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11 April 2016

Research Director  
Agriculture and Environment Committee  
Parliament House  
BRISBANE QLD 4000

By email to: [aec@parliament.qld.gov.au](mailto:aec@parliament.qld.gov.au)

Dear Sir/Madam,

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

We are writing about the *Environmental Protection (Chain of Responsibility) Amendment Bill 2016* which was introduced in the Parliament on 15 March 2016, its referral to the Agriculture and Environment Committee for consideration and the call for submissions to be made by 31 March. We note that the Committee is due to report to the House on the Bill by 15 April 2016.

The introduction of the Bill and its referral to the Committee have only just come to our attention. The Bill potentially has a wide-ranging impact on many stakeholders and it is our view that its release the week before the Easter holidays, with submissions due less than fourteen business days later and a report to the House due shortly after that was inappropriate. We therefore request that the Committee take this submission into account in preparing its report.

This submission is provided on behalf of the Australian Finance Conference (AFC) and the Australian Equipment Lessors Association (AELA) which together represent more than 100 financial service organisations. The AFC is the national finance industry association. AELA is the national association for the equipment leasing and financing industry. Membership lists can be provided on request. Our Members include finance companies, banks and leasing companies providing various types of finance, including term loans, working capital facilities and equipment finance.

We are concerned that the Bill potentially imposes liability on the financiers of entities that operate sites where issues of environmental management and clean-up arise. The Bill seeks to impose responsibility on the related persons of a company and refers to an “administering authority”, when determining whether a person has a relevant connection with the company, being able to take a number of matters into consideration. These are set out in Clause 7 of the Bill and give rise to the following particular concerns:

1. The administering authority has a wide discretion and is not obliged to take all of the matters listed into consideration.
2. One matter that the authority may consider is the extent of the person’s financial interest in the company. A financier may have a “financial interest” in a company in the sense that it may receive interest or other payments from the company, but this of itself should not make it a related person of the company.
3. “Financial interest” is defined to include a mortgage, charge or other security given by the company. Most arm’s length finance arrangements involve the giving of some form

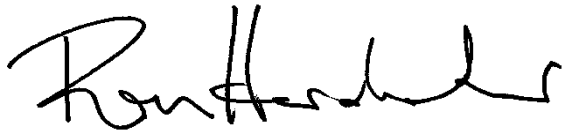
of mortgage, charge or other security, however this on its own should not mean that the financier is deemed to have a “financial interest” in the company.

4. The administering authority may consider the extent to which dealings with the company are at arm’s length, on an independent commercial footing or are for the purpose of providing finance including the taking of security. We suggest that this “activity” based exclusion is not wide enough to fully exclude genuine financiers from potential liability under the Act, particularly given the wide discretion given to the administering authority. This may impact severely on the risks for banks and other lenders providing finance to companies that are subject to this legislation and could substantially reduce the availability of finance.

In conclusion, we submit that the legislation should not be enacted without the inclusion of “passive financier” provisions which refer not just to the activity of providing finance but also to the character of the other person as an entity whose principal business is the provision of finance. Such an approach would be consistent with the Queensland *Work Health and Safety Act* which excludes from liability for health and safety outcomes “passive financiers” who do not control the use or maintenance of equipment. We also submit that a “passive financier” provision should provide a clear exemption rather than this being left to the discretion of the administering authority.

If you would like to discuss this submission, please contact me or Catherine Shand on the above number or by email to [REDACTED] or [REDACTED] .

Yours truly,

A handwritten signature in black ink, appearing to read 'Ron Hardaker', written in a cursive style.

Ron Hardaker  
Executive Director