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QELA, a not for profit organisation, consults with and educates interested professionals and government representatives about planning, development and environmental laws which apply, or are proposed to apply in Queensland. QELA provides a collegiate forum for multi-disciplinary interaction and collaboration.

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Research Director
Agriculture and Environment Committee
Parliament House
Brisbane Qld 4000

Email: aec@parliament.qld.gov.au

Dear Honourable Committee Members,

Submission about the Environmental Protection (Chain of Responsibility) Amendment Bill 2016

Thank you for the opportunity for Queensland and Environmental Law Association (**QELA**) to make a submission about the Environmental Protection (Chain of Responsibility) Amendment Bill 2016 (**Bill**).

QELA is a non-profit, multi-disciplinary association. Its members include lawyers, town planners, and a broad range of consultants who represent and advise a miscellany of participants in the development industry.

We understand that the Bill has been introduced in response to concerns surrounding compliance with rehabilitation requirements following financial difficulties for various projects across the State and to facilitate greater environmental protection for affected sites. QELA supports the intention of ensuring rehabilitation obligations are met. However, we consider that there are some concerns that will need to be addressed prior to the Bill being enacted.

Related Person or Related Connection

The Bill introduces a new concept of 'related person'. By doing this, the Bill exposes a broader range of business executives, operators, investors and land owners to the risk of clean up and rehabilitation costs through an environmental protection order (**EPO**).



Under the Bill, a 'related person' includes:

- a holding company of a company carrying out the activity with a 'financial interest' in the company;
- a person who owns land on which a company carries out, or has carried out, a relevant activity;
- a person who the DEHP decides has a 'relevant connection' with the company. A relevant connection will arise if the DEHP is satisfied a person has benefitted financially, or is capable of benefitting financially, from the carrying out of the relevant activities or has been in a position to influence the company's conduct in relation to environmental obligations; and
- a person who is, or has been at any time during the past 2 years, in a position to influence (including legal or practical ability to exert influence) the company's compliance.

An EPO may claim a stated amount for costs reasonably incurred in taking an action stated in the EPO or in monitoring compliance by the related person with the EPO. QELA strongly supports the position that a company bears its own rehabilitation cost. However, given the significance of this, it is important that who is considered a related person is carefully considered.

QELA is concerned that land owners could be faced with significant liabilities, which are not necessarily within their control or are disproportionate to their ability to control activities, particularly where there is no absolute right for a land owner to resist a resources or petroleum activity on its land. This could give rise, in many cases, to further complications in the operator/land owner relationship.

QELA is concerned about the breadth of one of the criterion (in subclause 363AB(2)(a)) used to decide that a person has a relevant connection and is therefore a related person. It would be possible for a person who has a very minor financial interest to be considered to have a relevant connection. This could be the case despite the list of factors that the DEHP may consider under clause 363AB(4). Such a result would be inappropriate, particularly where the interest may be significantly disproportionate to the costs in question. QELA recommends considering further limits on that criterion, perhaps by requiring that, to be considered to have a relevant connection, a person with a financial interest must also have an ability to influence the



company's conduct (by replacing "or" with "and" between subclauses 363AB(2)(a) and (b)).

Retrospective application

The Bill proposes that the DEHP's power to issue EPOs to 'related persons' have retrospective application. This will have potentially significant implications for landowners that have had no involvement in the activity and who will not have structured any land-use agreements to accommodate the additional liability the Bill will potentially attribute to them. Retrospective application could also dramatically change the risk profiles of investors and corporate structures in such a way not anticipated at the time of investment or structuring.

Financial Assurance

QELA supports amendments proposed by the Bill to enable the addition of a condition requiring the provision of financial assurance upon the transfer of an environmental authority.

The Bill proposes limits on the Planning and Environment Court and Land Court's powers to stay an original decision made by DEHP about the amount of financial assurance to be provided under a condition of an EA. The Bill proposes that the decision may not be stayed unless the DEHP has been given security for at least 85% of the amount of financial assurance that was decided by DEHP. In circumstances where the decision to require financial assurance is in dispute, a lower percentage would be more appropriate.

We thank you for the opportunity to make a submission about the Bill. We would welcome the opportunity to assist the Committee further , if required.

Yours sincerely,



Leisa Sinclair

Vice-President
Queensland Environmental Law Association

