

31 March 2016

Mr G Butcher MP
Chair - Agriculture and Environment Committee
Parliament House
BRISBANE QLD 4000

Environmental Protection (Chain of Responsibility) Amendment Bill 2016

Dear Mr Butcher,

The Property Council welcomes the opportunity to provide input into the Committee's investigation of the Government's *Environmental Protection (Chain of Responsibility) Amendment Bill 2016*.

By establishing a legal chain of responsibility, the Bill aims to increase environmental protections for sites operated by companies in financial difficulty and to avoid the taxpayer bearing the cost for managing and rehabilitating these sites. Great care must be taken in developing the legal framework for this chain of responsibility in order to ensure that only those with genuine responsibility for environmental obligations are held to account for defaults.

The Bill proposes to make 'related persons' responsible for remedying environmental defaults of companies. The Bill does not make the landowner responsible as a last resort for the State (as is the case where contamination incidents occur), but rather the landowner may receive an environmental protection order to remedy environmental breaches if any company for which the landowner is a related person has also received an EPO, or instead/as well as an insolvent company for which the landowner is a related person.

A 'related person' is defined in Section 363AB of the Bill as either a holding company, the landowner of the land on which the relevant activity has taken or is taking place, or any other person or company who DEHP can determine meets the comprehensive 'relevant connection' test.

The Property Council contends that the owner of the land on which a company carries out an environmentally relevant activity may not necessarily have a responsibility for these activities. For example, in the instance that a landowner leases a site under an arms length transaction to an entirely separate company, who then builds and operates a facility on that site and then does something to warrant the issuing of an EPO, the landowner does not have exclusive possession of the land (this has been given to the tenant) and has very limited ability to control the day to day actions of the tenant. In those circumstances, there is no general legal assumption of responsibility for the tenant's activities by the landowner, and the Property Council does not agree that that landowner should be potentially responsible for the tenant's behaviour. By contrast, at the other end of the scale, in instances where the landowner simply manages the facility through a wholly-owned holding company, a line of responsibility may be able to be established.

As it currently stands, the Bill lays a blanket 'related person' classification on all owners of land on which a company carries out, or has carried out, a relevant activity (Chapter 7 Part 5 Division 2 section 363AB (1)(b)). This does not recognise the fact that many landowners will not have had any involvement in, or control over, the activities in question.

The 'relevant connection' test, outlined in Section 363AB(2)-(6), provides a far more comprehensive and accurate measure of determining a 'related person'. This section captures all individuals or companies who have benefitted financially from carrying out the relevant environmental activity or have been able to influence the company's conduct in this area. Any landowners who actually have any relevant control over the defaulting company would be caught under this definition. As such, this section should be used instead of the earlier wide-ranging landowner definition (363AB(1)(b)).

In addition, under the current wording of Section 363AB(1)(b), responsibility is attributed to the current landholder for activity that may have taken place prior to their ownership of the land. This outcome is clearly contrary to the Government's objective to hold those with relevant relationships to the offending company financially responsible for the required environmental management. It is also contrary to the chain of responsibility evident in, for example, Chapter 7 Part 8 in relation to contamination incidents, where clean up notices are issued to owners only in limited circumstances (ie if the polluter is unknown), and where there is also a statutory right of contribution.

The Government should not be liable for funding remediation works caused by the environmentally damaging activities of private entities. Similarly, other individuals and companies who have no responsibility for these activities should also not be liable for these costs.

To ensure the chain of responsibility measures to be introduced through these amendments are accurate and targeted to those with actual responsibility, the Property Council recommends that Section 363AB(1)(b) be removed from the final Bill.

If you would like any further information, please do not hesitate to contact me on 07 3225 3000, or cmountford@propertycouncil.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Mountford', with a long horizontal stroke extending to the right.

Chris Mountford
Queensland Executive Director