

Casenote: *Linc Energy Ltd v Chief Executive Administering the Environmental Protection Act 1994 & Anor* [2014] QSC 172



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Summary

On 1 August 2014, the Queensland Supreme Court in *Linc Energy Ltd v Chief Executive Administering the Environmental Protection Act 1994 & Anor* [2014] QSC 172 declared that the seizure of materials by the Department of Environment and Heritage Protection (**DEHP**) pursuant to a warrant issued under the *Environmental Protection Act 1994* (Qld) (**EP Act**) was unlawful.

The case makes it clear that when DEHP executes a search warrant for a special class of documents they must specifically consider the content of each document and be satisfied it has potential value as evidence for the commission of an offence before it can be seized. The collection of vast quantities of materials which are taken with the intention of considering their relevance at a later point in time is not a proper exercise of the power under a warrant and will most likely result in an order that all materials be returned.

Background

Linc Energy Ltd (**Linc**) is a global mining company with substantial mining assets in Australia including an underground coal gasification demonstration facility at Chinchilla. DEHP applied for a warrant under the EP Act to authorise the search, inspection and seizure of material which it reasonably believed would constitute evidence of the commission of offences under the EP Act. One of the warrants related to the applicant's Brisbane premises and the other to its Chinchilla premises, although all four offences were confined to the operations at the Chinchilla site.

The warrants did not identify specific documents. Rather, they described the 'evidence' to be seized as falling within three broad classes of documents: those relating to the applicant's operations at the Chinchilla site, sampling, and human resource records.

The material seized

The material was collected from Linc's Brisbane and Chinchilla offices by DEHP over a period of two days. A vast amount of material was ultimately collected from both sites. From the Brisbane office, the executing officers took possession of 60-70 backup tapes containing file and email servers from the applicant's global operations as well as the applicant's entire network storage device. They took copies of the applicant's internal databases and extracted copies of the mailboxes of 10 individual employees. From the Chinchilla office, DEHP seized a number of individual documents as well as a copy of the entire hard drive from the general manager's laptop.

At the hearing DEHP conceded that much of the material taken was outside the scope of the warrants, however as each item contained some material which was within the warrants, they claimed that each item was validly seized.

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The decision

The court held that in executing a search warrant, the executing officer is authorised to seize only a thing described in the warrant and must therefore make a decision that the item being seized is described and has a connection to the prosecution of the relevant offence. An officer is not entitled to seize a large volume of materials so that they can be analysed for potentially relevant evidence at a later point in time.

In the present case the evidence showed that while there was some consideration of the type of material seized by the executing officers, this extended only to the point of identifying the name of a person relevant to the investigation in a document. There was no further consideration of the actual content of any of the material seized or its relevance in the prosecution for an offence.

The seizure of the backup tapes and network storage device was declared to be unlawful and DEHP was ordered to return these items to the applicant.

Concluding comments

If served with a warrant by DEHP, it is imperative to immediately seek legal advice. This case confirms that there are limits on how a warrant can be executed, particularly if a broad class of documents is involved. Further, issues of legal professional privilege are always relevant when a warrant is being executed.
