend the existing regime to enable the Department of Environment and Heritage Protection (DEHP) to hold a "related person" liable for a company's compliance with environmental obligations.

DEHP currently has the power to issue an Environmental Protection Order (EPO) for a range of reasons, including for a failure to comply with conditions of an Environmental Authority. It would be an offence to fail to comply with an EPO, with penalties that are some of the highest able to be imposed for environmental offences in Queensland. The recipient of an EPO may be ordered to, among other things, stop all (or some) activities indefinitely, modify its operations, rehabilitate land or take particular actions.

In principle, the ABA banking sector has no major concern with the intent of the Bill subject to clarification of who it is that is intended to be a "related person" and that banks and other arm's length financiers are clearly excluded from this definition.

Otherwise, this would mean that a lender could be issued with an EPO, and be held accountable for costs involved in complying with the EPO or be at risk of conviction of an offence for non-compliance.

Clause 7 of the Bill defines a "related person" broadly. It includes persons and companies that have a "financial interest in the company which includes under a mortgage or charge given by the company, or a person having a "relevant connection" with the company which would include a person capable of benefiting financially from the company's activities or from a consideration of the extent of the person's financial interest in the company.

In determining whether a person is a "related person", DEHP may consider whether the relationship is at arm's length, on an independent and commercial basis or for the purposes of providing finance.



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However, lenders are not automatically excluded from the definition of a “related person”. This puts a bank in an uncertain position as to whether it could be deemed a “related person” simply due to the fact that it has provided a loan to a particular company or project irrespective whether it is secured over the land on which the relevant activity is being conducted or over other assets of the company.

We believe that these definitions may unintentionally capture banks and other financiers in their capacity as a lenders to industrial and mining companies and assets. The definition of “owner” in the Environmental Protection Act 1994 includes a mortgagee but only where the mortgagee is in possession of land with exclusive management and control of the land or has appointed a person to be in possession of the land with the same management and control of the land. It would appear to be inconsistent with this definition of “owner” for a bank to be included also as a “related person” in the Bill.

We believe that unless appropriate amendments are made to the Bill, it could materially restrict the ability of certain companies and projects to obtain finance in Queensland. In addition, it could cause banks and other financiers to exit existing relationships where they perceive this legislation may expose them to additional risk.

We propose that the legislation be amended to explicitly exclude commercial lenders from the application of the legislation.

We would be pleased to provide any further information to the Committee or discuss our views in more detail by contacting me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Gilbert', is written over a light grey dotted background.

Ian Gilbert
Director Banking Services Regulation
03 9852 7976
[Redacted]