

# INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE

## REPORT NO. 19 ON THE

### WATER LEGISLATION AMENDMENT BILL 2015

### QUEENSLAND GOVERNMENT RESPONSE

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#### **Introduction**

On 10 November 2015, the Water Legislation Amendment Bill 2015 was introduced into Parliament.

The Bill was subsequently referred to the Infrastructure, Planning and Natural Resources Committee with a report back date of 1 March 2016.

On 1 March 2016, the committee tabled its report No. 19 in relation to the Bill.

The Queensland Government response to the recommendation made and clarification on points raised by the committee are provided below.

#### **Response to recommendation**

##### **Recommendation 1**

The committee recommends the Department of Natural Resources and Mines continues to investigate alternatives for securing water for large scale projects while taking into account the impact on communities.

##### **Government response**

The government notes that the government committee members support the omission of the water development option provisions, while non-government committee members do not support the omission of these provisions. The government also notes the committee's recommendation to continue to investigate alternatives for securing water for large-scale projects.

The water development option provisions are inconsistent with government policy and election commitments for Saving the Great Barrier Reef, which expressly commits to the removal of the water development option provisions in their entirety.

The omission by the Bill of the water development option provisions from the *Water Reform and Other Legislation Amendment Act 2014* delivers on the government's election commitment.

There are existing mechanisms within the *Water Act 2000* which support large-scale water infrastructure development.

For example, a number of water plans set aside unallocated water reserves specifically for major water infrastructure projects. The Burdekin Basin water resource plan has unallocated water to support potential raising of the level of the Burdekin Falls Dam. Similarly, the Fitzroy Basin water resource plan includes reserves of unallocated water to support a potential Connors River Dam and the raising of the level of Eden Bann Weir.

In water plan areas where there is no unallocated water reserved specifically for major water infrastructure projects, unallocated water may be made available from other relevant reserves

to support such development. In addition, a proponent may enter the water market to purchase water allocations to support the project.

In the event that there is insufficient unallocated water reserved in an area for a project, the Water Act allows for the Minister to review or amend a water plan to make water available for development. This trigger to amend a plan would only be used where a comprehensive assessment, based on strong science and extensive consultation, supports additional water being made available. Community support for a review or amendment of a water plan can be canvassed through the Minister's release of a notice of proposal.

The government notes the concerns expressed by stakeholders, and the recommendation of the committee for the Department of Natural Resources and Mines to continue to investigate alternatives for securing water for large-scale projects, while taking into account the impact on communities. The department will continue to consult with stakeholders to better understand the concerns and issues being raised.

A legislative alternative to the water development option provisions is not contemplated by the Bill, nor through amendment during consideration in detail.

### **Matters raised by the committee to note**

#### **1.6 The government's consultation on the Bill**

##### **Committee comments**

The committee raised the issue of Cotton Australia expressing disappointment that its representative body was not included in the Water Engagement Forum. The committee notes that the Department of Natural Resources and Mines will give further consideration to the membership of the forum.

##### **Government response**

The Water Engagement Forum acts as the peak body advisory group to the Department of Natural Resources and Mines on government-related water matters. The department aims to have membership of the forum focussed on organisations that are multi-representative with a view to providing appropriate representation of interests, while being able to engage in meaningful conversations.

The forum comprises representatives from the agricultural sector, including the Queensland Farmers' Federation, AgForce and Irrigation Australia. Cotton Australia is an active member of the Queensland Farmers' Federation.

The department believes that the combination of the Queensland Farmers' Federation, AgForce and Irrigation Australia as members of the forum provides appropriate representation of the agricultural sector.

It should also be noted that there are broader processes to engage with stakeholders through the water planning, allocation and use framework during the review of existing water plans and preparation of new or amendment of existing water plans. This presents opportunities to target consultation with the cotton industry in those parts of the state where cotton is grown.

The government thanks the committee for its recognition of the extensive community consultation that took place throughout the drafting process for the Bill, and the provision of detailed explanatory materials to assist people to understanding the Bill's provisions.

## 1.7 Should the Bill be passed?

### Committee comments

The committee was not able to reach a majority decision on whether the Bill should be passed and, therefore, in accordance with section 91C(7) of the *Parliament of Queensland Act 2001*, the question on the motion failed. The committee is not able to make a recommendation that the Bill be passed.

Despite varying opinions on whether the Bill should be passed or not passed, the committee considered a range of issues during the course of this inquiry. Committee members unanimously agreed that the House take note of the substantive content of this report.

### Government response

The government thanks the committee for its consideration of the Bill. The government also thanks the individuals and groups for their time in preparing submissions on the Bill and participation in the committee's public hearing on 15 February 2016.

The government notes the committee's advice that it was unable to reach a majority decision on whether the Bill should be passed.

The government also notes the substantive content of the committee report, and has provided responses to the comments, areas of support and disagreement presented in the report to assist Parliament in its consideration of the Bill.

## 2.1 Principles of ecologically sustainable development

### Committee comments

The committee was unable to reach consensus on the proposed provisions relating to the inclusion of the principles of ecologically sustainable development in Chapter 2 of the Water Act.

The committee is satisfied with the Department of Natural Resources and Mines' reasons for not extending the application of the principles of ecologically sustainable development to the resources sector under Chapter 3 or to the entirety of the Water Act.

### Government response

The principles of ecologically sustainable development have been included in the purpose of Chapter 2 of the Water Act since commencement of that Act in 2000. They provide a well-established and internationally-recognised framework for proper consideration of social, economic and environmental factors for the planning, allocation and use of water resources.

These principles encompass—

- economic, environmental, social and equitable considerations;
- threats of serious or irreversible environmental damage;
- consideration of future generations;
- conservation of biological diversity and ecological integrity;
- the need to develop a strong, growing and diversified economy; and
- broad community involvement on issues affecting them.

Integral to the principles of ecologically sustainable development is the use of the best available scientific evidence, as well as thorough stakeholder consultation.

The principles recognise the importance of sustaining ecosystem health, water quality, and water-dependent ecological processes and biological diversity associated with catchments,

watercourses, lakes, springs, aquifers and other natural systems. They also provide fair, transparent and orderly processes, and promote the efficient use of water.

Reinstatement of the principles of ecologically sustainable development through the Bill will ensure that the principles continue to have effect as originally intended. The reinstatement of these principles is critical in delivering on the government's election commitments for Saving the Great Barrier Reef.

Reinstatement of the principles was also supported by submitters on the Bill, as well as in witness testimony to the committee, including by peak agriculture, mining, environmental and community groups.

The government notes the committee is satisfied with the government's reasons for not extending the application of the principles of ecologically sustainable development to the resources sector under Chapter 3 or to the entirety of the Water Act.

## **Riparian protection permit, land and water management plan and licence to divert watercourses**

### **Committee comments**

The committee notes that the government is considering ways to protect riparian areas through the reinstatement of vegetation protection laws.

In relation to watercourse diversion and the licencing of proponents under the Water Act, the committee notes that proponents now require an environmental authority to divert a watercourse for resource activities under the *Environmental Protection Act 1994* rather than having to obtain a water licence under the Water Act, and that the environmental authority requires the provision of specific information. The committee also notes that the *Guideline: Works that interfere with water in a watercourse - watercourse diversions* specifies the requirements for proponents regarding approval to divert a watercourse.

### **Government response**

The government notes the committee's acknowledgement of the Department of Natural Resources and Mines' consideration of ways to protect riparian areas through the reinstatement of vegetation protection laws and subsequent comments around the framework for watercourse diversions.

Since the committee's report, the government introduced the Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016 (VMROLA) into Parliament on 17 March 2016. The Reinstatement Bill included amendments to the Water Act to reinstate the application of the riverine protection permit framework to regulate the destruction of vegetation in a watercourse, lake or spring. These provisions were previously removed from the Water Act in 2013. The Bill was referred to the Agriculture and Environment Committee for review which reported back on 30 June 2016. However, the VMROLA did not pass in Parliament during the sitting of 16-18 August 2016.

## **2.2 Water development option**

### **Committee comments**

Government members of the committee support the omission of the water development option as set out in the Bill. Non-government members of the committee do not support the omission of the water development option.

The committee acknowledges that there is a need for a process to provide certainty of water access at an early stage of a project. The committee acknowledges that the Department of

Natural Resources and Mines is currently working to develop a mechanism to provide this certainty.

### **Government response**

The government notes the differing views of committee members in relation to the Bill's omission of the water development option provisions.

The Department of Natural Resources and Mines explored an alternative approach to the water development option aimed at addressing stakeholder concerns. The alternative approach was tested with key stakeholders through the Water Engagement Forum. Ultimately, there remained some stakeholder concerns about the water development option provisions and alternatives.

A legislative alternative to the water development option provisions is not contemplated by the Bill, nor through amendments during consideration in detail.

Please refer to the government's response to recommendation 1 for further information.

## **2.3 Designated watercourses**

### **Committee comments**

The committee is satisfied with the provisions relating to the omission of the declaration of a designated watercourse.

### **Government response**

The government notes the committee's satisfaction with the provisions omitting the declaration of a designated watercourse and, therefore, changes to the Bill are not contemplated.

## **2.4 Lower Herbert Water Management Authority**

### **Committee comments**

The committee is satisfied with the provisions validating the Lower Herbert Management Authority.

### **Government response**

The government notes the committee's satisfaction with the provisions validating the Lower Herbert Water Management Authority and, therefore, changes to the Bill are not contemplated.

## **2.5 River Improvement Trust Act 1940**

### **Committee comments**

The committee is satisfied with the Department of Natural Resources and Mines' advice regarding the function of the provisions.

### **Government response**

The government notes the committee's satisfaction with the Department of Natural Resources and Mines' advice regarding the function of the provisions and, therefore, changes to the Bill are not contemplated.

## **2.6 Publishing requirements for licence applications**

### **Committee comments**

The committee is pleased the Bill introduces a less costly option for water licence applicants to notify interested parties about the application and making submissions which does not disadvantage potential submitters.

### **Government response**

The government notes the committee is pleased the Bill introduces a less costly option for water license applicants and, therefore, changes to the Bill are not contemplated.

## **2.7 Cumulative management areas**

### **Committee comments**

The committee supports the proposed provisions relating to cumulative management areas.

### **Government response**

The government notes the committee's support for the proposed provisions relating to cumulative management areas and, therefore, changes to the Bill are not contemplated.

## **2.8 Underground water management**

### **Committee comments**

The committee acknowledges submitters' concerns regarding Part 4 of the *Water Reform and Other Legislation Amendment Act 2014* (WROLA Act) but notes that such matters are outside the scope of the Bill. The committee is hopeful that the departments' responses to submitter concerns have provided some reassurance to stakeholders regarding this issue.

### **Government response**

The government notes the committee's view that these matters are outside the scope of the Bill.

The government also notes the committee's hope that the responses to submitter concerns provided by the Department of Environment and Heritage Protection and the Department of Natural Resources and Mines will provide some reassurance to concerned stakeholders. These departments will work together to communicate with stakeholders about the new framework. The two departments will continue to consult with key stakeholders, including through the Water Engagement Forum, about implementation of the underground water management framework.

The departments will continue to listen to stakeholders' concerns and comments to ensure a robust and effective framework to manage impacts from mining activities and provide landholders with statutory certainty in respect to make good arrangements, including a readily accessible dispute resolution process.

## **2.9 Make good provisions**

### **Committee comments**

The committee acknowledges the concerns of stakeholders regarding the make good provisions, but notes that such matters are outside the scope of the Bill. The committee notes that the Department of Environment and Heritage Protection will undertake a review of

Chapter 3 of the Water Act this year, and encourages the department to engage with stakeholders who have submitted to the committee regarding this matter. The committee requests that the department brief the committee on the findings and outcomes of its review.

### **Government Response**

The government notes the committee's view that these matters are outside the scope of the Bill.

The government notes the committee's encouragement for the Department of Environment and Heritage Protection to engage with the submitters regarding the operational review of Chapter 3 of the Water Act.

## **2.10 Commencement date**

### **Committee comments**

The committee recognises that some stakeholders may have some difficulty transitioning to the new framework but is pleased that the departments have processes in place to assist in the transition.

### **Government response**

The government notes the committee's view and thanks the committee for its mention of the processes in place to assist in the transition. The Department of Natural Resources and Mines will work with the Department of Environment and Heritage Protection to communicate with stakeholders about the new framework. Both departments will continue to consult with key stakeholders, including through the Water Engagement Forum, about implementation of the underground water management framework.

## **2.11 Great Barrier Reef World Heritage Area**

### **Committee comments**

The committee is satisfied that the Bill includes provisions to ensure that the Queensland Government's commitments under the Reef 2050 Long Term Sustainability Plan can be fulfilled under the Water Act to ensure the protection of the Great Barrier Reef World Heritage Area.

### **Government response**

The government notes the committee's satisfaction with the Bill's inclusion of provisions to ensure the government's commitments under the Reef 2050 Long Term Sustainability Plan and, therefore, changes to the Bill are not contemplated.

## **3.1 Fundamental legislative principles**

### **Committee comments**

The committee examined the application of fundamental legislative principles to the Bill and considers that clauses 4, 5, 8 and 16 raise potential issues of fundamental legislative principle.

It is considered that, on balance, clause 16 has sufficient regard to the rights and liberties of individuals effected by a decision of the chief executive to make a tenure, or part of the tenure, a cumulative management area tenure.

In reaching this view, the committee noted that the matters which must be regarded by the chief executive are set out in a new clause 3B(a). The committee also noted that the chief executive must have regard to advice from the Office of Groundwater Impact Assessment and the tenure holder. Although the provision does not allow an appeal in relation to a decision made regarding a tenure partially inside or outside a cumulative management area, this is consistent with the provisions contained in Chapter 3 of the *Water Act 2000* which do not provide an appeal process for tenure holders whose tenure is wholly within a cumulative management area.

Clause 4 potentially increases the power afforded to the chief executive in directing the works to be carried out, or not carried out, by a river improvement trust. Pursuant to section 4(3)(c) of the *Legislative Standards Act 1992*, legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons. Generally, powers should be delegated only to appropriately qualified officers or employees of the administering department.

The Office of Queensland Parliamentary Counsel Notebook provides that the appropriateness of a limitation on delegation depends on all the circumstances, including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.

The committee is satisfied with the Department of Natural Resources and Mines' response to the Local Government Association of Queensland's concerns.

In relation to clause 5, the committee considers that, given the explanation provided in the explanatory notes, in that the provision does not appear to have affected the rights and liberties of individuals since December 2014, the retrospectivity has sufficient regard to rights and liberties in the circumstances.

The committee notes that clause 8 seeks to correct an error made in regulation no. 334 of 2005 when establishing the authority over 10 years ago. Given the time that has elapsed and the reasons provided in the explanatory notes in relation to validity, the committee considers that the validating provision is appropriate in the circumstances.

### **Government response**

In relation to clause 16, the government thanks the committee for consideration of this issue and notes the committee's acknowledgment of the attenuation measures to address the rights and liberties of individuals affected by the decision.

In relation to clause 4, the government thanks the committee for consideration of this issue, and notes the committee is satisfied with the response to concerns raised by the Local Government Association of Queensland.

In relation to clauses 5 and 8, the government thanks the committee for consideration of this issue, and notes the committee's comments.

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