1. When sites on which potentially environmentally damaging activities are conducted are subject to receivership, administration or liquidation, company financial structures can make it difficult to pursue financial accountability for, and require, clean-up, leaving substantial environmental legacies which need to be addressed by the State and ultimately funded by taxpayers. Amendments to the *Environmental Protection Act 1994* (EP Act) are required to ensure that the necessary enforcement and financial provisions are sufficient and secure in these situations.
2. The Environmental Protection (Chain of Responsibility) Amendment Bill 2016 aims to ensure that operators, or their related parties, retain the responsibility of managing and ultimately decommissioning and rehabilitating their sites to protect the environment.
3. The Bill adds a new head of power in the EP Act to allow the Department of Environment and Heritage Protection (EHP) to issue an Environmental Protection Order (EPO) in circumstances where an Environmental Authority (EA) holder is in external administration.
4. In the event an EPO is not complied with, EHP should have the ability to take any necessary action to prevent harm and rehabilitate the site, without the state bearing the costs. The Bill amends the EP Act to enable EHP to take such action and recover the costs from the recipient of the EPO. This new head of power may be used where there is no financial assurance to cover the costs of these actions or where there is financial assurance but it is insufficient to cover the costs of these actions.
5. Financial assurance is a type of financial security provided to the Government by an EA holder to cover any costs or expenses incurred in taking action to prevent or minimise environmental harm or rehabilitate or restore the environment should the holder fail to meet their environmental obligations. Financial assurance can only be required from an EA holder if it is a condition of the EA. Historically, financial assurance was only required for resource activities. This means that EAs for high-risk activities such as refining or processing plants often do not have financial assurance. The Bill addresses this shortcoming by enabling EHP to amend EAs when they are transferred to impose a condition requiring the provision of financial assurance.
6. The current powers in the EP Act enabling authorised officers to access sites for the purposes of conducting investigations and undertaking environmental management activities are narrow. This has created issues in accessing sites that are no longer in operation or that are in external administration, particularly where an EA has been disclaimed. The Bill addresses this issue to ensure that authorised officers have access to sites to monitor the risk of environmental harm in situations of insolvency and financial difficulty.
7. The Bill expands evidentiary powers in order to ensure that EHP has access to information required to make decisions about the issuing of EPOs. The Bill also expands the ability of authorised officers to access evidence by providing a compulsion for persons, for example employees of a company, to answer questions in relation to alleged offences committed by the company.
8. Cabinet approved that the Environment Protection (Chain of Responsibility) Amendment Bill 2016 be introduced into the Legislative Assembly.
9. *Attachments*
* [Environmental Protection (Chain of Responsibility) Amendment Bill 2016](Attachments/Bill.PDF)
* [Explanatory Notes](Attachments/ExNotes.PDF)