QUEENSLAND resources COUNCIL

Working together for a **shared future**

RECEIVED
20 Apr 2015
Finance and Administration Committee

20 April 2015

Research Director
Finance and Administration Committee
Parliament House
George Street
Brisbane Qld 4000

Email: fac@parliament.qld.gov.au

Dear Sir / Madam,

Thank you for the opportunity to provide comment on the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015* (the Bill).

The Queensland Resources Council (QRC) is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses exploration, production, and processing companies, energy production and associated service companies. QRC does not represent the small mining or gemstone sectors. The QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

This submission provides comment only on the sections of the Bill that pertain to amendments to the *Environmental Protection Act 1994* (EP Act)

The amendments to the Environmental Protection Act 1994 allow for the cancellation of Transitional Environmental Programs (TEPs) and Temporary Emissions Licences (TELs).
TEPs are a tool available under the Environmental Protection Act 1994 which allow, for example, a transitionary period for environmental authority holders not operating in accordance with their licence to reach or return to compliance with their approval. TELs are a tool available for authorising in emergency situations what would otherwise be unlawful activities, such as urgent release of water from tailings dams during flood events. There is currently no power in the Environmental Protection Act 1994 to cancel a TEP or TEL in the event of changed circumstances, even if it would result in enhanced environmental outcomes or the approval is no longer required. This would allow for the agreed early end of a TEP so as to, for example, enable the translation of conditions to an amended Environmental Authority EA.

QRC has no concerns with the wording of the amendments in their current form and appreciates that these amendments are a bipartisan commitment from both the former and current government, and at the time of the announcement which proposed making the amendments provided full support both publically and directly to government.

ABN 59 050 486 952
Level 13 133 Mary St Brisbane Queensland 4000
T 07 3295 9560 F 07 3295 9570 E info@qrc.org.au
www.qrc.org.au

We therefore appreciate the statement on pages 3 and 4 of the Bill's Explanatory Notes that:

> *The amendments to the Environmental Protection Act 1994 allow for the cancellation of Transitional Environmental Programs (TEPs) and Temporary Emissions Licences (TELs). TEPs are a tool available under the Environmental Protection Act 1994 which allow, for example, a transitionary period for environmental authority holders not operating in accordance with their licence to reach or return to compliance with their approval.*
>
> *TELs are a tool available for authorising in emergency situations what would otherwise be unlawful activities, such as urgent release of water from tailings dams during flood events.*
>
> *There is currently no power in the Environmental Protection Act 1994 to cancel a TEP or TEL in the event of changed circumstances, even if it would result in enhanced environmental outcomes or the approval is no longer required.*
>
> *For example, the amendment would remove a potential barrier to the extension of the life of the Copper Smelter at Mount Isa beyond 2016. Closure of the smelter would cause significant job losses in both Mount Isa and Townsville. The smelter operates under a TEP that authorises operating parameters different to the environmental authority during a transitionary period. The extension of the life of the smelter is inconsistent with a commitment made by the operator in a draft TEP. The TEP was subsequently approved under the Environmental Protection Act 1994 and noted on the operator's environmental authority, so is now legally binding on the current operator. The environmental impact of any extension of the life of the smelter is expected to be managed under amended conditions of the environmental authority, rendering the TEP unnecessary. Without cancellation of the TEP, there would be likely to be a conflict of conditions between the TEP and the conditions of the environmental authority. These amendments would allow for the cancellation of an unnecessary TEP, removing the potential conflict of conditions, and consequently giving effect to the Government's commitments and responding to a significant issue raised by the local community.*
>
> *The power to cancel is limited so there is no loss of rights for the holder of the instrument and no loss of environmental outcomes.*

As the Committee may be aware, the parent operator of the Mount Isa Mines Copper Smelter, Glencore, is a long-standing member of the Queensland Resources Council and we fully support the need for the company to have regulatory certainty as part of their consideration of the on-going operation of the smelter.

We note that in the case of Mount Isa Mines, the TEP was established as the way to bring the resources activities on its tenements (particularly in relation to air quality and water) into compliance with contemporary environmental conditions in the EA, given that historically the operations had been governed by a Special Agreement Act. Their TEP was originally established for five years with an expiry date of 2016.

Mount Isa Mines is currently investigating the feasibility of operating its copper smelter beyond the end of 2016, however this would potentially require further amendments to its EA and the ability to end its TEP prior to its end date. Without a provision to end it earlier, there is uncertainty in the pathway available to Mount Isa Mines to extend the life of the copper smelter and save a significant number of jobs in Mount Isa and Townsville.

As the standard mechanism for applying environmental conditions, an EA is significantly preferred as the operating instrument. EAs are more than able to include conditions with timeframes for achievement, without the punitive impression that a TEP can imply to the community, government and investors.

The amendment and move to an EA acknowledges that Mount Isa Mines has worked hard over the last three years in particular to make environmental gains. It will give government the ability to acknowledge that and lock it into an EA to enable certainty of operating conditions going forward.

QRC acknowledges that this issue is only one part of Glencore's consideration of the future of the smelter and that no formal decision has been made by the company. However, the company has indicated to QRC that the amendment is a significant input into those considerations.

Just as importantly, QRC is of the view that, significantly, the legislation change will not solely benefit Glencore and pleasingly will have a more general application.

Suggested Future Amendments to the EP Act

Within that context, QRC wrote to the Hon. Steven Miles MP, Minister for Environment and Heritage Protection, Minister for National Parks and the Great Barrier Reef on 2 April 2015 (having not been made aware of the timetable for the introduction of the legislation) requesting that QRC both have the opportunity (even if brief) to review the amendments as well as proposing other improvements to TEPs which could be included in the Bill. Many of these had been put to government for some time, including as part of QRC's submission to the Queensland Floods Inquiry in 2011.

As QRC was not given the opportunity to place these issues before the Minister prior to the amendments being introduced, we would like to place them on the record for the Committee and seek additional amendments to the EP Act through the Bill if time allows, or if this is not possible, prompt future Bills proposing amendments to the EP Act.

Initially we would like to expand on the reasons for the need for a further range of changes to TEPs, given this has evolved significantly since the EP Act commenced 20 years ago.

Upon the commencement of the EP Act, the usual situation that needed to be addressed by a TEP (then called an Environmental Management Program, or EMP), was that many existing operations had previously been largely unregulated by environmental conditions, so it was fair and reasonable to provide an opportunity for them to bring themselves into compliance with the Act (or into compliance with new EA conditions) over a period of time. Sometimes, more stringent conditions would be imposed as a result of an intensification or expansion, and an EMP would be imposed at that time (under what is now Section 332). Due to the origins of the TEP, several provisions in the EP Act still make an undesirable assumption that the starting point for a TEP is that an operation must have been in non-compliance with the Act and that it will only achieve compliance with the Act at (or shortly before) the end of the TEP.

In practical terms, this has sometimes led to situations where companies were unable to persuade EHP's predecessors that a TEP would be an appropriate mechanism, because the company was unable to prove the implied prerequisite that it was starting from a position of unlawfulness. These days, it is not unusual for a company to be interested in using the TEP mechanism either to reduce environmental harm or to improve existing standards as a result of a new policy or other standard having been developed after the operation commenced, but from the baseline that there is nothing about the operation that is actually in non-compliance with the Act.

A hypothetical example of a modern situation where TEPs might be desirable is where an existing operation has old environmental conditions that are expressed in ambiguous terms with no clear measurable parameters. Due to the ambiguity of the existing conditions there might be no evidence of non-compliance with the conditions, so the operation is not, strictly speaking, in non-compliance with either the conditions or the Act. However, in terms of social licence to operate, the business may see it as in everyone's interests to volunteer a TEP with a program of improvements over a period, with the last action being amendment of EA conditions to model conditions setting clear measurable parameters. If the starting assumption of non-compliance with the Act is removed, then this would open up the options for this type of TEP to be perceived less as a punitive or quasi-punitive tool and would justify more flexibility in terms of procedures.

As a further example of the way the EP Act is written currently and the concerns about the modern use of TEPs, originally 'environmental standard' was undefined, but now it seems to be quite restrictive, only referring to standards under a regulation or objectives under an Environmental Protection Policy. It is unclear why there needs to be a narrow definition of 'environmental standard'. In terms of encouraging environmental improvement, it would be preferable if a wide range of 'standards' could be open, such as non-binding guidelines. For example, if a company is in compliance with the Act and conditions, why should it not have the ability to make a voluntary TEP (VTEP) to achieve compliance over a period of time with a non-binding new guideline?

In the letter to Minister Miles QRC proposed having some more detailed discussions with the Minister's advisers and the Department of Environment and Heritage Protection about the specific proposals QRC suggested could be included in the current round of amendments to the EP Act. In summary though, the changes relate to:

- *Duration* – Apart from the fact that a TEP holder should be able to remove a TEP earlier than the original period if the actions are completed early, Section 340(3) should note that the TEP remains in force for either the period stated or for an amended period under Section 344 if applicable.
- *Amendments* - TEPs are too restrictive, which makes the task for both EHP and applicants more convoluted when trying to correct clerical errors in TEPs. It is difficult to amend a TEP once approved, because EHP does not have power to approve an amendment if this would lead to an increase in environmental harm. For example, there is a reasonable argument that any extension of timeframe constitutes an increase in the underlying environmental harm, in that the harm continues for longer. The requirement for an amendment not to increase environmental harm at all does not even allow for minor impacts, or for lawful authorised impacts under existing standards, regulations etc.
- *Non-compliance protection* - the protection of the TEP is lost if there is <u>any non-compliance at all</u>, however minor, meaning that the company then becomes liable not only for the breach of the TEP but also for the underlying EA conditions that were otherwise overridden by the TEP.
- *Use of TEPs* - in the past, EHP and its predecessors have sometimes reported on, or otherwise used TEPs as if they were evidence of poor environmental performance by a company (for example, even if the situation was actually a result of EHP imposing a set of new requirements without a transitional period) and this has resultant impacts on the calculation of financial assurance.
- *Criteria for approval/refusal and conditions* – The criteria under both Section 338 and 339 are too vague. For example, conditions should be reasonable and relevant, not just whatever is considered 'appropriate'.

- *TEPs to run with the land* – there is a gap in the EP Act about whether the TEP is taken to attach to the land and automatically apply to successors in title/successors in the business or not. If not, there needs to be transfer provisions, or surrender provisions in case the purchaser wants to run a different business on the land. In contrast, under the Sustainable Planning Act, development permits are specified to attach to the land, avoiding the need for transfer, and the development permits can either be cancelled by the owner or allowed to lapse if a purchaser wants to do something different.

Some other specifics include:

- *Further information* – Section 334A – There should be a timeframe for issuing a further information notice. Because there is no timeframe for an information request, effectively this means there is no timeframe for a decision under Section 337(1)(c).
- *Public notice* – Section 335 – It is suggested that if a VTEP does not propose to override any existing legal requirement, the public notice restriction should not apply. QRC has a concern about Section 336A(2), which allows EHP to impose a public notice requirement in respect of a TEP that is for a period of under 3 years.
- *Extensions* – QRC has a concern that there is no limitation on the number or duration of extensions under Section 337(2).
- *Notation on EAs* – EHP should remove the notation from the EA upon the expiry of each TEP. While the Bill includes the ability to remove this note in the cancellations circumstances set out in the Bill, this notation removal should apply across all circumstances when a TEP has finished.

Given the issues described above, QRC would clearly welcome the Committee's support to seek additional amendments to the TEP regulatory framework from the government and that these be included in the Bill.

The QRC contact on this Bill is Frances Hayter, QRC Director, Environment Policy who can be contacted on 3316 2517 [redacted]

Yours sincerely

Greg Lane
A/Chief Executive