

**Queensland Government Response to
Agriculture and Environment Committee Report No. 16**

**Environmental Protection (Chain of Responsibility) Amendment Bill
2016**

INTRODUCTION

On 15 March 2016 Hon Dr Steven Miles MP, Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef, introduced the Environmental Protection (Chain of Responsibility) Amendment Bill 2016 to the Queensland Parliament.

The Bill was subsequently referred to the Agriculture and Environment Committee for consideration.

On 15 April 2016, the Agriculture and Environment Committee tabled its report (Report No. 16) in relation to the Bill.

The Queensland Government response to the recommendations made by the Agriculture and Environment Committee is provided in the table below.

RESPONSE TO RECOMMENDATIONS AND POINTS FOR CLARIFICATION

Recommendation / Point of clarification	Government response
<p>Recommendation 1</p> <p>The Committee could not agree whether the Environmental Protection (Chain of Responsibility) Amendment Bill 2016 should be passed with the amendments proposed in this report.</p>	<p>No response required.</p>
<p>Recommendation 2</p> <p>The committee recommends that the Minister consider amending clause 7 of the Bill to include other terms used in new Division 2 such as 'executive officer' and 'related person' to assist users of the legislation.</p>	<p>The term 'related person' is defined in proposed section 363AA by reference to section 363AB. The term 'executive officer' is defined in schedule 4 of the <i>Environmental Protection Act 1994</i>.</p> <p>The government will implement this recommendation by ensuring that the guideline made in accordance with recommendation 4 will assist users of the legislation in understanding both its meaning and the way in which it will be applied.</p>
<p>Recommendation 3</p> <p>The committee recommends that subsection 363AB(1)(b) in clause 7 be omitted from the Bill.</p>	<p>The government supports the intent of this recommendation and will act to ensure that farmers and native title holders are excluded from the effect of this clause. The government will achieve this by amending section 363AB(1)(b) in clause 7 rather than omitting it from the Bill in its entirety.</p> <p>The government will amend section 363AB(1) to exclude from the definition of 'owner' native title holders or claimants, holders of Aboriginal or Torres Strait Islander land and owners of land underlying a resource tenement (unless they are an associated entity of the resource tenement holder).</p> <p>By not omitting subsection (1)(b) in its entirety, the administering authority</p>

	<p>will retain the option of enforcing environmental obligations against land owners which are related companies of the environmental authority holder and against commercial landowners of industrial land. Such landowners have capacity to influence activities carried out on their land through the terms of the lease and should have priced, into the rent being charged, the risk of a tenant failing to make good the land when the lease ends.</p>
<p>Recommendation 4</p> <p>The committee recommends that the Bill be amended to require the Minister to table in Parliament a statutory guideline that will stipulate the manner in which the Department of Environment and Heritage Protection as the administering authority will administer the provisions contained in clause 7 section 363AB, including the department's consideration of the factors listed at subsection 363AB(4) for determining a person's 'relevant connection' to a company.</p>	<p>The government supports this recommendation and will amend the Bill to provide that the administering authority must have regard to any criteria stated in a guideline made by the chief executive in deciding who is a 'related person' to which an environmental protection order should be issued.</p> <p>The proposed guideline will also address other aspects of the new provisions, including decisions about which of the related persons of a company an environmental protection order should be issued to.</p>
<p>Recommendation 5</p> <p>The committee recommends that section 363AC of clause 7 be amended to require that the administering authority may only issue an environmental protection order to a related person of a company if the authority has also issued an environmental protection order in the same terms to the company, where the company is still in existence.</p>	<p>Section 363AC of the Bill allows an environmental protection order to be issued to a related person of a company only when, or after, an environmental protection order is issued to the company.</p> <p>The Bill does not require the same prerequisites for the issue of an environmental protection order under section 363AD. The actions which can be required under an environmental protection order issued under section 363AD are broader than those which could be required by an environmental protection order issued to the environmental authority holder under the current section 358 of the <i>Environmental Protection Act 1994</i>. This is intended to ensure that the administering authority can require that rehabilitation be undertaken. The reason for this expansion of powers is that, should the 'high risk' company be wound up, it will not be</p>

	<p>subject to the surrender process which would ordinarily ensure that rehabilitation occurs.</p> <p>In practice, the administering authority is very unlikely to have recourse to either provision unless enforcement action against the environmental authority holder has failed or appears likely to fail.</p> <p>The government will implement this recommendation through the guideline made in accordance with recommendation 4. That guideline will address the circumstances in which the new powers will be exercised including that enforcement (by one of the existing tools available under the <i>Environmental Protection Act 1994</i>) should be attempted, or deemed infeasible, before there is recourse to section 363AD.</p>
<p>Recommendation 6</p> <p>The committee recommends that the Minister directs his department to consult with the Queensland Law Society, Queensland Resources Council, the Queensland Environmental Law Association, the Association of Mining and Exploration Companies and other stakeholders, in relation to sections 522A 535B of clause 15, to identify a less onerous percentage than the 85% proposed that is appropriate under the circumstances.</p>	<p>The government supports this recommendation and proposes to amend the Bill to reduce the percentage to 75%.</p> <p>Consultation has taken place with the Queensland Law Society, Queensland Resources Council, Queensland Environmental Law Association and the Association of Mining and Exploration Companies, although there was not agreement.</p>
<p>Point for clarification</p> <p>The committee invites the Minister to assure the House that the liabilities and obligations the Bill seeks to impose on executive officers do not duplicate or interfere with the responsibilities of executive officers under the <i>Corporations Act 2001 (Cwth)</i> or the COAG principles of executive officer liability.</p>	<p>The Bill does not duplicate or interfere with the responsibilities of executive officers under the <i>Corporations Act 2001 (Cwth)</i>. Any actions taken under the new provisions must be consistent with the <i>Corporations Act 2001 (Cwth)</i>. If the administering authority fails to do this, Commonwealth law will prevail and actions taken under the <i>Environmental Protection Act 1994</i> will be ineffective.</p>

	<p>The Bill is not inconsistent with the COAG principles of executive officer liability. The COAG Guidelines state that the 'imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations where there are compelling public policy reasons for doing so (for example, in terms of the potential for significant public harm that might be caused by the particular corporate offending)'. Examples of significant public harm include 'serious damage to the environment and/or serious risk to public health and safety (e.g. offences concerned with preventing toxic contamination)'.</p> <p>The <i>Environmental Protection Act 1994</i> already contains executive officer liability provisions, precisely because they are designed to discourage significant public harm. The Bill is consistent with the approach to executive officer liability in the existing <i>Environmental Protection Act 1994</i>.</p>
<p>Point for clarification</p> <p>The committee invites the Minister to inform the House on the administration of the financial assurance framework by his department, including: information on the numbers of mining, minerals processing, gas and petroleum sites in Queensland; the numbers of sites against which the government holds financial assurance; the amount of financial assurance held; and the proportion of these sites held by companies deemed 'high risk'.</p>	<p><u>Administration of the financial assurance framework</u></p> <p>In Queensland, holders of environmental authorities for resource activities provide financial assurance as security for their activities. Other activities may also be required to pay financial assurance.</p> <p>Financial assurance is a tool designed to ensure the government has sufficient funds to cover the liability to the state in the event of project abandonment and is calculated based on disturbance and the costs to rehabilitate that disturbance. Most financial assurance is secured via a financial instrument such as a bank guarantee held by the state.</p> <p>Financial assurance arrangements have been subject to substantial discussion and review, in particular over the last three years. In 2013 the</p>

	<p>Department of Environment and Heritage Protection (EHP) finalised a statutory guideline and in 2014 introduced a financial assurance calculator. The updated guideline and new calculator improved the accuracy, consistency and transparency of financial assurance calculations and decisions.</p> <p>In January 2014 the Queensland Audit Office (QAO) identified that:</p> <ul style="list-style-type: none"> • the state was exposed to substantial liability because the amount of financial assurance requested has not always been the same as that calculated as being necessary for rehabilitation • a gap between the amount of financial assurance that has been requested (\$5.2 billion) and the amount received (\$4.9 billion) existed. <p>The QAO recommended that EHP ensures that the calculation and collection of financial assurance reflects the estimated cost of environmental rehabilitation and that the administration arrangements for financial assurance be transferred from the Department of Natural Resources and Mines (DNRM) to EHP. Through implementation of the guideline and financial assurance calculator, EHP has largely acquitted against the QAO's recommendations. EHP and DNRM are progressing the transfer of the administrative arrangements.</p> <p>Note: there is a statement on page 31 of the report of the committee that no financial assurance is held for the Texas Silver Mine. EHP seeks to correct this statement; the state required \$2 million of financial assurance for Texas Silver Mine.</p> <p><u>Number of mining, minerals processing, gas and petroleum sites in Queensland</u></p> <p>As of February 2016, there were 541 'site specific' (larger scale) environmental authorities for: mining (229), petroleum and gas (298) and</p>
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	<p>off-tenure mineral processing or refinery plants (14) (not part of the mining environmental authority) in Queensland.</p> <p>Note: This figure excludes 'standard' (low risk) mining and petroleum, and gas activities.</p> <p><u>Number of sites against which the government holds financial assurance</u></p> <p>At 30 June 2015, approximately 3,503 resource (mining, petroleum and gas) environmental authorities were administered by EHP and 1,709 by DNRM. This figure includes 'standard' (low risk) mining, petroleum and gas activities. Financial assurance is held against all of these authorities. Financial assurance is also currently held in relation to 79 non-resource environmental authorities.</p> <p><u>Amount of financial assurance held</u></p> <p>The Government currently holds approximately \$7 billion in financial assurance.</p> <p><u>Proportion of sites holding financial assurance deemed 'high risk'</u></p> <p>There are currently 9 operations deemed 'high risk' (i.e. in external administration) in Queensland.</p>
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