



Queensland

Environmental Protection (Chain of Responsibility) Amendment Act 2016

Act No. 14 of 2016

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

[Assented to 27 April 2016]



Queensland

Environmental Protection (Chain of Responsibility) Amendment Act 2016

Contents

		Page
1	Short title	3
2	Act amended	3
3	Amendment of s 215 (Other amendments)	3
4	Amendment of s 332 (Administering authority may require draft program)	4
5	Insertion of new ch 7, pt 5, div 1 hdg	4
	Division 1 General	
6	Amendment of s 358 (When order may be issued)	4
7	Insertion of new ch 7, pt 5, div 2	4
	Division 2 Issue of orders to related persons of companies	
	363AA Definitions for division	4
	363AB Who is a related person of a company	5
	363ABA Decision whether to issue an order	9
	363AC Order may be issued to related person	9
	363AD Order may be issued to related person of high risk company 10	
	363AE Order may provide for joint and several liability	11
	363AF Procedure if related person is not the owner of land on which action is required	11
	363AG Taking action in place of related person	12
	363AH Obstruction of recipient complying with notice	13
	363AI Administering authority may issue cost recovery notice	14
	363AJ Review of operation of division	16
8	Amendment of s 363K (Taking action in place of recipient)	17
9	Amendment of s 452 (Entry of place—general)	17
10	Amendment of s 476 (Failure to attend or answer questions) . . .	18
11	Amendment of s 490 (Evidentiary provisions)	19

Contents

12	Amendment of s 522 (Stay of operation of particular original decisions)	19
13	Insertion of new ss 522A and 522B	19
	522A Stay of decision about financial assurance	19
	522B Stay of decision to issue environmental protection order	20
14	Amendment of s 535 (Stay of operation of decisions)	20
15	Insertion of new ss 535B and 535C	20
	535B Stay of decision about financial assurance	20
	535C Stay of decision to issue environmental protection order	21
15A	Insertion of new s 548A	21
	548A Guidelines about issuing particular environmental protection orders	21
16	Insertion of new ch 13, pt 25	21
	Part 25 Transitional provisions for Environmental Protection (Chain of Responsibility) Amendment Act 2016	
	743A Definitions for part	22
	744 Amendment of environmental authority because of particular pre-commencement matter	22
	745 Decision about related persons based on particular pre-commencement matters	22
	746 Extension of power to issue environmental protection orders to particular persons	23
	747 Requirements under environmental protection orders may relate to past matters	23
17	Amendment of sch 2 (Original decisions)	23
18	Amendment of sch 4 (Dictionary)	24

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Environmental Protection (Chain of Responsibility) Amendment Act 2016*.

2 Act amended

This Act amends the *Environmental Protection Act 1994*.

3 Amendment of s 215 (Other amendments)

(1) Section 215(2)—

insert—

(ba) another entity becomes a holder of the authority;

(bb) another entity becomes a holding company of a holder of the authority;

(fa) the amendment or withdrawal of an environmental protection order;

(2) Section 215(2)(ba) to (m)—

renumber as section 215(2)(c) to (q).

(3) Section 215—

insert—

(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.

[s 4]

4 Amendment of s 332 (Administering authority may require draft program)

Section 332(2)—

insert—

- (e) an environmental protection order issued to the person or public authority has been amended or withdrawn.

5 Insertion of new ch 7, pt 5, div 1 hdg

Chapter 7, part 5, before section 358—

insert—

Division 1 General

6 Amendment of s 358 (When order may be issued)

Section 358—

insert—

- (f) in the circumstances stated in division 2.

7 Insertion of new ch 7, pt 5, div 2

Chapter 7, part 5, after section 363—

insert—

Division 2 Issue of orders to related persons of companies

363AA Definitions for division

In this division—

associated entity has the meaning given by the Corporations Act, section 50AAA.

financial interest, 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.

high risk company means—

- (a) a company that is an externally-administered body corporate within the meaning given by the Corporations Act, section 9; or
- (b) a company that is an associated entity of a company mentioned in paragraph (a).

interest means a legal or equitable interest.

related person see section 363AB.

relevant activity, in relation to a company, means an environmentally relevant activity—

- (a) that was, or is being, carried out by the company under an environmental authority; or
- (b) that was, or is being, carried out by the company and has caused, or is causing or likely to cause, environmental harm.

363AB Who is a *related person* of a company

- (1) A person is a ***related person*** of a company if—
 - (a) the person is a holding company of the company; or
 - (b) the person owns land on which the company carries out, or has carried out, a relevant activity other than a resource activity; or
 - (c) the person—
 - (i) is an associated entity of the company; and

[s 7]

- (ii) owns land on which the company carries out, or has carried out, a relevant activity that is a resource activity; or
 - (d) the administering authority decides under this section the person has a relevant connection with the company.
- (2) The administering authority may decide a person has a relevant connection with a company if satisfied—
 - (a) the person is capable of significantly benefiting financially, or has significantly 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 relevant activity by the first company, including (but not limited to) a structure or arrangement under which—
 - (i) the person is not entitled to require a financial benefit; but
 - (ii) it is possible for the person to receive a financial benefit because of a decision by someone else or the exercise of a discretion by someone else;
- (e) any agreements or other transactions the person enters into with a company mentioned in paragraph (b)(i) or (ii);
- (f) the extent to which dealings between the person and a company mentioned in paragraph (b)(i) or (ii) are—
 - (i) at arm's length; or
 - (ii) on an independent, commercial footing; or
 - (iii) for the purpose of providing professional advice; or
 - (iv) for the purpose of providing finance, including the taking of a security;
- (g) the extent of the person's compliance with a requirement under section 451 for

information relevant to the making of a decision under this section.

- (5) The matters mentioned in subsection (4) may be considered as at the time the administering authority is making the decision under subsection (2) or as at an earlier time relevant to the decision.
- (6) In deciding for subsection (2) whether a person, other than an associated entity of a company, has a relevant connection with the company, it is irrelevant if the person—
- (a) is capable of significantly benefiting financially, or has significantly benefited financially—
 - (i) under an agreement or obligation relating to native title, Aboriginal cultural heritage or Torres Strait Islander cultural heritage; or
 - (ii) under a conduct and compensation agreement, or from compensation paid or payable, under resource legislation; or
 - (iii) under a make good agreement for a water bore under the *Water Act 2000*; or
 - (b) is or has been in a position to influence the company's conduct because of an agreement or obligation mentioned in paragraph (a).
- (7) In making a decision under this section, the administering authority must have regard to any relevant guidelines in force under section 548A.
- (8) In this section—

control has the meaning given by the Corporations Act, section 50AA.

financial benefit, received by a person, includes profit, income, revenue, a dividend, a distribution, money's worth, an advantage, priority or

preference, whether direct or indirect, that is received, obtained, preferred on or enjoyed by the person.

owner, of land, does not include a person mentioned in schedule 4, definition *owner*, paragraph 1(d) to (f).

363ABA Decision whether to issue an order

In deciding whether to issue an environmental protection order to a related person of a company under section 363AC or 363AD, the administering authority—

- (a) must have regard to any relevant guidelines in force under section 548A; and
- (b) may consider whether the related person took all reasonable steps, having regard to the extent to which the person was in a position to influence the company's conduct, to ensure the company—
 - (i) complied with its obligations under this Act; and
 - (ii) made adequate provision to fund the rehabilitation and restoration of the land because of environmental harm from a relevant activity carried out by the company.

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

[s 7]

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.

Example—

The order may include a requirement to secure compliance with a condition of an environmental authority that the high risk company no longer holds.

- (4) Also, the order may require the related person to—
 - (a) take action to prevent or minimise the risk of unlawful serious or material environmental harm—
 - (i) from a relevant activity; or
 - (ii) from contaminants on land on which the high risk company carries out, or has carried out, a relevant activity (whether or not the contaminants are the result of a relevant activity); or

- (b) take action to rehabilitate or restore land because of environmental harm—
 - (i) from a relevant activity; or
 - (ii) from contaminants on land on which the high risk company carries out, or has carried out, a relevant activity (whether or not the contaminants are the result of a relevant activity); or
- (c) give the administering authority a bank guarantee or other security for the related person's compliance with the order.

363AE Order may provide for joint and several liability

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

363AF Procedure if related person is not the owner of land on which action is required

- (1) This section applies if an environmental protection order issued to a related person (the *recipient*) requires the recipient to take action on land the recipient does not own.
- (2) The recipient, or person taking the action for the recipient (the *contractor*), may enter the land to take the action only—
 - (a) with the consent of the owner and occupier of the land; or
 - (b) if the recipient or contractor has given at least 2 business days written notice to the owner and occupier.

[s 7]

- (3) The notice under subsection (2)(b) must inform the owner and occupier of—
 - (a) the intention to enter the land; and
 - (b) the purpose of the entry; and
 - (c) the days and times when the entry is to be made.
- (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.
- (5) Nothing in this section authorises the recipient or contractor to enter a building used for residential purposes.
- (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 compensation claimed.
- (7) Subsection (6) does not apply to loss or damage incurred by the company of whom the recipient is a related person.
- (8) The court may make an order about costs it considers just.

363AG Taking action in place of related person

- (1) This section applies if—
 - (a) an environmental protection order is issued to a related person (the *recipient*); and
 - (b) either—

-
- (i) the recipient fails to comply with it within the period stated in the order; or
 - (ii) the operation of the decision to issue the order is stayed under section 522 or 535.
- (2) An authorised person, or person acting under the direction of an authorised person (the *contractor*), may take any of the actions stated in the environmental protection order.
- (3) For subsection (2), the authorised person or contractor may enter land on which the actions are required to be taken—
- (a) with the consent of the owner and occupier of the land; or
 - (b) if the authorised person or contractor has given at least 2 business days written notice, complying with section 363AF(3), to the owner and occupier.
- (4) If the authorised person or contractor enters land under subsection (3), section 363AF(4) to (7) applies as if a reference in the provisions to the recipient or contractor were a reference to the authorised person or contractor.
- (5) Subsections (3) and (4) do not limit another provision of this Act under which an authorised person may enter land.

Note—

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

363AH Obstruction of recipient complying with notice

- (1) A person must not obstruct the recipient of an environmental protection order in the taking of action to comply with an environmental protection order unless the person has a

[s 7]

reasonable excuse.

Maximum penalty—165 penalty units.

(2) In this section—

recipient, of an environmental protection order, means—

- (a) a related person to whom the order is issued; or
- (b) a person acting for a related person to whom the order is issued.

363AI Administering authority may issue cost recovery notice

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

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

- (a) the recipient fails to comply with the environmental protection order and an authorised person or contractor acts under section 363AG; or
- (b) the following happens—
 - (i) the operation of the decision to issue the environmental protection order is stayed under section 522 or 535;
 - (ii) during the period of the stay, an authorised person or contractor acts under section 363AG;
 - (iii) the appeal ends and—
 - (A) there is no appeal decision under section 530 or 539; or
 - (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

- (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.
- (3) A cost recovery notice may claim a stated amount for costs or expenses reasonably incurred in—
 - (a) taking an action stated in the environmental protection order; or
 - (b) monitoring compliance by the recipient with the order.
 - (4) Subsection (5) applies if—
 - (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—
 - (a) a copy of the notice must be given to each recipient; and
 - (b) the amount claimed in the notice is payable by the recipients jointly and severally.
- (9) A reference in this section to an authorised person includes a person acting under the direction of an authorised person.
- (10) In this section—

costs and expenses includes labour, equipment and administrative costs and expenses.

363AJ Review of operation of division

- (1) The Minister must, within 2 years after the

commencement, review the operation of this division to decide whether the provisions of the division remain appropriate.

- (2) The Minister must, as soon as practicable after finishing the review, table a report about its outcome in the Legislative Assembly.

8 Amendment of s 363K (Taking action in place of recipient)

Section 363K(1)(a), after 'it'—

insert—

within the period stated in the notice

9 Amendment of s 452 (Entry of place—general)

- (1) Section 452(1)—

insert—

(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—

- (i) an authorised person intends to enter the place; and
- (ii) the purpose of the entry; and
- (iii) the day and time when the entry is to be made; or

- (2) Section 452(1)(ca) to (i)—

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

- (3) Section 452—

insert—

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

[s 10]

- (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
 - (b) the place is not used for residential purposes; and
 - (c) an authorised person has given at least 2 business days written notice to the owner and occupier of the place stating—
 - (i) an authorised person intends to enter the place; and
 - (ii) the purpose of the entry; and
 - (iii) the day and time when the entry is to be made.
- (4) Section 452(1A) to (3)—
renumber as section 452(2) to (4).

10 **Amendment of s 476 (Failure to attend or answer questions)**

- (1) Section 476(3)—
omit, insert—
- (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.
 - (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 proceeding for an offence for which the falsity or misleading nature of the answer is relevant.
- (2) Section 476—
insert—
- (5) In this section—

incriminating evidence, 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.

- (3) Section 476(3A) to (5)—
renumber as section 476(4) to (6).

11 Amendment of s 490 (Evidentiary provisions)

Section 490(5)(a)—

omit, insert—

- (a) a stated document is a copy of a document issued, given, received or kept by the administering authority under this Act;

12 Amendment of s 522 (Stay of operation of particular original decisions)

Section 522—

insert—

- (5) This section applies subject to sections 522A and 522B.

13 Insertion of new ss 522A and 522B

Chapter 11, part 3, division 2, after section 522—

insert—

522A Stay of decision about financial assurance

- (1) This section applies to an application under section 522 for a stay of a decision about the amount of financial assurance required under a condition of an environmental authority.
- (2) The decision may not be stayed unless the administering authority has been given security for at least 75% of the amount of financial assurance that was decided by the administering

authority.

522B Stay of decision to issue environmental protection order

- (1) This section applies to an application under section 522 for a stay of a decision to issue an environmental protection order.
- (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 Amendment of s 535 (Stay of operation of decisions)

Section 535—

insert—

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

15 Insertion of new ss 535B and 535C

After section 535A—

insert—

535B Stay of decision about financial assurance

- (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.
- (2) The decision may not be stayed unless the administering authority has been given security for at least 75% of the amount of financial assurance that was decided by the administering authority.

535C Stay of decision to issue environmental protection order

- (1) This section applies to an application under section 535 for a stay of a decision to issue an environmental protection order.
- (2) 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.

15A Insertion of new s 548A

After section 548—

insert—

548A Guidelines about issuing particular environmental protection orders

- (1) The chief executive may make guidelines about—
 - (a) how the administering authority decides under section 363AB whether a person has a relevant connection with a company; and
 - (b) in relation to a company to which section 363AC or 363AD applies, how the administering authority decides—
 - (i) whether to issue any environmental protection orders to related persons of the company; and
 - (ii) if so, which of the related persons of the company to issue with an order.
- (2) A guideline under this section takes effect when it is approved by regulation.

16 Insertion of new ch 13, pt 25

Chapter 13—

insert—

Part 25

Transitional provisions for Environmental Protection (Chain of Responsibility) Amendment Act 2016

743A Definitions for part

In this part—

amending Act means the *Environmental Protection (Chain of Responsibility) Amendment Act 2016*.

introduction day means the day the Bill for the amending Act was introduced into the Legislative Assembly.

transitional period means the period from the start of the introduction day to the day the amending Act commenced.

744 Amendment of environmental authority because of particular pre-commencement matter

- (1) The reference in section 215(2)(c) to ‘becomes a holder of the authority’ is taken to include ‘became a holder of the authority during the transitional period’.
- (2) The reference in section 215(2)(d) to ‘becomes a holding company of a holder of the authority’ is taken to include ‘became a holding company of a holder of the authority during the transitional period’.

745 Decision about related persons based on particular pre-commencement matters

- (1) A reference in section 363AB to a relevant

activity carried out by a company includes a relevant activity carried out before the commencement.

- (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.

746 Extension of power to issue environmental protection orders to particular persons

- (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—
 - (a) is not, at the time the order is issued, a related person of the company; but
 - (b) was, during the transitional period, a related person of the company.
- (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.

747 Requirements under environmental protection orders may relate to past matters

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.

17 Amendment of sch 2 (Original decisions)

- (1) Schedule 2, part 1, division 5—

[s 18]

insert—

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—

insert—

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’—

insert—

, other than a requirement for information relevant to the making of a decision under section 363AB

18 Amendment of sch 4 (Dictionary)

(1) Schedule 4, definition *relevant activity*—

omit.

(2) Schedule 4—

insert—

associated entity, for chapter 7, part 5, division 2, see section 363AA.

financial interest, for chapter 7, part 5, division 2, see section 363AA.

high risk company, for chapter 7, part 5, division 2, see section 363AA.

holding company see the Corporations Act, section 9.

interest, for chapter 7, part 5, division 2, see section 363AA.

related person, for chapter 7, part 5, division 2, see section 363AB.

relevant activity—

- (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.