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AN ENVIRONMENTAL REVOLUTION IN THE QUEENSLAND MINING INDUSTRY OR JUST A CHANGING OF THE GUARD? AN ANALYSIS OF THE NEW REGIME FOR THE ENVIRONMENTAL REGULATION OF MINING UNDER THE ENVIRONMENTAL PROTECTION ACT (QLD)

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Environmental regulation of mining in Queensland has been shown to be ineffective in the past. The Environmental Protection and other legislation Amendment Act 2000 transferred the environmental management of mining from the Department of Mining and Energy to the Environmental Protection Agency. Environmental conditions and rehabilitation requirements were removed from the Mineral Resources Act 1989 and transferred to the Environmental Protection Act. The nature of the changes, the main features of the new regime and the impact upon miners is examined. The efficacy of the changes will however ultimately depend on the degree of resources and commitment provided by the state government to the Environmental Protection Agency.

1. INTRODUCTION

The environmental regulation of mining in Queensland has had a checkered history. As the State's most important source of revenue and export earnings,[1] successive governments have been reluctant to subject the mining industry to stringent environmental controls that might stifle mineral development in the State. But with the public outcry over the Criminal Justice Commission's (CJC) 1994 report, revealing evidence of widespread non-compliance with environmental controls by mining operations, and an expensive legacy for the State in rehabilitating mine sites,[2] the need for rigorous and effective regulation of the environmental impacts of mining could no longer be ignored by the industry or regulators. The State government of the day moved quickly to introduce stricter environmental controls into the legislation governing mining,[3] evincing "an ongoing determination to ensure that environmental best practice is applied to the Queensland mining industry"[4]. However, the amendments did nothing to address the fundamental tension identified by

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1 See V. Cassimatis, "The Importance of the Mining Industry to the Economy", Paper presented at the 29th Annual Conference of Economists, Gold Coast, Queensland, 4 July 2000, available on the DME's website at http://www.dme.qld.gov.au/prodindx.htm.

2 See Queensland Criminal Justice Commission, Report by the Criminal Justice Commission on its Public Hearings Conducted by the Honourable RH Matthews QC into the Improper Disposal of Liquid Waste in South-East Queensland. Vol. 1: Report regarding Evidence received on Mining Issues, July 1994, p. 6-21.

3 Various environmental amendments were made to the *Mineral Resources Act 1989* by *the Mineral Resources Amendment Act 1995*, including expansion of public access to the mining warden's court, stricter requirements for miners to ensure the rehabilitation of mine sites and legislative backing of the DME's policy for the Environmental Management of Mining in Queensland requiring miners to prepare an environmental management overview strategy as part of the tenure application.

4 Hon T. McGrady, Minister for Minerals and Energy, second reading speech for the Mineral Resources Amendment Bill 1995, Hansard, 23 Feb. 1995, p. 11060.

the CJC between the traditional role of the Department of Mines and Energy (DME) as the promoter and facilitator of mining in Queensland,[5] and its other role as the environmental regulator of the industry[6].

With the coming into force of the *Environmental Protection and Other Legislation Amendment Act 2000* (EPOLA) on 1 January 2001[7], the environmental management of mining in Queensland has been brought within jurisdiction of the State's *Environmental Protection Act 1994* (EPA), and responsibility for the regulation of the environmental impacts of the mining industry has been transferred to the Queensland Environmental Protection Agency (EP Agency). Introducing the EPOLA Bill, the Minister for Environment and Heritage, the Honourable Rod Welford, described the amendments as "one of the most significant environmental reforms introduced by this Government", which recognise that "effective regulation and good environmental practice are central to realising the full potential of the mining industry to contribute to sustainable economic development in Queensland"[8].

The EPOLA amendments remove provisions relating to environmental conditions and rehabilitation requirements from the *Mineral Resources Act 1989* (MRA) and create a new chapter in the EPA of some 160 sections, dealing with the issue of environmental authorities for mining activities by the EP Agency. The hope of the State government is that the new regime will provide improved protection for the Queensland environment while not discouraging the mining industry from continuing to invest and provide jobs in the State[9]. The real impact of the changes on the environmental management of mining in Queensland will not be known for some time[10], but a review of the main features of the new regime gives an indication of whether it is likely to deliver on promises of improved environmental regulation of the mining industry, or whether it will merely shift administrative responsibility from one government department to another.

2. ENVIRONMENTAL REGULATION OF MINING UNDER THE PREVIOUS REGIME

Prior to the EPOLA amendments, two separate regulatory regimes governed the environmental aspects of mining in Queensland: the provisions under the MRA concerning the minimisation of environmental impact and rehabilitation of land damaged by mining, and the regime for the issue of environmental authorities for mining activities under the EPA[11].

2.1 Environmental obligations under the MRA

Under the MRA, applicants for mining tenements were required to prepare various planning documents, detailing measures to minimise the adverse environmental impact of the mining activities and setting out proposals for progressive and final rehabilitation of the affected land.

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5 The first listed "principal objective" of the MRA is to "encourage and facilitate prospecting and exploring for and mining of minerals": see s 2(a) MRA.

6 The CJC labelled this tension the "departmental dilemma": see CJC Report, op. cit., n 2, p. 25.

7 See SL 2000, No. 350.

8 Second reading speech for the EPOLA Bill, Hansard, 4 Oct. 2000, p. 3385.

9 Ibid.

10 The government has committed to a review of the legislation after 18 months of operation see ibid.

11 For a fuller discussion of these regimes and problems with them see F. Kingham, Environmental Management of Mining - Overkill or Have We Missed the Mark Entirely? (1996) 2 Q.E.P.R. 95.

These documents ranged from a brief statement in the case of a mining claim, to a detailed environmental management overview strategy (EMOS) for a mining lease.

Environmental obligations were also a feature of the conditions of mining tenements. The essential environmental conditions applicable to mining claims, exploration permits and mineral development licences (MDLs) required the tenement holder to provide for the control of the activity's environmental impact and undertake surface rehabilitation to the satisfaction of the mining registrar or Mines and Energy Minister. Additional conditions could be imposed on exploration permits and MDLs, requiring actions to minimise the effect of the mining activities on the environment, including land degradation and air and water pollution. These tenures were also subject to obligations to undertake progressive rehabilitation of the land subject to the exploration permit or MDL, to the satisfaction of the Minister for Mines and Energy.

Mining leases were subject to a condition requiring the submission of an operational document known as a plan of operations (POP), which translated the strategies of the EMOS into operational practice across the life of the mining project. Consistency between the POP and the EMOS was ensured by an environmental audit carried out by or on behalf of the miner. Compliance with the EMOS and the POP in the conduct of the mining activities was required as a condition of the mining lease.

Surrender of a mining tenement under the MRA was only possible if the Minister (or the mining registrar in the case of a mining claim) was satisfied that the land covered by the tenement had been satisfactorily rehabilitated. This determination was made on the basis of a final rehabilitation report submitted by the miner. If the Minister was not satisfied that the land had been satisfactorily rehabilitated he could give the miner reasonable directions about rehabilitating the land. In the case of a mining lease, the Minister could require a further final rehabilitation report, accompanied by an environmental audit statement confirming that the miner had met the rehabilitation requirements under the EMOS and POP.

2.2 Environmental obligations under the EPA: Regulation in the hands of DME

Compared to the extensive environmental requirements under the MRA, regulation of the environmental impacts of mining activities under the EPA was fairly minimal.

Under the EPA, "mineral exploration or mining" was prescribed as a level 2 environmentally relevant activity (ERA). Level 2 ERAs are generally activities with a low risk of environmental harm, which attract less regulatory oversight that level 1 ERAs[12]. Carrying out of a level 2 ERA required an approval under the EPA[13].

Miners received approvals to carry out the ERA of mining from the DME, acting under a delegation from the EP Agency. Pursuant to this delegation, the DME replaced the EP Agency as

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12 Examples of other level 2 ERAs prescribed in the Environmental Protection Regulation 1998 are metal forming, flour milling, operating a boarding kennel and commercial printing. Holders of environmental authorities for level 2 ERAs are not required to pay annual licence fees (as is the case for holders of environmental authorities for level 1 ERAs) or to lodge annual returns with the EP Agency (s 316).

13 If the mining activity carried out by the miner included other ERAs, for example, mineral processing or waste disposal, separate environmental authorities (or a single integrated environmental authority for multiple ERAs) had to be obtained by the miner to authorise these additional activities.

the "administering authority" for mining activities under the EPA and was responsible for determining the environmental conditions of the miner's approval.

Under this dual regulatory system, environmental management of mining in Queensland was largely in the hands of the DME, which set the environmental conditions for carrying out mining activities and supervised environmental compliance by miners. Although miners had to obtain an environmental authority under the EPA, in practice the more important environmental compliance documents were the mining tenements themselves and, in the case of a mining lease, the EMOS and POP. In addition, the DME, rather than the EP Agency, had the primary responsibility for conducting investigations of environmental complaints related to mining operations and for ensuring that environmental protection and rehabilitation commitments under the mining lease were met[14].

While the environmental controls on mining activities appeared stringent on paper[15], concerns were continually raised about the DME's lack of commitment to environmental enforcement and the conflict of interest created by its dual role as the industry's facilitator and environmental regulator[16]. The problem of polluting, disused mine sites also continued to plague the DME, with costs to the State for rehabilitating these sites amounting to tens of millions of dollars[17].

3 MAIN FEATURES OF THE NEW REGIME

Under the new regulatory regime, responsibility for the environmental regulation of mining is vested in the EP Agency. The DME retains responsibility for issues relating to the grant of mining tenures but the ultimate decision on environmental conditions governing the mining activity, together with the responsibility for oversight of environmental compliance, rests with the EP Agency.

3.1 Environmental Authority as the New Environmental Compliance Document

In contrast to the previous regime where the mining tenement and planning documents, such as the EMOS and POP, formed the basis of the miner's environmental protection commitments, under the new system the primary environmental compliance document is the environmental authority issued by the EP Agency.

Applicants for environmental authorities for mining leases will still be required to prepare a POP, and for non-standard applications (see below), an EMOS as well. However, the sole function of the EMOS will be to propose "environmental protection commitments" to assist the EP Agency to prepare a draft environmental authority for the application[18] and the environmental authority will override the POP wherever there is any inconsistency[19].

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14 DME officers were appointed as "authorised persons" under the EPA for investigative and enforcement purposes.

15 Indeed one commentator considered that the dual environmental requirements for mining under the MRA and the EPA made the mining industry "the most regulated industry in terms of environmental requirements in Queensland": see Kingham, op. cit. n 11, at p. 99.

16 One of the Department's most trenchant critics is the spokesperson for the Queensland Greens, Drew Hutton. See D. Hutton, "Digging for a lode of answers", Courier Mail, 10 April 1997, p. 13.

17 See P. Morley, "Mines leave $20m hole", The Sunday Mail, 18 April 1999, p. 40.

18 Section 202 EPA.

19 Section 236 EPA. If the miner fails to amend an inconsistent POP to bring it into line with the

3.2 Standard vs Non-Standard Mining Activities

Mining activities are no longer treated generically as level 2 ERAs. Instead, different types of mining activities are differentiated based on the risk of environmental harm that they pose. Mining activities with a low risk of serious environmental harm are designated "standard mining activities" and correspond to level 2 ERAs[20]. All other mining activities are "non-standard mining activities", which correspond to level 1 ERAs[21].

The determination whether a mining activity is "standard" or "non-standard" is made by the EP Agency and is referred to as "the assessment level decision"[22]. An assessment level decision is only necessary on applications for environmental authorities relating to an exploration permit, a MDL or a mining lease[23]. Prospecting and mining claims are considered to be low impact activities[24] and so environmental authorities for these activities will always be standard environmental authorities[25].

If the EP Agency decides that a particular activity is a non-standard activity, it must then determine whether an environmental impact statement (EIS) is required for the application.[26] If an EIS is required it must be prepared in accordance with a new EIS process set out in chapter 3 of the EPA, which replaces the environmental impact assessment provisions previously found in the MRA[27].

3.3 Processing of environmental authority applications

The applicable assessment process for an environmental authority application for a mining activity varies depending on the nature of the mining activity (standard or non-standard) and the type of mining tenure to which the authority relates.

Given their lesser environmental impact, applications for environmental authorities for standard mining activities are assessed under a simplified approval system, with short processing times[28].

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conditions of the environmental authority, the miner commits an offence. The maximum fine that may be imposed for the offence is 100 penalty units (currently $7500) though a fine of five times this amount may be imposed on a corporate offender: see s 181B(3) Penalties & Sentences Act 1992.

20 Section 151 EPA.

21 Section 20 EPA.

22 Section 162 EPA.

23 Section 161 EPA.

24 See second reading speech for EPOLA Bill, Hansard, 4 Oct. 2000, p. 3385.

25 Section 151(2)(c)(i) EPA.

26 Section 164 EPA.

27 The only matter which the EP Agency is expressly required to take into account in deciding whether to require an EIS is the "standard criteria" under the EPA (s 151). The "standard criteria" are a list of matters specified in schedule 3 of the EPA, which encompass the principles of ecologically sustainable development set out in the National Strategy for Ecologically Sustainable Development (including the precautionary principle), the nature of the receiving environment, best practice environmental management for the activity, the financial implications of the requirements of the authority and the public interest. Thus the Agency has a broad power to require a miner to carry out an EIS which is unconstrained by any threshold requirement, such as that the activity's effect on the environment must be "significant" (cf. the EIS requirements under pt 4 of the *State Development and Public Works Organisation Act 1971* (Qld) and under the new *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*).

28 Processing times for these applications are generally 5-10 business days.

Environmental conditions for these authorities will mostly be drawn from "codes of environmental compliance"[29], which set out standard environmental conditions for different mining activities[30].

Applications for environmental authorities for non-standard activities warrant a higher degree of scrutiny because of the potential for the activities to cause serious harm to the environment. Authorities for these activities are assessed and conditioned on a case-by-case basis by the EP Agency. The Agency has a broad discretion[31] to impose any condition on the authority which it considers is "necessary or desirable"[32], including conditions requiring the holder to take stated preventative measures, carry out and report on a monitoring program or undertake stated rehabilitation or remediation work[33].

In formulating the conditions of a non-standard authority, the administering authority relies on "environmental protection commitments" in environmental planning documents prepared by the applicant - an environmental management plan (EM plan) in the case of environmental authorities for exploration permits and MDLs[34] and an EMOS in the case of an environmental authority for a mining lease[35]. The environmental protection commitments proposed by the applicant must deal with how the environmental values affected by the mining activity will be protected and enhanced under best practice environmental management and must be stated in a way that allows them to be measured and audited. They must also include an action program to ensure their achievement or implementation, including, for example, programs for continuous improvement, environmental auditing, monitoring, reporting and staff training[36].

Given that they will form the basis of particular conditions of the environmental authority, rather than being merely environmental strategies guiding the conduct of mining operations, the environmental protection commitments and rehabilitation proposals made in the planning documents will need to be reasonably detailed and realistic. Formulating such commitments and proposals early in the life of a resource project is likely to be a difficult task, particularly if the extent of the ore body is not fully known or the plan for mining the resource is likely to change with better physical knowledge and fluctuating economic conditions[37].

3.4 New Public Notice Requirements

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29 Section 549 EPA. Three Codes have been developed by stakeholder working groups led by the DME: (1) the Code of Environmental Compliance for Mining Claims and Prospecting Permits, (2) the Code of Environmental Compliance for Exploration and Mineral Development Projects and (3) the Code of Environmental Compliance for Mining Leases.

30 This assessment process is similar to code assessment under the Integrated Planning Act 1997.

31 The Agency must exercise this power in the way that best achieves the Act's object of protecting Queensland's environment while allowing for ecologically sustainable development (see ss 3 and 5 EPA).

32 See ss 193 and 210 EPA.

33 Section 305 EPA.

34 Section 187 EPA.

35 Section 201 EPA.

36 See ss 189 and 203 EPA.

37 See S. McNeilage &G. McIlveen, "Mining and the Environment", Paper presented at Queensland Environmental Law Association Seminar: Mining and the Environment, 13 November 2000, p. 19.

A new requirement for the processing of applications for environmental authorities for mining claims and mining leases is that the application must be publicly notified[38]. This public notification process is separate from that for the mining tenure itself under the MRA, but is intended to be carried out at the same time so the public can lodge objections relating to all aspects of a mining project.

Public comment is sought on the basis of a draft environmental authority prepared for the mining claim or mining lease application by the EP Agency. Any member of the public may submit an objection to the EP Agency about the application or the draft environmental authority. Any objections to which have not been withdrawn at the end of the public objection period are referred to the Land and Resources Tribunal. The Tribunal conducts an "objections decision hearing" and makes a recommendation to the Minister for Mines and Energy about the environmental authority[39].

Although the recommendation of the Tribunal is made to the Minister for Mines and Energy, the ultimate decision on the grant or refusal of the environmental authority for the mining claim or mining lease rests with the Minister for Environment and Heritage[40]. The Minister for Environment and Heritage is required, however, to seek the advice of the Minister for Mines and Energy about the objections decision[41] and to render a decision within a "reasonable period" of receiving that advice[42]. If the application is refused there is no provision for the decision to be appealed on the merits.

3.5 No surrender without Agency's approval

Under the new regime, surrender of a miner's environmental authority may only occur with the approval of the EP Agency[43]. A surrender application must be accompanied by a final rehabilitation report giving details of whether the conditions under the environmental authority and the environmental protection commitments (if any) have been met[44]. The EP Agency may only accept a surrender if it is satisfied that the affected land has been rehabilitated satisfactorily or that other arrangements have been put in place to complete the rehabilitation, such as an environmental management program or a site management plan for contaminated land[45]. The intent of the new provisions is to "ensure that the people of Queensland are not left with the liability of repairing environmental damage after a mining project finishes, as has occurred in the past"[46].

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38 See ch 5, pt 6, div 6 EPA. The same process applies for applications for environmental authorities for mining claims by virtue of s 177.

39 Section 222 EPA. The matters that the Tribunal must consider in making its recommendation are the same as those which the EP Agency is required to take into account in deciding whether to grant or refuse an application for an environmental authority: s 223.

40 Section 225 EPA.

41 Failure by the Environment Minister to seek the advice of the Minister for Mines and Energy does not invalidate the Environment Minister's decision under s 225: see s 224(5) EPA.

42 Section 225(2) EPA.

43 Section 268 EPA. Note that an environmental authority (prospecting permit) can not be surrendered: s 267.

44 Section 273 EPA.

45 Section 278 EPA.

46 See second reading speech for the EPOLA Bill, Hansard, 4 Oct. 2000, p. 3387.

In the event that the EP Agency has to remediate environmental damage at a mine site because the miner has failed to met its rehabilitation commitments, the Agency may draw on the financial assurance under the environmental authority to defray its reasonable costs and expenses[47].

3.6 New powers to conduct environmental audits

Part 11 of chapter 5 of the EPA gives the EP Agency broad new powers to require the holder of an environmental authority for a mining activity to conduct an environmental audit of the project[48] at the holder's expense[49]. An audit requirement may only be made by the Agency if it is "reasonably satisfied that the audit is necessary or desirable"[50]. Examples of situations in which an audit might be required are given in s 280 and include:

1. Determining whether there has been compliance with the conditions of the environmental authority;
2. Assessing the actual environmental harm being caused by the project against the harm authorised under the environmental authority or anticipated under the relevant EM plan or EMOS;
3. Auditing the POP against the conditions of the environmental authority; and
4. Determining the accuracy of a final rehabilitation report.

The audit may be undertaken by the EP Agency itself[51] or by an auditor accredited by the authority[52].

4 EFFECT OF THE CHANGES FOR MINERS

For miners coming to terms with the detailed new regulatory requirements of the EPA, an important question will be how the transition will affect the day-to-day activities of a mining operation. The amendments have the potential to impact mining operations in a number of ways, including:

- greater public scrutiny of the environmental requirements imposed on mining activities;
- less flexibility to change the conduct of mining operations;
- stricter scrutiny of rehabilitation efforts on surrender; and
- increased exposure to investigation, audits and penalties.

4.1 Greater Public Scrutiny

The avenues for the public to have input into the environmental conditions imposed on mining activities are enhanced under the new regime. Members of the public have objection rights in

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47 Section 367 EPA.
48 Section 280 EPA.
49 Section 282 EPA.
50 Section 280(2) EPA.
51 Section 283 EPA.
52 Section 285 EPA.

relation to mining claims and mining leases[53], may access and take extracts from environmental management documents, POPs and final rehabilitation reports submitted by an applicant[54], and, where an EIS is required for a non-standard application, may participate in the formulation of the draft terms of reference for the EIS and make submissions on the EIS itself[55].

The application process under the EPA is also more transparent for the miner than was the previous regime under the MRA, which was characterised by a high degree of executive discretion. Powers conferred on the EP Agency are generally subject to the consideration of relatively detailed criteria and must always be exercised by the Agency in the way that best achieves the object of the EPA[56]. For non-standard applications, the miner is also given rights to appeal many of the decisions taken by the EP Agency[57].

4.2 Less flexibility to change mining operations

The conduct of mining operations will now be tied to, and have to comply with, the mine's environmental authority, rather than the POP as was the case under the previous regime. Inherently the environmental authority, with conditions specifying the level of environmental harm authorised under it, is a less flexible document than the operationally-based POP. Moreover, changes to the environmental authority may only be effected by following the complex amendment procedure under the Act[58], which may require the miner, in some cases, to carry out public notification of the amendment application or even to prepare an EIS for the amendment[59]. As a result, the mining operation may have less flexibility to evolve with changing knowledge or economic conditions, since operational changes are likely to have flow-on environmental effects necessitating amendment of the environmental authority.

4.3 Stricter scrutiny of rehabilitation efforts

Strict requirements are specified under the EPA before the surrender of an environmental authority can be accepted by the EP Agency. All surrender applications will now need to be accompanied by an environmental audit which must state the extent to which the mining activities carried out under the environmental authority have complied with the conditions of the authority and the extent to which the final rehabilitation report is accurate[60]. In addition the applicant's final rehabilitation report may be assessed by the EP Agency[61] and both the final rehabilitation report and any assessment report by the EP Agency will be publicly available[62].

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53 Section 216 EPA.

54 Section 542 EPA.

55 See ss 43 and 54 EPA.

56 Section 5 EPA.

57 See sch 1 EPA for a list of appealable decisions.

58 See ch 5, pt 8 EPA.

59 Public notification is required for amendment applications for non-standard environmental authorities where it is determined that the level of environmental harm caused by the mining activity is likely to be significantly increased: s 251 EPA. The administering authority may also require the preparation of an EIS for such applications: s 246 EPA.

60 Section 273 EPA.

61 Section 276 EPA.

62 See ss 540 and 542 EPA.

Even when a surrender is accepted, the miner may have ongoing environmental management obligations for the land under an environmental management program or a site management plan if the land is contaminated[63]. A miner who does not undertake satisfactory rehabilitation stands to lose the financial assurance required as a condition of the environmental authority if the EP Agency is forced to undertake rehabilitation and remediation itself[64].

4.4 Increased exposure to investigation, audits and penalties

The environmental obligations imposed on a miner will now be contained entirely in the miner's environmental authority, rather than in the mining tenement. Non-compliance with a condition of an environmental authority is an offence under the EPA, attracting hefty penalties[65]. Responsibility for the investigation and prosecution of complaints relating to non-compliance with a mine's environmental conditions will now fall to the EP Agency, rather than being dealt with by the DME. Members of the public may also bring actions against a miner seeking orders to restrain a breach of conditions under the miner's environmental authority[66].

Apart from greater exposure to the possibility of investigation and penalties, miners are likely to have their mining operations audited more frequently than in the past. This will necessitate ongoing reviews of environmental management by the miner to ensure that the mining operation is complying with the conditions of the environmental authority and meeting environmental protection commitments and rehabilitation requirements.

5 ENVIRONMENTAL REVOLUTION OR MERELY CHANGING OF THE GUARD?

The changes made by the EPOLA to the legislative regime governing the environmental regulation of the Queensland mining industry are significant and, if fully implemented, offer the promise of real improvements in the environmental management of mining in the State. By far the most significant change, however, is in the personality of the regulator who will oversee implementation of the new regime. With the transfer of environmental responsibilities for mining to the EP Agency, the mining industry is longer in the hands of a department committed to encouraging and facilitating mining, but under the jurisdiction of an agency whose mandate is to ensure the protection of Queensland's environment[67]. This change addresses the "departmental dilemma" faced by the DME under the previous regime and, for the first time, entrusts the implementation and enforcement of the environmental requirements for mining to a specialist environmental agency. Potentially this could mean that mining operations in Queensland will face greater public scrutiny of, and accountability for, the environmental impacts of their activities.

The main criticism of the DME's environmental regulation of the mining industry in the past related to a perceived reluctance on the part of the department to take strong enforcement measures against miners, given its commitment to encouraging and facilitating mining. This obstacle to

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63 Section 278 EPA.

64 Section 367 EPA.

65 Section 430 EPA. Maximum penalties range from 250 penalty units (currently $18,750 for an individual or $93,750 for a company) to 2000 penalty units (currently $150,000 for an individual or $750,000 for a company; individuals also face up to 2 years imprisonment). Note also the Act's broad provision for executive officer liability: s 493.

66 Section 505 EPA.

67 See object of the Act: s 3 EPA.

environmental enforcement is removed with the transition to the EP Agency as regulator but this may not necessarily guarantee changes in the way that the environmental impacts of mining are managed.

Like the previous system under the MRA, the new environmental regulatory regime for mining under the EPA is one that places heavy reliance on enforcement of environmental requirements by the regulator. Monitoring compliance with environmental conditions, taking prosecution or other enforcement action, requiring and overseeing audits and assessing the adequacy of rehabilitation efforts all require large investments of a regulator's time and resources. Moreover, these tasks will be in addition to those arising out of the introduction of a range of new applications into the EPA and the need to deal with a host of new administrative requirements under the public notification and EIS procedures.

In the past the EP Agency has struggled with the administrative load generated by environmental authority applications and it is only recently that significant resources have been put into compliance assurance and enforcement[68]. To cope with its new administrative and regulatory roles under the amended regime, the EP Agency will require both strong political backing and high levels of resourcing from the State Government. Without a well-resourced EP Agency, committed to strong and vigilant enforcement of the new environmental regime for mining, Queensland may simply witness a changing of the regulatory guard rather than the promised revolution in the environmental management of mining in the State.

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68 D.E. Fisher & M. Walton, "Bulletin No. 1: Prosecutions under the Environmental Protection Act 1994 (Qld), December 2000", in Environmental Law in Queensland, , LBC Information Services, Sydney 1996