

QUEENSLAND ENVIRONMENTAL LAWS TRUMP COMMONWEALTH CORPORATIONS ACT, LIQUIDATORS ARE 'EXECUTIVE OFFICERS'

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Legal Briefings - By **Madeline Simpson, Anthony Haly** and **Maritsa Samios**

Today the Queensland Supreme Court confirmed that the liquidators of an insolvent company are 'executive officers' of that company under Queensland's environmental laws, which means that the liquidators are required to use available funds to cause the company to comply with its environmental obligations under an environmental protection order issued to Linc.

In addition, the Court found that the Commonwealth Corporations Act (relevantly liquidators' disclaimer powers) does not prevail over the relevant provisions in Queensland's environmental laws, to the extent of any inconsistency of laws.

Herbert Smith Freehills acted for the Queensland Department of Environment and Heritage Protection, which opposed the liquidators' application for directions that they are justified in not causing Linc to comply with an environmental protection order.

The decision is also of more general interest as it highlights the possibility of State legislation having precedence to the Corporations Act when the laws conflict (in contrast to s109 of the Constitution).

BACKGROUND

Linc operated an underground coal gasification (**UCG**) demonstration facility on land near Chinchilla in Queensland. The Department of Environment and Heritage Protection (**DEHP**) contends that Linc is responsible for contamination caused by its UCG operations.

Linc's creditors placed it into administration in April 2016, and shortly afterwards DEHP issued an Environmental Protection Order (**EPO**) to Linc. The EPO imposed various obligations on Linc, including requiring it to conduct environmental monitoring and reporting.

Linc entered liquidation in May 2016, and its liquidators argued that they were not required to cause Linc to comply with any environmental obligations it may have, as they were not 'executive officers' of Linc under Queensland's environmental laws.

The issues for the Court included whether Linc's liquidators were justified in not causing Linc to comply with the EPO issued by DEHP, and the priority to be given to the costs of any environmental obligations in the liquidation. This case raised novel and untested questions of law on the scope of liquidators' powers under the Commonwealth Corporations Act, as well as the status of State laws that impose obligations on a company in liquidation.

Key Findings:

- Linc Energy's liquidators are 'executive officers' of Linc Energy under Queensland's environmental laws.
- Queensland's environmental laws relating to Environmental Protection Orders (EPOs) are inconsistent with the Corporations Act provisions that enable liquidators to disclaim property and be relieved from all liabilities in respect of the disclaimed property.
- Due to the operation of section 5G of the Corporations Act, the relevant provisions of Queensland's environmental laws take precedence over the Corporations Act disclaimer provisions (ss 568 and 568D).

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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