

Our ref: 20200755:AJT

4 August 2021

Office of Climate Change, Environment Division  
Department of Environment, Parks and Water Security  
PO Box 3675  
Darwin NT 0801

**By Email: [environment.policy@nt.gov.au](mailto:environment.policy@nt.gov.au)**

Attention: Ms Simone Symonds

Dear Ms Symonds

## **SUBMISSION ON ENVIRONMENTAL CHAIN OF RESPONSIBILITY LAWS**

We refer to the Environmental Chain of Responsibility Laws Environmental regulatory reform information paper dated 7 July 2021 (**Information Paper**) and renew our opposition to environmental chain responsibility (**ECOR**) legislation first raised in our submission on the regulation of mining activities – environmental regulatory reform, dated 17 March 2021.

ECOR legislation conflicts with a key objective of the Territory's reform program – improved investor security – by undermining the basic tenant of corporation law. The core purpose underpinning the creation of a corporation is to limit the liability of persons (including related entities, shareholders, management and employees) engaged in an enterprise. Legislation that undermines that core purpose increases investor risk, depresses investor confidence, and ultimately results in decreased investment in the sector. It also makes it more difficult to attract qualified management and director teams to the sector.

The suggestion in section 3 of the Information Paper that ECOR laws might use negligence as a basis for liability is alarming. ECOR laws are intended to address "the worst of the worst" offenders, those who have engaged in wilful malfeasance, if not actual criminal activity. What the Territory suggests is an unwarranted expansion of an unnecessary law.

Having reviewed the submissions provided on the mining reform information paper in which ECOR legislation was first suggested, we disagree with the assertion in the Information Paper that industry groups have seen the benefit of ECOR laws and acknowledge that the laws have not acted as a deterrent to investment. We also disagree with the assertion in the Information Paper that stakeholders who do not believe ECOR legislation is necessary have "general misunderstandings" about such laws.

The information paper uses the Heavy Vehicle National Law (**HVNL**) as a basis for chain responsibility legislation. The HVNL, however, is premised on a principle of shared responsibility<sup>1</sup> for those who have affirmative duties regarding safety within the transportation supply chain.<sup>2</sup> A supply chain is a network to produce and distribute a specific product or service to a final consumer. The HVNL chain of responsibility

<sup>1</sup> See, e.g., *Heavy Vehicle National Law Act 2012* (Qld) s 26A.

<sup>2</sup> *Ibid* s 26C.

---

### Partners

Kevin Stephens  
Leon Loganathan  
Ashley Heath  
Michael Grove  
Teresa Hall  
Kaliopi Hourdas  
Tessa Czislawski

### Consultants

Carolyn Walter  
Markus Spazzapan  
Tony Whitelum  
Charlie Martel

### Special Counsel

Bradly Torgan

### Conveyancing Manager

Theresa Cocks

---

### Darwin

Level 7, NT House,  
22 Mitchell Street  
T 08 8911 0714

### Palmerston

Suite 2  
6 Woodlake Boulevard  
T 08 8931 3388

### Casuarina

Unit 3  
293B Trower Road  
T 08 8942 2333

### Alice Springs

PO Box 3296  
T 08 8952 4200

### Katherine

3/38 Katherine Terrace  
T 08 8911 0714

---

A legal practice conducted  
by Ward Keller Pty Ltd  
ACN 009 628 157  
ABN 83 867 405 190

checklist, as an example lists, no less than ten potential entities with affirmative duties within the transportation supply chain. We do not believe this model is appropriate for application of a chain of responsibility law to the resources sector.

Although not by name, the information paper also refers to the *Environmental Protection (Chain of Responsibility) Amendment Bill 2016* (Qld) along with what purports to be its purpose. It should be recalled that the Queensland legislation was known as the "Clive Palmer Bill," and considered to be designed with one person and one purpose in mind and to be overreach by many.

ECOR legislation in the Northern Territory is a solution in search of a problem. If properly administered, there are sufficient regulatory powers available to address environmental impacts from activities and industries that have the potential to harm the environment.

Yours faithfully  
**WARD KELLER**



**KEVIN STEPHENS**  
Partner

**Direct Line** (08) 8946 2921  
**Email** kevinstephens@wardkeller.com.au