



Queensland

Environmental Protection (Chain of Responsibility) Amendment Bill 2016



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2016

A Bill

for

An Act to amend the *Environmental Protection Act 1994* for particular purposes

The Parliament of Queensland enacts—	1
Clause 1 Short title	2
This Act may be cited as the <i>Environmental Protection (Chain of Responsibility) Amendment Act 2016</i> .	3 4
Clause 2 Act amended	5
This Act amends the <i>Environmental Protection Act 1994</i> .	6
Clause 3 Amendment of s 215 (Other amendments)	7
(1) Section 215(2)—	8
<i>insert—</i>	9
(ba) another entity becomes the holder of the authority;	10 11
(fa) the amendment or withdrawal of an environmental protection order;	12 13
(2) Section 215(2)(ba) to (m)—	14
<i>renumber</i> as section 215(2)(c) to (p).	15
(3) Section 215—	16
<i>insert—</i>	17
(3) An amendment because of a matter mentioned in subsection (2)(c) may only be to impose a condition under section 292 requiring the holder of the environmental authority to give the administering authority financial assurance.	18 19 20 21 22
Clause 4 Amendment of s 332 (Administering authority may require draft program)	23 24
Section 332(2)—	25
<i>insert—</i>	26

	(e) an environmental protection order issued to the person or public authority has been amended or withdrawn.	1 2 3
Clause 5	Insertion of new ch 7, pt 5, div 1 hdg Chapter 7, part 5, before section 358— <i>insert</i> — Division 1 General	4 5 6 7
Clause 6	Amendment of s 358 (When order may be issued) Section 358— <i>insert</i> — (f) in the circumstances stated in division 2.	8 9 10 11
Clause 7	Insertion of new ch 7, pt 5, div 2 Chapter 7, part 5, after section 363— <i>insert</i> — Division 2 Issue of orders to related persons of companies 363AA Definitions for division In this division— <i>associated entity</i> has the meaning given by the Corporations Act, section 50AAA. <i>financial interest</i> , in a company, means a direct or indirect interest in— (a) shares in the company; or (b) a mortgage, charge or other security given by the company; or (c) income or revenue of the company.	12 13 14 15 16 17 18 19 20 21 22 23 24 25 26

[s 7]

- high risk company** means— 1
- (a) a company that is an 2
externally-administered body corporate 3
within the meaning given by the 4
Corporations Act, section 9; or 5
 - (b) a company that is an associated entity of a 6
company mentioned in paragraph (a). 7
- holding company** see the Corporations Act, 8
section 9. 9
- interest** means a legal or equitable interest. 10
- related person** see section 363AB. 11
- relevant activity**, in relation to a company, means 12
an environmentally relevant activity— 13
- (a) that was, or is being, carried out by the 14
company under an environmental authority; 15
or 16
 - (b) that was, or is being, carried out by the 17
company and has caused, or is causing or 18
likely to cause, environmental harm. 19

363AB Who is a related person of a company 20

- (1) A person is a **related person** of a company if— 21
 - (a) the person is a holding company of the 22
company; or 23
 - (b) the person owns land on which the company 24
carries out, or has carried out, a relevant 25
activity; or 26
 - (c) the administering authority decides under 27
this section the person has a relevant 28
connection with the company. 29
- (2) The administering authority may decide a person 30
has a relevant connection with a company if 31
satisfied— 32

-
- (a) the person is capable of benefiting financially, or has benefited financially, from the carrying out of a relevant activity by the company; or
 - (b) the person is, or has been at any time during the previous 2 years, in a position to influence the company's conduct in relation to the way in which, or extent to which, the company complies with its obligations under this Act.
- (3) A reference in subsection (2)(b) to a person being in a position to influence a company's conduct includes a person being in that position—
- (a) whether alone or jointly with an associated entity of the company; and
 - (b) whether by giving a direction or approval, by making funding available or in another way.
- (4) In deciding for subsection (2) whether a person has a relevant connection with a company (the *first company*), the matters an administering authority may consider include the following—
- (a) the extent of the person's control of the first company;
 - (b) whether the person is an executive officer of—
 - (i) the first company; or
 - (ii) a holding company or other company with a financial interest in the first company;
 - (c) the extent of the person's financial interest in the first company;
 - (d) the extent to which a legally recognisable structure or arrangement makes or has made it possible for the person to receive a financial benefit from the carrying out of a

[s 7]

- relevant activity by the first company, 1
including (but not limited to) a structure or 2
arrangement under which— 3
- (i) the person is not entitled to require a 4
financial benefit; but 5
- (ii) it is possible for the person to receive a 6
financial benefit because of a decision 7
by someone else or the exercise of a 8
discretion by someone else; 9
- (e) any agreements or other transactions the 10
person enters into with a company 11
mentioned in paragraph (b)(i) or (ii); 12
- (f) the extent to which dealings between the 13
person and a company mentioned in 14
paragraph (b)(i) or (ii) are— 15
- (i) at arm’s length; or 16
- (ii) on an independent, commercial 17
footing; or 18
- (iii) for the purpose of providing 19
professional advice; or 20
- (iv) for the purpose of providing finance, 21
including the taking of a security; 22
- (g) the extent of the person’s compliance with a 23
requirement under section 451 for 24
information relevant to the making of a 25
decision under this section. 26
- (5) The matters mentioned in subsection (4) may be 27
considered as at the time the administering 28
authority is making the decision under subsection 29
(2) or as at an earlier time relevant to the decision. 30
- (6) In this section— 31
- control** has the meaning given by the 32
Corporations Act, section 50AA. 33
- financial benefit**, received by a person, includes 34
profit, income, revenue, a dividend, a distribution, 35

money's worth, an advantage, priority or preference, whether direct or indirect, that is received, obtained, preferred on or enjoyed by the person.

363AC Order may be issued to related person

- (1) When issuing an environmental protection order to a company under division 1, or if an environmental protection order issued to a company under division 1 is in force, the administering authority may also issue an environmental protection order under division 1 to a related person of the company.
- (2) The order may impose any requirement on the related person that is being, or has been, imposed on the company, as if the related person were the company.

363AD Order may be issued to related person of high risk company

- (1) The administering authority may issue an environmental protection order under division 1 to a related person of a high risk company, whether or not an environmental protection order is being issued, or has been issued, to the high risk company.
- (2) The order may impose any requirement on the related person that could be imposed on the high risk company under division 1, as if the related person were the high risk company.
- (3) If the high risk company has stopped holding an environmental authority, the order may include any requirements that could be imposed if the company still held the environmental authority.

[s 7]

- Example—* 1
- The order may include a requirement to secure 2
compliance with a condition of an environmental 3
authority that the high risk company no longer holds. 4
- (4) Also, the order may require the related person 5
to— 6
- (a) take action to prevent or minimise the risk of 7
serious or material environmental harm— 8
- (i) from a relevant activity; or 9
- (ii) from contaminants on land on which 10
the high risk company carries out, or 11
has carried out, a relevant activity 12
(whether or not the contaminants are 13
the result of a relevant activity); or 14
- (b) take action to rehabilitate or restore land 15
because of environmental harm— 16
- (i) from a relevant activity; or 17
- (ii) from contaminants on land on which 18
the high risk company carries out, or 19
has carried out, a relevant activity 20
(whether or not the contaminants are 21
the result of a relevant activity); or 22
- (c) give the administering authority a bank 23
guarantee or other security for the related 24
person’s compliance with the order. 25

**363AE Order may provide for joint and several 26
liability 27**

If a requirement is made of 2 or more related 28
persons of a company, the environmental 29
protection order or orders issued to them may 30
provide that the related persons are jointly and 31
severally liable for complying with the 32
requirement, including for the costs of 33
compliance. 34

363AF Procedure if related person is not the owner of land on which action is required	1
	2
(1) This section applies if an environmental protection order issued to a related person (the <i>recipient</i>) requires the recipient to take action on land the recipient does not own.	3 4 5 6
(2) The recipient, or person taking the action for the recipient (the <i>contractor</i>), may enter the land to take the action only—	7 8 9
(a) with the consent of the owner and occupier of the land; or	10 11
(b) if the recipient or contractor has given at least 2 business days written notice to the owner and occupier.	12 13 14
(3) The notice under subsection (2)(b) must inform the owner and occupier of—	15 16
(a) the intention to enter the land; and	17
(b) the purpose of the entry; and	18
(c) the days and times when the entry is to be made.	19 20
(4) In taking the action, the recipient or contractor must take all reasonable steps to ensure the recipient or contractor causes as little inconvenience, and does as little damage, as is practicable in the circumstances.	21 22 23 24 25
(5) Nothing in this section authorises the recipient or contractor to enter a building used for residential purposes.	26 27 28
(6) If a person incurs loss or damage because of action taken by the recipient or contractor, the person is entitled to be paid by the recipient or contractor the reasonable compensation because of the loss or damage that is agreed between the recipient or contractor and the person or, failing agreement, decided by a court having jurisdiction for the recovery of amounts up to the amount of	29 30 31 32 33 34 35 36

[s 7]

compensation claimed. 1

(7) Subsection (6) does not apply to loss or damage 2
incurred by the company of whom the recipient is 3
a related person. 4

(8) The court may make an order about costs it 5
considers just. 6

363AG Taking action in place of related person 7

(1) This section applies if— 8

(a) an environmental protection order is issued 9
to a related person (the *recipient*); and 10

(b) either— 11

(i) the recipient fails to comply with it 12
within the period stated in the order; or 13

(ii) the operation of the decision to issue 14
the order is stayed under section 522 or 15
535. 16

(2) An authorised person, or person acting under the 17
direction of an authorised person (the *contractor*), 18
may take any of the actions stated in the 19
environmental protection order. 20

(3) For subsection (2), the authorised person or 21
contractor may enter land on which the actions are 22
required to be taken— 23

(a) with the consent of the owner and occupier 24
of the land; or 25

(b) if the authorised person or contractor has 26
given at least 2 business days written notice, 27
complying with section 363AF(3), to the 28
owner and occupier. 29

(4) If the authorised person or contractor enters land 30
under subsection (3), section 363AF(4) to (7) 31
applies as if a reference in the provisions to the 32
recipient or contractor were a reference to the 33

authorised person or contractor. 1

- (5) Subsections (3) and (4) do not limit another 2
 provision of this Act under which an authorised 3
 person may enter land. 4

Note— 5

See also sections 452 and 458 in relation to the power to 6
 enter a place to take the actions. 7

**363AH Obstruction of recipient complying with 8
 notice 9**

- (1) A person must not obstruct the recipient of an 10
 environmental protection order in the taking of 11
 action to comply with an environmental 12
 protection order unless the person has a 13
 reasonable excuse. 14

Maximum penalty—165 penalty units. 15

- (2) In this section— 16
recipient, of an environmental protection order, 17
 means— 18

(a) a related person to whom the order is issued; 19
 or 20

(b) a person acting for a related person to whom 21
 the order is issued. 22

**363AI Administering authority may issue cost 23
 recovery notice 24**

- (1) This section applies if the administering authority 25
 issues an environmental protection order to a 26
 related person (the *recipient*). 27

- (2) The administering authority may issue a written 28
 notice (a *cost recovery notice*) to the recipient 29
 if— 30

(a) the recipient fails to comply with the 31
 environmental protection order and an 32
 authorised person or contractor acts under 1

[s 7]

section 363AG; or	2
(b) the following happens—	3
(i) the operation of the decision to issue the environmental protection order is stayed under section 522 or 535;	4 5 6
(ii) during the period of the stay, an authorised person or contractor acts under section 363AG;	7 8 9
(iii) the appeal ends and—	10
(A) there is no appeal decision under section 530 or 539; or	11 12
(B) the effect of the appeal decision under section 530 or 539 is to confirm the decision to issue the environmental protection order to the extent the order required the recipient to take an action that was ultimately taken by the authorised person or contractor under section 363AG; or	13 14 15 16 17 18 19 20 21
(C) the effect of the appeal decision under section 530 or 539 is to issue an environmental protection order requiring the recipient to take action for the same purpose as the action that was ultimately taken by the authorised person or contractor under section 363AG.	22 23 24 25 26 27 28 29
(3) A cost recovery notice may claim a stated amount for costs or expenses reasonably incurred in—	30 31
(a) taking an action stated in the environmental protection order; or	32 33
(b) monitoring compliance by the recipient with the order.	34 35
(4) Subsection (5) applies if—	36

-
- (a) the environmental protection order issued by the administering authority (the *original order*) required the recipient to take action for a particular purpose; and
 - (b) an environmental protection order is issued under an appeal decision mentioned in subsection (2)(b)(iii)(C) (the *appeal order*) requiring the recipient to take action for the same purpose.
- (5) The amount claimed for costs and expenses incurred in taking the action stated in the original order may not be more than the costs and expenses that would be reasonably incurred in taking the action for the same purpose under the appeal order.
- (6) A cost recovery notice must state the following matters—
- (a) the name of the recipient;
 - (b) the amount claimed;
 - (c) a description of costs and expenses giving rise to the claimed amount;
 - (d) that, if the recipient does not pay the amount to the administering authority within 30 days after the day the notice is issued, the administering authority may claim the amount from the recipient as a debt;
 - (e) the name, address and contact details of the administering authority;
 - (f) the review or appeal details.
- (7) If the recipient does not pay the amount to the administering authority within 30 days after the day the notice is issued, the administering authority may claim the amount from the recipient as a debt.
- (8) If a cost recovery notice is issued to 2 or more recipients—

[s 8]

	(a) a copy of the notice must be given to each recipient; and	1 2
	(b) the amount claimed in the notice is payable by the recipients jointly and severally.	3 4
	(9) A reference in this section to an authorised person includes a person acting under the direction of an authorised person.	5 6 7
	(10) In this section— <i>costs and expenses</i> includes labour, equipment and administrative costs and expenses.	8 9 10
Clause 8	Amendment of s 363K (Taking action in place of recipient)	11 12
	Section 363K(1)(a), after ‘it’— <i>insert</i> — within the period stated in the notice	13 14 15
Clause 9	Amendment of s 452 (Entry of place—general)	16
	(1) Section 452(1)— <i>insert</i> —	17 18
	(ca) it is a place to which an environmental authority relates and an authorised person has given at least 5 business days written notice to the owner and occupier of the place stating—	19 20 21 22 23
	(i) an authorised person intends to enter the place; and	24 25
	(ii) the purpose of the entry; and	26
	(iii) the day and time when the entry is to be made; or	27 28
	(2) Section 452(1)(ca) to (i)—	29 30

renumber as section 452(1)(d) to (k). 1

(3) Section 452— 2

insert— 3

(1A) An authorised person may enter a place if— 4

(a) it was a place to which an environmental authority related but the environmental authority no longer operates at the place by operation of a law other than this Act; and 5
6
7
8

(b) the place is not used for residential purposes; and 9
10

(c) an authorised person has given at least 2 business days written notice to the owner and occupier of the place stating— 11
12
13

(i) an authorised person intends to enter the place; and 14
15

(ii) the purpose of the entry; and 16

(iii) the day and time when the entry is to be made. 17
18

(4) Section 452(1A) to (3)— 19

renumber as section 452(2) to (4). 20

Clause 10 Amendment of s 476 (Failure to attend or answer questions) 21
22

(1) Section 476(3)— 23

omit, insert— 24

(3) For subsection (2), it is not a reasonable excuse for an individual to fail to answer a question that complying with the requirement might tend to incriminate the individual. 25
26
27
28

(3A) However, incriminating evidence for an individual who answers a question is not admissible in evidence against the individual in a civil or criminal proceeding, other than a 29
30
31
32

[s 11]

	proceeding for an offence for which the falsity or misleading nature of the answer is relevant.	1 2
(2)	Section 476— <i>insert</i> —	3 4
(5)	In this section— <i>incriminating evidence</i> , for an individual who answers a question, means evidence of, or directly or indirectly derived from, the answer that might tend to incriminate the individual.	5 6 7 8 9
(3)	Section 476(3A) to (5)— <i>renumber</i> as section 476(4) to (6).	10 11
Clause 11	Amendment of s 490 (Evidentiary provisions)	12
	Section 490(5)(a)— <i>omit, insert</i> —	13 14
	(a) a stated document is a copy of a document issued, given, received or kept by the administering authority under this Act;	15 16 17
Clause 12	Amendment of s 522 (Stay of operation of particular original decisions)	18 19
	Section 522— <i>insert</i> —	20 21
	(5) This section applies subject to sections 522A and 522B.	22 23
Clause 13	Insertion of new ss 522A and 522B	24
	Chapter 11, part 3, division 2, after section 522— <i>insert</i> —	25 26
	522A Stay of decision about financial assurance	27
	(1) This section applies to an application under	28

section 522 for a stay of a decision about the amount of financial assurance required under a condition of an environmental authority. 1
2
3

- (2) The decision may not be stayed unless the administering authority has been given security for at least 85% of the amount of financial assurance that was decided by the administering authority. 4
5
6
7
8

522B Stay of decision to issue environmental protection order 9
10

- (1) This section applies to an application under section 522 for a stay of a decision to issue an environmental protection order. 11
12
13

- (2) The Land Court or the Court must refuse the application if satisfied there would be an unacceptable risk of serious or material environmental harm if the stay were granted. 14
15
16
17

Clause 14 Amendment of s 535 (Stay of operation of decisions) 18

Section 535— 19

insert— 20

- (5) This section applies subject to sections 535A to 535C. 21
22

Clause 15 Insertion of new ss 535B and 535C 23

After section 535A— 24

insert— 25

535B Stay of decision about financial assurance 26

- (1) This section applies to an application under section 535 for a stay of a decision about the amount of financial assurance required under a condition of an environmental authority. 27
28
29
30

- (2) The decision may not be stayed unless the 31

[s 16]

	administering authority has been given security	1	
	for at least 85% of the amount of financial	2	
	assurance that was decided by the administering	3	
	authority.	4	
	535C Stay of decision to issue environmental	5	
	protection order	6	
	(1) This section applies to an application under	7	
	section 535 for a stay of a decision to issue an	8	
	environmental protection order.	9	
	(2) The Court must refuse the application if satisfied	10	
	there would be an unacceptable risk of serious or	11	
	material environmental harm if the stay were	12	
	granted.	13	
Clause 16	Insertion of new ch 13, pt 25	14	
	Chapter 13—	15	
	<i>insert—</i>	16	
	Part 25	Transitional provisions	17
		for Environmental	18
		Protection (Chain of	19
		Responsibility)	20
		Amendment Act 2016	21
	744 Amendment of environmental authority	22	
	because of particular pre-commencement	23	
	matter	24	
	A reference in section 215(2)(c) to an entity	25	
	becoming the holder of an environmental	26	
	authority includes an entity becoming the holder	27	
	before the commencement.	28	

-
- 745 Decision about related persons based on particular pre-commencement matters** 1
2
- (1) A reference in section 363AB to a relevant activity carried out by a company includes a relevant activity carried out before the commencement. 3
4
5
6
- (2) In making a decision under section 363AB about whether a person has a relevant connection with a company, the matters the administering authority may consider include acts, omissions and circumstances occurring before the commencement. 7
8
9
10
11
12
- 746 Extension of power to issue environmental protection orders to particular persons** 13
14
- (1) The power under section 363AC or 363AD to issue an environmental protection order to a related person of a company includes power to issue an order to a person who— 15
16
17
18
- (a) is not, on or after the commencement, a related person of the company; but 19
20
- (b) was, during the transitional period, a related person of the company. 21
22
- (2) For the purpose of deciding if a person was, during the transitional period, a related person of a company, this Act applies as if the amending Act had commenced on the introduction day. 23
24
25
26
- (3) In this section— 27
- amending Act* means the *Environmental Protection (Chain of Responsibility) Amendment Act 2016*. 28
29
30
- introduction day* means the day the Bill for the amending Act was introduced into the Legislative Assembly. 31
32
33
- transitional period* means the period from the start of the introduction day to the day the 34
35
-

[s 17]

	amending Act commenced.	1
	747 Requirements under environmental protection orders may relate to past matters	2 3
	An environmental protection order issued under section 363AC or 363AD may impose requirements relating to a relevant activity carried out, or environmental harm caused, before the commencement.	4 5 6 7 8
Clause 17	Amendment of sch 2 (Original decisions)	9
	(1) Schedule 2, part 1, division 5—	10
	<i>insert—</i>	11
363AB	decision that a person is a related person of a company, in relation to the issuing of a resource activity EPO to the person	
363AC or 363AD	decision to issue a resource activity EPO	
363AI	decision to issue a cost recovery notice relating to a resource activity EPO	
363AI(3)	decision about an amount of costs or expenses claimed under a cost recovery notice relating to a resource activity EPO	
	(2) Schedule 2, part 2, division 4—	12
	<i>insert—</i>	13
363AB	decision that a person is a related person of a company, in relation to the issuing of an environmental protection order other than a resource activity EPO to the person	
363AC or 363AD	decision to issue an environmental protection order other than a resource activity EPO	

363AI	decision to issue a cost recovery notice relating to an environmental protection order other than a resource activity EPO	
363AI(3)	decision about an amount of costs or expenses claimed under a cost recovery notice relating to an environmental protection order other than a resource activity EPO	
(3)	Schedule 2, part 2, division 6, entry for section 451(1), after ‘this Act’—	1 2
	<i>insert—</i>	3
	, other than a requirement for information relevant to the making of a decision under section 363AB	4 5
Clause 18	Amendment of sch 4 (Dictionary)	6
(1)	Schedule 4, definition <i>relevant activity</i> —	7
	<i>omit.</i>	8
(2)	Schedule 4—	9
	<i>insert—</i>	10
	<i>associated entity</i> , for chapter 7, part 5, division 2, see section 363AA.	11 12
	<i>financial interest</i> , for chapter 7, part 5, division 2, see section 363AA.	13 14
	<i>high risk company</i> , for chapter 7, part 5, division 2, see section 363AA.	15 16
	<i>holding company</i> , for chapter 7, part 5, division 2, see section 363AA.	17 18
	<i>interest</i> , for chapter 7, part 5, division 2, see section 363AA.	19 20
	<i>related person</i> , for chapter 7, part 5, division 2, see section 363AB.	21 22
	<i>relevant activity</i> —	23

[s 18]

- (a) for an environmental authority, means the environmentally relevant activity the subject of the authority; or
- (b) for an application for an environmental authority—means the environmentally relevant activity the subject of the application; or
- (c) in relation to a company, for chapter 7, part 5, division 2, see section 363AA.
- resource activity EPO*** means an environmental protection order that imposes a requirement related to the carrying out of a resource activity.

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