

# Coast and Country

Research Director  
Agriculture and Environment Committee  
Parliament House  
BRISBANE QLD 4000

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## Submission on Environmental Protection (Chain of Responsibility) Bill 2016

Dear Mr Chair and Committee Members

On behalf of Land Services of Coast and Country I write to support the progression of the Environmental Protection (Chain of Responsibility) Bill 2016 (**Chain of Responsibility Bill**), and provide the following submission to Committee Members for review.

The development of the Chain of Responsibility Bill is timely and will support the long term protection and sustainable use of Queensland's water resources, and ensure best practice landscape management is employed to benefit future generations.

Coast and Country draws the committee's attention to the following issues:

In expert evidence provided to the Queensland Flood Commission, Assoc Prof David Laurence of the University of New South Wales in his report 'Flooding and Abandoned Mines: Report to the Queensland Floods Commission' stated<sup>1</sup>:

"A study of more than 800 mine closures in Australia between 1981 and 2005 showed that 75% of the closures were unplanned. A significant proportion of these were due to a drop in commodity price or increase in costs and many result in companies failing (Laurence 2006)".

This stark reminder is provided as Queensland's heavy industry, and more notably the mining sector moves deeper into structural change that is likely to result in closure or permanent suspension of activities of many facilities across Queensland. This structural adjustment, if not properly regulated and managed for compliance will leave the Queensland tax payer and other environmental users bearing the cost of waste management and contamination, rehabilitation costs, and long term social, economic and environmental negative impacts.

Such information is not novel to the Queensland Government, with a 2012 audit report, and the 2013 Queensland Audit Office report, titled 'Environmental regulation of the resources and waste industries. Report 15: 2013–14', identified the need for greater controls and other mechanisms to be put in place to ensure waste generators, including industries as the mining sector, are held accountable for end of life activities.

Of note and relevant to the rationale of the Chain of Responsibility Bill, the Audit Office report lead

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1 Assoc Prof David Laurence and Expert Opinion Services, 'Flooding and Abandoned Mines: Report for Queensland Floods Commission' (The University of New South Wales, 4 November 2011), sPage 4, [http://www.floodcommission.qld.gov.au/\\_\\_data/assets/file/0006/10689/Laurence\\_David\\_report.pdf](http://www.floodcommission.qld.gov.au/__data/assets/file/0006/10689/Laurence_David_report.pdf).

within its conclusion, the following opening statement<sup>2</sup>:

“EHP is not fully effective in its supervision, monitoring and enforcement of environmental conditions and is exposing the state to liability and the environment to harm unnecessarily”.

The Audit Office report and statement above goes directly to the need for improved mechanisms to ensure liability and Financial Assurance measures are delivering intended outcomes. At the time, driving the State's need to improve what can best be described as low compliance<sup>3</sup> to environmental conditions, was derived from a Queensland Supreme Court finding that found the Queensland Government breached its duty of care to a community impacted by mining activities<sup>4</sup>. Review of the Chain of Responsibility Bill's explanatory notes, it is clear the rationale for the then report holds true today.

Coast and Country maintains a concerns the Chain of Responsibility Bill does not reach far enough to ensure the State is: 1) appropriately protecting the community; 2) minimising the State from liabilities from defaulting environmental authority holders; 3) mitigating existing, continuing, and potential environmental impacts; and 4) is not collecting sufficient financial assurance, and where action is needed to be taken the Queensland Government is failing to do so. These concerns are reflected within our assessment of the proposed Chain of Responsibility Bill amendments outlined below.

Coast and Country supports clause 3 amendment to s215 of the Environmental protection Act. However, in review of the purpose of this amendment on s215 it is clear that s215(1)(b) provides for the ability to weaken an existing environmental authority conditions that in effect may serve to nullify the Chain of Responsibility Bill.

In its current form s215(1)(b) can be used to minimise rehabilitation conditions solely through the written agreement between parties. This section does not require the requirements of division 2 of the EPA to be adhered to. This section also allows for conditions to be changed and such a change to bypass the communities right to make submissions or to be engaged in the process. For rural land holders and the community that have an interest in water resources, or other such things, this section provides no legislated ability for them to engage in such changes.

Recommendation: change the existing s215(1)(a) to end with 'and', as seen below:  
“it considers the amendment is necessary or desirable because of a matter mentioned in subsection (2) and the procedure under division 2 is followed; and”

Recommendation: change the existing s215(1)(b) to say:  
“the holder of the authority has agreed in writing to the amendment, and changes the financial assurance commensurate to the changed activity, and that changed activity does not increase the existing approved contaminant release or environmental harm”.

Coast and Country supports the amendments outlined in Clause 7, including definitions outlined in 353AA. However 363AB (2)(b) enables the administering authority to decide if a person has a relevant connection is limited to the previous 2 years. We think this is inadequate for the following reasons.

Building from 2013 Queensland Audit Office report it is well established the fact that authority holders use 'care and maintenance' as a mechanism to limit corporate exposure to rehabilitation

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2 Queensland Audit Office, 'Environmental Regulation of the Resources and Waste Industries. Report 15: 2013–14' (State of Queensland, 2013), sPage 5, <https://www.qao.qld.gov.au/files/file/Reports%20and%20publications/Reports%20to%20Parliament%202013-14/RtP15Environmentalregulationoftheresourcesandwasteindustries.pdf>.

3 Ibid., sPage 44.

4 Ibid., sPage 11.

costs, environmental authority condition delivery or financial assurance liabilities. With the report noting use of care and maintenance extending from 1998<sup>5</sup>. Such an example clearly showing the two year period of connection as being highly inadequate.

Recommendation: Extend the connection period of clause 7 363AB (2)(b) to 30 years to ensure use of 'care and maintenance' by authority holders is consistent with the intent of the proposed amendment.

Recommendation: The Queensland Government through the Chain of Responsibility Bill or other legislation regulate the use of 'care and maintenance' by mining and resource license and environmental authority holders. The purpose should: 1) regulate the transfer of liability through the use of 'care and maintenance', including on selling to special purpose vehicles designed for 'care and maintenance' activities; and 2) limit the maximum use of 'care and maintenance' activities to 10 years.

The Chain of Responsibility Bill goes some way to deal with such things, however it fails to ensure resources that are 'frozen' in care and maintenance are unlocked in a timely manner to enable: 1) further exploitation opportunities that would provide Queensland with royalty benefits; and 2) full and appropriate rehabilitation or best practice environmental harm minimisation is achieved.

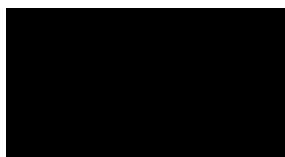
We recommend that the Committee supports the passing of the Chain of Responsibility Bill and supports the issues outlined within this submission. The need for the Chain of Responsibility Bill has increased in recent years, particularly since the beginning of the 2011 downturn of the mining sector and the recent and ongoing number of operators which have gone into administration and either placing the sites into 'care and maintenance' or abandoned, leaving downstream water users and future generations with increased risk of environmental harm related issues.

The Chain of Responsibility Bill goes towards providing suitable powers to the Queensland Government to exercise its function, and duty of care to Queenslanders, to ensure that companies such as those involved in activities covered by the Chain of Responsibility Bill cannot avoid liability for the conditional environmental harm and rehabilitation activities they subscribed to and managed.

Coast and Country therefore supports the Chain of Responsibility Bill as this Bill goes towards ensuring that companies and directors take their environmental stewardship obligations seriously and cannot bypass these obligations through on selling prior to fulfilling of their responsibilities.

We recommend that the Committee supports the passing of the Chain of Responsibility Bill and supports the issues outlined within this submission.

Yours faithfully



Derec Davies  
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5 Ibid., spage 50.