

QUEENSLAND GOVERNMENT PROPOSES SIGNIFICANT AMENDMENTS TO STATE ENVIRONMENTAL LEGISLATION

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Legal Briefings - By **Jay Leary**

OVERVIEW

The Environmental Protection (Chain of Responsibility) Bill 2016 (Qld) (**EPCOR Bill**), introduced into Queensland Parliament on 15 March 2016, proposes to introduce various measures to expand the scope of liability for corporates, their associated entities, officers, and financiers under the Environmental Protection Act 1994 (Qld) (**EP Act**).

If passed, the EPCOR Bill will have significant implications for entities operating under an environmental authority, as well as for vendors and purchasers of mining assets that have a high contamination or rehabilitation risk.

The key changes introduced by the EPCOR Bill include enabling the Queensland Department of Environment and Heritage Protection (**DEHP**) to:

- issue environmental protection orders (**EPOs**) to entities and individuals who are related to, or have a relevant connection with, a person undertaking an environmentally relevant activity; and
- impose or amend the amount of financial assurance required for a project whenever an environmental authority is transferred.

The EPCOR Bill also introduces a number of other amendments which increase the scope of DEHP's enforcement and investigation powers.

Certain of the proposed provisions in the EPCOR Bill will have retrospective effect and will, for example, enable DEHP to request financial assurance from companies no longer holding a relevant environmental authority but who have previously benefited from the operation of a site.

ISSUE OF EPOS TO ‘RELATED PERSONS’

An EPO is an administrative enforcement mechanism available to DEHP which may require the recipient to stop an activity or undertake a specified action directed at avoiding environmental harm or ensuring compliance with an existing environmental authority. DEHP has the power to issue an EPO if, among other things:

1. it is satisfied that unlawful environmental harm is being, or is likely to, be caused, or
2. to secure compliance with the general environmental duty under the EP Act, or with a condition of an environmental authority.

An EPO is generally only issued to an entity undertaking an activity with the potential to cause environmental harm, or to the holder of an environmental authority.

The EPCOR Bill expressly expands this scope, allowing DEHP to issue an EPO to:

- a ‘related person’ of any company, where an EPO is also issued to the company, and
- a ‘related person’ of a ‘high risk company’ (being a company under external administration, or an associated entity of that company), irrespective of whether an EPO has also been issued to the company.

Under the proposed amendments, an entity or individual will be considered a ‘related person’ of a company if:

- the entity is a holding company of the company,
- the entity or person owns land on which the company carries out, or has carried out, a relevant activity, or

- if DEHP decides that the person has a ‘relevant connection’ with the company. This may arise if the person has benefited from the carrying out of the relevant activity, or if the person is, or has been at any time during the previous two years, been in a position to influence the company’s conduct in relation to its environmental obligations.

This definition of a ‘related person’ is broad, and is likely to include a wide range of individuals and companies with an interest in the relevant company, including landowners, executive officers, financiers, investors, parent companies and holding companies.

AMENDMENTS TO FINANCIAL ASSURANCE REQUIREMENTS WHEN TRANSFERRING AN ENVIRONMENTAL AUTHORITY

The EPCOR Bill enables DEHP to amend existing environmental authorities when they are transferred to specifically include financial assurance requirements, or where there is existing financial assurance in place, to amend the level of assurance given.

This is a substantial expansion of DEHP’s existing powers. Under the existing framework, transferring an environmental authority is not subject to any material conditions (only requiring that the transferee is registered as a suitable operator) and poses limited commercial risk.

The proposed amendments are likely to significantly increase execution risk to vendors and purchasers of mining assets following transfers of environmental authorities, particular at sites with a high contamination risk.

EXPANDED ENFORCEMENT AND INVESTIGATION POWERS

The EPCOR Bill also makes a number of amendments to increase the scope of DEHP’s enforcement and investigation powers.

Under the EP Act, if a DEHP officer suspects on reasonable grounds that an offence against the EP Act has occurred, and a person may be able to give information about the offence, the authorised person may require the person to answer a question about the suspected offence. It is a ‘reasonable excuse’, under the EP Act, to refuse to answer a question on the basis that the answer might incriminate the individual.

The EPCOR Bill removes this protection, and expressly provides that it is not a ‘reasonable excuse’ to refuse to answer a question on the basis that it might lead to self-incrimination. Any incriminating evidence provided is, however, declared to be inadmissible in evidence in a civil or criminal proceeding.

The EPCOR Bill also expands the entry powers of DEHP officers, enabling an authorised person to enter:

- a place which is no longer subject to an environmental authority, and
- a place to which an environmental authority relates (notably, without any limitations as to business hours) where five business days' notice is given.

CONCLUSION

The EPCOR Bill, if passed, has significant implications for holders of environmental authorities, and for individuals, financiers and entities related to companies that hold environmental authorities.

The EPCOR Bill has been referred to the Agriculture and Environment Committee for review.¹

ENDNOTES

1. [Environmental Protection \(Chain of Responsibility\) Amendment Bill 2016](#).

MORE INFORMATION

For further information, please contact [William Oxy](#), [Jay Leary](#), [John Ware](#) or [Madeline Simpson](#).

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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