

Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016

Report No. 25, 55th Parliament
Agriculture and Environment Committee
October 2016

**Environmental Protection
(Underground Water Management)
and Other Legislation Amendment
Bill 2016**

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Agriculture and Environment Committee:

Chair	Mr Glenn Butcher MP, Member for Gladstone
Deputy Chair	Mr Tony Perrett MP, Member for Gympie
Members	Mrs Julieanne Gilbert MP, Member for Mackay Mr Robbie Katter MP, Member for Mount Isa Mr Jim Madden MP, Member for Ipswich West Mr Ted Sorensen MP, Member for Hervey Bay
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Acknowledgements

The committee thanks the officers from the Department of Environment and Heritage Protection and the Department of Natural Resources and Mines for their assistance during the inquiry.

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Abbreviations

ADR	Alternative Dispute Resolution
APPEA	Australian Petroleum Production and Exploration Association
DEHP, EHP	Department of Environment and Heritage Protection
DNRM	Department of Natural Resources and Mines
EDOQ	Environmental Defenders Office Queensland
EP Act	<i>Environmental Protection Act 1994</i>
ESD	Ecologically sustainable development
MR Act	<i>Mineral Resources Act 1989</i>
Origin	Origin Energy
PGPSA	<i>Petroleum and Gas (Production and Safety) Act 2004</i>
QRC	Queensland Resources Council
WROLAA	<i>Water Reform and Other Legislation Amendment Act 2014</i>

Chair's foreword

This Report presents the findings of the Agriculture and Environment Committee's inquiry into the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016.

I thank committee members for their work on the inquiry. I would also like to acknowledge the assistance provided by officers of the Department of Environment and Heritage Protection and the Department of Natural Resources and Mines, who provided high-quality advice in extremely tight timeframes.

The committee heard from many resource companies, community associations and stakeholder groups during the inquiry. We sincerely thank everyone who contributed their views.

I commend the report to the House.

A handwritten signature in black ink, appearing to read 'Glenn Butcher', with a stylized flourish at the end.

Glenn Butcher MP
Chair

Recommendations

Recommendation 1

3

The committee recommends that the Bill be passed.

Recommendation 2

6

The committee recommends that the Minister examine the impact on relevant mining licence holders' short-term prospects, and the resulting impacts on affected communities, and present his findings in the Bill's second reading speech.

1. Introduction

Role of the committee

The Agriculture and Environment Committee is a portfolio committee appointed by a resolution of the Legislative Assembly on 27 March 2015. The committee's primary areas of responsibility are: Agriculture, Fisheries, Environment, Heritage Protection, National Parks and the Great Barrier Reef.¹

The referral

On 13 September 2016, Hon Dr Steven Miles MP, Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef, introduced the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016 (the Bill).

The Bill was referred to the committee by the Legislative Assembly for examination and report by 25 October 2016 in accordance with Standing Order 131.

The committee's processes

For its examination of the Bill, the committee:

- notified stakeholders of the committee's examination of the Bill and invited written submissions. The committee accepted 141 written submissions. The committee also accepted three 'form' submissions, from a total of 1,896 individuals. A list of submissions is at **Appendix A**
- held a public briefing on the Bill by the Department of Environment and Heritage Protection (DEHP) and the Department of Natural Resources and Mines (DNRM) on Friday 30 September 2016. A list of departmental officers who appeared at the briefing is at **Appendix B**
- sought further written briefings from the departments, and
- convened a public hearing and further departmental briefing on 12 October 2016. A list of witnesses who appeared at the hearing is at **Appendix C**.

The water licensing system in Queensland

Since the commencement of the *Water Act 2000* (the Water Act), holders of resource operations licences under the *Mineral Resources Act 1989* (the MR Act) (mining licence holders) have been required to obtain a water licence prior to extracting any underground water within a regulated area. The mechanisms for assessment of applications for water licences were located in Chapter 2, Part 6 of the Water Act.

Following the receipt of an application, the mining licence holder is required to publish the details of their application and call for public submissions.² The chief executive must then consider the application in light of the submissions received, and in the context of the principles of ecologically sustainable development (ESD) set out in s 11 of the Water Act.³

¹ Schedule 6 of the [Standing Rules and Orders of the Legislative Assembly of Queensland](#).

² Water Act, s 208.

³ Water Act, ss 10(2)(c)(ii), 210.

Water Reform and Other Legislation Amendment Act 2014

Parliament passed the *Water Reform and Other Legislation Amendment Act 2014* (WROLAA) on 5 December 2014. The WROLAA inserted a new s 334ZP into the MR Act, creating a limited statutory right for mining licence holders to “take or interfere with underground water in the area of the licence or lease if the taking or interference happens during the course of, or results from, the carrying out of an authorised activity for the licence or lease.”⁴ The WROLAA also amended Chapter 2 of the Water Act, removing references to ecologically sustainable development as a criterion for assessment of an application for a water licence.⁵

These provisions did not commence upon assent to the WROLAA. Subordinate legislation fixed various times for their commencement, until the Water Reform and Other Legislation Amendment (Postponement) Regulation 2015 fixed the commencement date for all as-yet uncommenced provisions as 6 December 2016.⁶

Policy objectives of the Bill

Most of the Bill’s provisions change the framework surrounding assessment of a mining licence holder’s use of, or interference with, underground water. Rather than an application for a licence under the Water Act, the Bill sets out a scheme whereby underground water use becomes a factor that must be included in an application for an environmental authority under the *Environmental Protection Act 1994* (the EP Act).⁷

The Bill further limits the (as-yet uncommenced) statutory right of mining licence holders to use underground water without a licence. Clause 31 inserts a new s 839 into the MR Act, requiring applications for an associated water licence under a new Division within Chapter 9, Part 8 of the Water Act (to be inserted by the WROLAA). This will affect:

- holders of an environmental authority who, but for the commencement of s 334ZP of the MR Act, would have been required to apply for a water licence
- applicants for environmental authorities whose application has not yet been decided by the chief executive, and
- projects notified as coordinated projects under the *State Development and Public Works Organisation Act 1971* for which an environmental impact statement is required, but where a water licence has not been secured.⁸

Clause 36 inserts provisions for making and evaluating such applications into the WROLAA, which will, in turn, insert them into the Water Act. The flowchart on page 4 compares the water licencing process under the unmodified Water Act, and the processes for new projects and those where the application process is already well-advanced, under the WROLAA as modified by the Bill.

Clauses 26 to 29 (inclusive), and clause 35, amend the Water Act to strengthen the rights of landholders who are negotiating, or are parties to, a make good agreement under Chapter 3, Part 5 of the Water Act by:

- lowering the level of scientific certainty necessary to trigger the obligation on the mining licence holder (or a petroleum tenure under the *Petroleum and Gas (Production and Safety) Act 2004* [the PGPSA]) to enter into a make good agreement⁹

⁴ WROLAA, s 11.

⁵ WROLAA, s 67.

⁶ Water Reform and Other Legislation Amendment (Postponement) Regulation 2015, s 2.

⁷ Bill, cl 5.

⁸ Explanatory Notes, p 12.

⁹ Bill, cl 26.

- increasing the ability of landholders to repudiate make good agreements recently entered into¹⁰, and
- fixing the burden of any costs incurred in negotiating a make-good agreement (including the acquisition of specialist hydrogeology advice¹¹ and the conduct of non-court dispute resolution processes¹²) on the mining licence or petroleum tender holder.

Finally, Part 3 of the Bill amends the *Queensland Heritage Act 1992* (the Heritage Act) to allow local government employees to be appointed as authorised persons with regard to the functions and powers of local government chief executives over local heritage places.¹³ The powers and limitations of local government employees appointed under the amended s 125 of the Heritage Act are defined.¹⁴

Consultation for the Bill

Relatively little consultation has been undertaken on the amendments to the EP Act, MR Act and Water Act compared to previous pieces of legislation such as the WROLAA. Notably, no regulatory impact statement has been performed, and direct stakeholder consultation has been limited to briefings provided to the Water Engagement Forum seeking immediate verbal feedback and written feedback within one week.¹⁵

Committee comment

The committee understands that the Bill has been prepared in response to issues raised during consultation on the WROLAA and the Water and Legislation Amendment Bill 2015. In light of this, and given the short time available until the commencement of the provisions sought to be amended by the Bill, the committee considers that the level of consultation has been appropriate.

Estimated cost to government of implementing the Bill

Adopting the Bill is not anticipated to cause any additional costs to government.

Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend the Bill be passed.

Recommendation 1

The committee recommends that the Bill be passed.

¹⁰ Bill, cls 27-28.

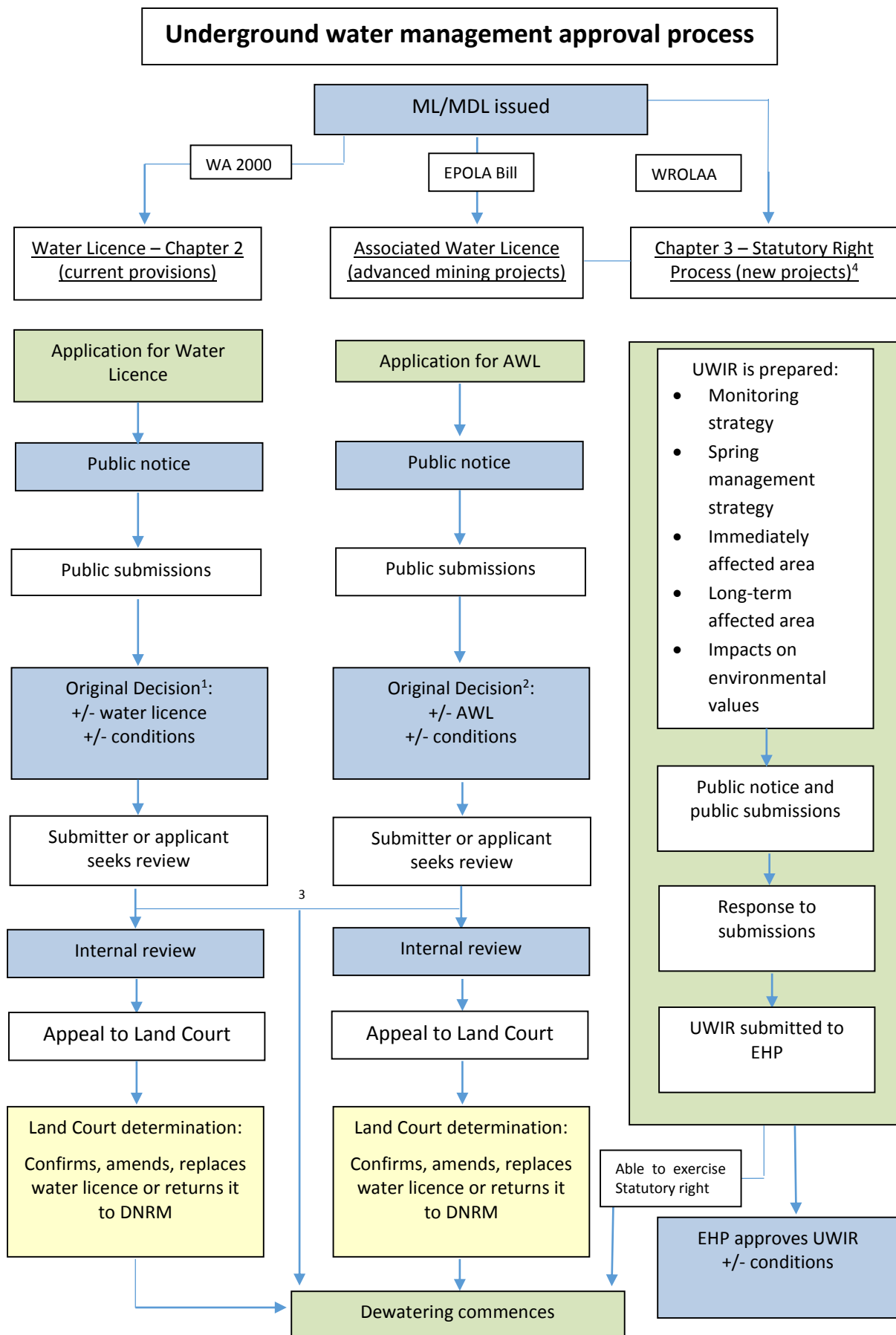
¹¹ Bill, cl 35.

¹² Bill, cl 29.

¹³ Bill, cl 12.

¹⁴ Bill, cl 13 – 27.

¹⁵ Andrew Barger, Director, Economics and Infrastructure, Queensland Resources Council, *Public Hearing Proof Transcript*, 12 October 2016, pp 9-10.



2. Examination of the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016

The committee brings the following issues to the attention of the House.

Effect of transitional provisions

The transitional provisions described above have proven to be the most contentious issue in this inquiry. The WROLAA had the effect of removing all third-party rights of appeal over proposed use of groundwater by mining licence holders. Applying the environmental authority process to new projects, and the proposed associated water licence process to existing projects, has broad support.¹⁶

Resources industry representatives, however, have been unanimous in their opposition to the application of the proposed associated water licence process to 'advanced projects'. Advanced projects are those where an environmental authority has already been granted or applied for, but a water licence has not yet been obtained. The Queensland Resources Council (QRC) also includes in its definition projects where the mining licence holder has already entered into agreements with affected landholders.

The QRC argues that:

- a. *[any advanced project] has already been through a public submission phase as a result of the EIS process. Non-duplication of public submission phases where an EIS has been completed is an accepted principle in the EP Act; and*
- b. *the proponent has been proactive in entering into make good agreements with potentially impacted landholders, on the basis of detailed groundwater modelling.*¹⁷

The QRC goes on to liken the necessity to undergo multiple rounds of assessment regarding a project's anticipated impact on groundwater to double jeopardy.¹⁸ Along with several mining licence holders, it notes that the delays necessitated by a further round of public submissions and potential appeals may fundamentally alter the calculations with regard to the feasibility of particular projects.¹⁹

Conversely, the Environmental Defenders Office Queensland (EDOQ) notes that, for most advanced projects, the environmental authority process would have proceeded on the assumption that groundwater impacts would be assessed as part of the water licence process.²⁰ In the absence of some form of assessment under the Water Act, the impact of taking or interference with groundwater may not receive sufficient attention prior to the commencement of mining activities.

Committee comment

The committee notes that the mining licence holders who have voiced their opposition to the transitional provisions are large scale operators for whom the administrative overhead required by assessment processes is an accepted cost of doing business. The committee also notes the comment of the QRC that government water use policies have been in a state of flux for some time,²¹ and that the Bill has been developed in response to issues identified in earlier consultative processes (see above). In light of this, the committee considers that:

¹⁶ e.g. Protect the Bush Alliance, *Submission 113*, p 3; Queensland Conservation Council, *Submission 49*, p 3; Darling Downs Environment Council, *Submission 44*, p 1.

¹⁷ Queensland Resources Council, *Submission 50*, p 4.

¹⁸ Above, p 5.

¹⁹ Above, p 3; Adani Mining, *Submission 22*, p 2; New Hope Group, *Submission 32*, p 2; Rio Tinto, *Submission 51*, pp 3-5

²⁰ Environmental Defenders Office, *Submission 28*, p 6.

²¹ Queensland Resources Council, *Submission 50*, p 1.

- a) mining licence holders will have been aware of the potential for legislative amendment, and
- b) affected mining licence holders have had sufficient time to apply for a water licence under the currently-applicable provisions of the Water Act, or to prepare themselves to do so.

Impact on regional communities

A closely related issue is the anticipated flow-on impact of the transitional provisions on regional communities. Discussion of this issue centred around the New Acland Stage 3 mine expansion, operated by New Hope Group (New Hope). The New Acland mine currently employs 275 full-time employees, periodically employs some 500 contractors, and contributes to the existence of approximately 2,300 jobs in south-east Queensland.²² Many of these are in the Oakey area, where alternative employment opportunities are scarce.²³ An unknown number of employees have family who are rural producers, and who are partially reliant on off-farm income for the financial stability of their properties. Some of these properties are far from the Oakey region.²⁴

Stage 2 of the New Acland mine is nearing completion, and current production rates will be unable to be maintained past mid-2018.²⁵ The committee heard that, if Stage 3 is not able to be commenced by this point, job losses will inevitably follow. For this deadline to be achieved, construction would be required to commence in early 2017.²⁶ This would be commercially unfeasible in the absence of security over water rights.

A contrasting view is provided by the EDOQ, which argues that mining industry figures in general, and New Hope, in reference to the New Acland mine, in particular, have consistently overstated the number of jobs created by mineral resource projects.²⁷

Committee comment

The committee has significant concerns about the flow-on impacts of any interruption of production at New Acland, and in similar projects. The number of projects in a similar situation, the number of anticipated job losses and the economic and social impact on rural and regional communities are all beyond the ability of the committee to ascertain in the time available.

Recommendation 2

The committee recommends that the Minister examine the impact on relevant mining licence holders' short-term prospects, and the resulting impacts on affected communities, and present his findings in the Bill's second reading speech.

Assessment and sustainability

Overwhelmingly, the issue most frequently raised by submitters was the lack of any statutory recognition of the principles of ESD in the new scheme, whether in the environmental authority or

²² Andrew Boyd, Chief Operations Officer, New Hope Group, *Public Hearing Proof Transcript*, 12 October 2016, p 2.

²³ Franks, Kim, *Submission 98*, p 1.

²⁴ Kemshead, Dianne, *Submission 1*, p 4.

²⁵ King, Greg, *Submission 85*, p 1.

²⁶ Andrew Boyd, *Public Hearing Proof Transcript*, 12 October 2016, p 4.

²⁷ Jo-anne Bragg, Chief Executive Officer/Solicitor, Environmental Defenders Office Queensland, *Public Hearing Proof Transcript*, 12 October 2016, pp 6-7.

associated water licence processes. As stated above, the WROLAA removed these from the Water Act. Section 3 of the EP Act makes the following explicit reference to ESD:

*The object of this Act is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (**ecologically sustainable development** [sic]).*

However, the extensive definition contained in s 11 of the Water Act is not provided in the EP Act. Of particular importance to many submitters²⁸ was the lack of any provision mirroring s 11(b) of the Water Act, which states:

... if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation ...

Nor will the Water Act contain any references to ESD after 6 December 2016. This means that the principles will not be required by statute to be applied to applications for associated water licences.

Committee comment

The committee notes that the Queensland Government has not rescinded its support for the *National Strategy for Ecologically Sustainable Development 1992 (Cth)*, which was endorsed by the Council of Australian Governments in December 1992. The intention of the government to have environmental authority applications assessed along similar lines is reasonably clear. An alternative definition of 'principles of ecologically sustainable development' is found in s 3(5) of the *Fisheries Act 1994*. This definition includes a reference to (and definition of) the precautionary principle.

Given this context, and the institutional memory available to departmental chief executives, the committee is satisfied that the standard by which applications for environmental authorities are assessed will not be significantly lower than that currently obtaining for water licence applications.

Rights for groundwater users

While the Bill goes some way toward equalising the power relationship between landholders and mining licence or petroleum tender holders, an inequality of rights still persists. Section 334ZP of the MR Act continues to grant a statutory right to the use of groundwater to holders of mining licences that is not enjoyed by agriculturalists and graziers. Nor is s 185(3) of the PGPSA, which grants an unlimited right to groundwater to petroleum tenure holders, affected by the Bill. Therefore, if the Bill is passed without amendment, the current scheme whereby the level of any statutory right to take and use groundwater varies according to the nature of the person or organisation that proposes to use it, will be perpetuated.

Several submitters found this state of affairs to be deeply unsatisfactory. Their view is typified by the statement of the EDOQ that:

[w]e remain strongly opposed to the commencement of the statutory right to associated water for mining proponents, and opposed to the statutory right to water held currently by the petroleum and gas industry.²⁹

²⁸ e.g. Environment Council of Central Queensland, *Submission 7*, p 2; Lock the Gate Alliance, *Submission 15*, p 3; Australian Lawyers Alliance, *Submission 24*, p 3; Environmental Defenders Office of Northern Queensland, *Submission 27*, p 2.

²⁹ Environmental Defenders Office, *Submission 28*, p 3.

Other submitters raised relevant points of policy. Kingfisher Law noted that the ability of regulatory authorities to monitor and report on the amount of groundwater taken, and the purposes for which it is used, will be reduced in the absence of a water licencing scheme.³⁰

Supporters of mining rights considered the existing rights to be appropriate. The Association of Mining and Exploration Companies, for example, stated that the right to take and use groundwater is “severely limited under changes to the Environmental Protection Act 1994 [sic] contained within the Bill.”³¹

DNRM advises that associated water rights provided by the WROLAA to mining licence holders are limited to the taking or interfering with water necessarily removed as part of mining operations. For example, water can be removed to the extent necessary to create safe operating conditions. If the operator wishes to take water in order to use it in their activities, this type of take must be authorised under the Water Act consistent with other water users.

Committee comment

The desire of conservationists to see the rescindment of statutory water rights for resource tenure holders is understandable. However, such a measure would be far beyond what has been contemplated in the development of the Bill, particularly in light of the limited consultation referred to above. The committee also notes that the introduction of s 334ZP of the MR Act was an attempt by Parliament to rectify an apparent discrepancy between statute and common law.³² In view of this, the committee does not support changes to remove statutory water rights.

Make good agreements

As described above, the Bill significantly strengthens the position of landholders during negotiations with resource tenure holders over damaged or degraded bores. Notably, these provisions apply equally to holders of mineral mining licences and petroleum tenders.

Once again, these measures enjoy broad support from stakeholders.³³ The opposition to the changes comes, as could be expected, from the petroleum and gas exploration industry. The Australian Petroleum Production and Exploration Association (APPEA) argues, for example, that the Bill:

*... would lead ... to extended negotiations and increased disputes. In turn, this would have the effect of undermining [the] industry’s social licence and community confidence in government.*³⁴

APPEA, along with Origin Energy (Origin), considers the definitions of the terms ‘free gas’,³⁵ ‘health and safety risks’ and ‘impaired capacity’ to be inappropriately drafted.³⁶

Origin notes that the Bill alters the current standard of proof, whereby a decline in bore capacity (and subsequent make good obligations) must be “because of the exercise of underground water rights”.³⁷ Instead, the Bill inserts a new definition, whereby the standard of proof is “the exercise of

³⁰ Kingfisher Law, *Submission 30*, p 4.

³¹ Association of Mining and Exploration Companies, *Submission 23*, p 1.

³² This discrepancy arose from the decision of the Land Court in *Hancock Coal Pty Ltd v Kelly and Department of Environment and Heritage Protection (No. 4)* [2014] QLC 12.

³³ e.g. Fitzroy Basin Association, *Submission 6*, p 1; Queensland Farmers’ Federation, *Submission 35*, p 2; Basin Sustainability Alliance, *Submission 40*, p 6; Property Rights Australia, *Submission 135*, p 1.

³⁴ Australian Petroleum Production and Exploration Association, *Submission 38*, p 6.

³⁵ Australian Petroleum Production and Exploration Association, p 6, Origin Energy, *Submission 34*, p 3.

³⁶ Origin Energy, pp 3-4.

³⁷ Water Act, s 412.

underground water rights has, or has likely, caused or materially contributed to the decline”.³⁸ Origin argues that the policy rationale behind this shift is unclear.

Some submitters also noted that the measures in the Bill may still be insufficient in the case of a tenure holder who becomes insolvent, or simply moves offshore. Proposals for rectifying this shortfall include requiring financial assurance as a precondition of exercising underground water rights,³⁹ and the institution of a Make Good Commissioner and a make good code of practice.⁴⁰

Committee comment

The change in definition appears to align the make good obligations in the Water Act with the precautionary principle included in the principles of ESD. The Explanatory Notes also state that the change is necessary to remove an “unreasonable level of certainty” from the current standard.⁴¹ The committee does not consider that further explanation is necessary.

The committee notes that financial assurance may be imposed as a condition of environmental authority under s 292 of the EP Act. The committee considers that moving to a scheme of mandatory financial assurance would impose an undue burden on petroleum tenure holders who have yet to show any evidence of being unwilling, or unable, to make good environmental impacts.

The committee considers the proposal for a Make Good Commissioner and code of practice to be beyond the scope of this Bill.

³⁸ Bill, cl 26.

³⁹ Local Government Association of Queensland, *Submission 5*, p 1.

⁴⁰ e.g. Lock the Gate Alliance, p 4.

⁴¹ Explanatory Notes, p 10.

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

Rights and liberties of individuals

Clauses 29 and 35 amend sections 426 and 423 of the Water Act respectively, which deal with make good agreements between resource tenure holders and water bore owners. A resource tenure holder is defined as the holder of either a mining tenure or a petroleum tenure. The amendment to section 423 is made pursuant to the WROLAA, which contains an amendment to the section that has not yet commenced.

Section 426 of the Water Act deals with the circumstance where the resource tenure holder and bore owner cannot agree on the terms of a make good agreement, providing that the parties may seek to undertake an alternative dispute resolution (ADR) process to negotiate an outcome to the dispute. Under the current provisions the party who requests the ADR, either the resource tenure holder or the owner of the bore, pays the costs of the person to facilitate the ADR. The amendment under clause 29 will require the resource tenure holder to pay the costs of the ADR, irrespective of whether they or the bore owner requested the ADR.

Section 423 of the Water Act deals with the obligations to enter into make good agreements and for the resource tenure holder to reimburse the costs incurred by the bore owner in the agreement making process. As currently drafted in the WROLAA, section 423 provides that the resource tenure holder must reimburse the bore owner for any accounting, legal or valuation costs the owner necessarily and reasonably incurs in negotiating or preparing a make good agreement, other than the costs of ADR requested by the bore owner. The amendment under clause 35 removes the exclusion of the reimbursement of ADR costs, in line with the amendment under section 426 that the resource tenure holder must pay this cost, and requires the resource tenure holder to pay any hydrogeology costs incurred by the bore owner.

To the extent that clause 29 mandates that resource tenure holders must bear the costs of any ADR irrespective of which party initiates the ADR, and clause 35 requires resource tenure holders to reimburse hydrogeology costs incurred by bore owners, it may be argued that these clauses affect the rights and liberties of individuals.

The likelihood of these provisions applying to individuals may be low, as it is probable the resource tenure holders will be companies undertaking mining projects rather than individuals working a mining lease. It may however be the case that some individuals will be adversely affected by the changes proposed in clauses 29 and 35.

The Explanatory Notes purport to justify the amendments on the basis that:

*While resource companies are under additional obligations... this is justified because it ensures the appropriate apportionment of burden. Therefore, insofar as the amendments are regarded to impose liability, the amendments should be regarded to be fair and reasonable.*⁴²

The committee sought advice from DNRM regarding the number of individual and small-enterprise resource tender holders potentially affected by the provisions of the Bill.

⁴² Explanatory Notes, p 4.

Committee Comment

DNRM has been unable to supply the advice requested by the committee in the time available. In the absence of this information, the committee accepts the justification provided by the Explanatory Notes, and does not consider that the Bill's provisions unduly impose upon the rights and liberties of individuals.

Appendix A: List of submitters

Sub No.	Submitter
1	Dianne Kemshead
2	Jonathan Peter
3	Chris O'Connor
4	Mick Raff
5	Local Government Association of Queensland
6	Fitzroy Basin Association
7	Environmental Council of Central Queensland
8	Paul Jukes
9	Brad Caporn
10	Glistening Deepwater
11	Sam Fisher
12	Anjanette Fisher
13	Erica Siegel
14	Gillian Peachey
15	Lock the Gate Alliance
16	Wayne Pengelly
17	Brynn Matthews
18	Great Barrier Reef Divers
19	Robert Gordon
20	David Oldfield
21	Neil McLaren
22	Adani Mining Pty Ltd
23	Association of Mining & Exploration Companies (AMEC)
24	Australian Lawyers Alliance
25	Australian Marine Conservation Society
26	Bridgeport Energy Limited
27	Environmental Defenders Office of Northern Queensland
28	Environmental Defenders Office (Qld) Inc
29	WP Organic Pastoral Company
30	Kingfisher Law
31	Mackay Conservation Group
32	New Hope Group
33	Nth Queensland Land Council
34	Origin Energy
35	Queensland Farmers' Federation
36	AgForce Qld Industrial Union of Employers
37	Alliance to Save Hinchinbrook
38	Australian Petroleum Production & Exploration Association

39	Arrow Energy Pty Ltd
40	Basin Sustainability Alliance
41	Cairns & Far North Environment Centre
42	Brisbane Residents United
43	Daniel Kenafake
44	Darling Downs Environment Council
45	Joan Meecham
46	Landholder Service Pty Ltd
47	MWA Environmental
48	North Queensland Conservation Council
49	Queensland Conservation Council
50	Queensland Resources Council
51	Rio Tinto Limited
52	World Wildlife Fund (Australia)
53	Aaron White
54	Adam Burke
55	Andrew Basson
56	Anthony Downs
57	Anthony Nielsen
58	Annette Rodriguez
59	Ben Armitage
60	Brett Domrow
61	Brett Jeffries
62	Catherine Uechtritz
63	Cathy Wood
64	Christina Eastall
65	Christina Carlisle
66	Dale Collins
67	Danique Bax
68	David Caffin
69	David Cooper
70	David Dolan
71	David Drakeley
72	David Follington
73	David Genn
74	David Kingsford
75	David Wood
76	Dilwyn Griffiths
77	Don Ballon
78	Ella Linwood
79	Emily D'Alterio

80	Franklin Bruinstroop
81	Garry Handford
82	Garry Reed
83	Genna McDonagh
84	Greenpeace Australia Pacific
85	Greg King
86	Holly McVicar
87	Jane Hyde
88	Jane Stevenson
89	Jason and Rebecca Murphy
90	Jenifer Bush
91	Jennie Wright
92	Jenny Fitzgibbon
93	Joanne Kingsford
94	Judith Odgaard
95	Judy Stewart
96	Judy Whistler
97	Katherine Beddoes-Eagles
98	Kim Franks
99	Krystal Mollis
100	Kuranda Conservation Community Nursery
101	Kylie Smith
102	Lindsay Bamberry
103	Melville Powels
104	Mia Armitage
105	Michael Rodgers
106	Michelle Finger
107	Matthew Busch
108	Pat Faulkner
109	Patrick Tyrrell
110	Peggy Fisher
111	Peter Rosier
112	Peter Young
113	Protect the Bush Alliance
114	Rachel Burnham
115	Robyn Hermann
116	Robyn Masters
117	Roland Henry
118	Roslyn Blackwood
119	Sally Elliot
120	Sam Roach
121	Sarah Moles

122	Shane Moore
123	Shane Stephen
124	Stacey Schilpzand
125	Stephen Eames
126	Thomas Sheppard
127	Toan Huynh
128	Maxine Godley
129	Whitsunday Residents Against Dumping
130	Wide Bay Environment Council
131	Margaret Airoidi
132	Matt McLeish
133	Matt Terry
134	Matthew and Naomi Tonscheck
135	Property Rights Australia
136	Andrew Curnock
137	David von Pein
138	Logan & Albert Conservation Association
139	Environmental Defenders Office Queensland
140	Meg Nielsen
141	Ross Bennett

The committee also received the following numbers of ‘form’ submissions:

- from Do Gooder: 213
- from the EDOQ: 71, and
- from GetUp: 1,612.

Appendix B: Briefing officers

Public briefing 30 September 2016

Department of Environment and Heritage Protection:

- Mr Laurie Hodgman – Director, Environmental Policy and Legislation
- Ms Deborah Brennan – Manager, Environmental Policy and Legislation

Department of Natural Resources and Mines:

- Ms Leanne Barbeler – Executive Director Water Policy
- Mr Darren Moor – Executive Director Central Region
- Mr Saji Joseph – Director, Strategic Water Programs

Public briefing 12 October 2016

Department of Environment and Heritage Protection:

- Mr Geoff Robson – Executive Director, Strategic Environment and Waste Policy
- Mr Laurie Hodgman – Director, Environmental Policy and Legislation
- Ms Deborah Brennan – Manager, Environmental Policy and Legislation

Department of Natural Resources and Mines:

- Ms Leanne Barbeler – Executive Director Water Policy
- Mr Saji Joseph – Director, Strategic Water Programs
- Mr Ian Gordon – Director, Water Operations Support

Appendix C: Public hearing witnesses

12 October 2016

New Hope Group

- Mr Andrew Boyd – Chief Operations Officer
- Ms Kylie Gomez Gane – Manager, Environment, Policy and Approvals
- Kathryn Pacey – Legal Advisor (Partner, Clayton Utz)

Environmental Defenders Office Queensland

- Ms Jo-anne Bragg – Chief Executive Officer/Solicitor
- Ms Revel Pointon – Law Reform and Litigation Solicitor

Queensland Resources Council

- Mr Andrew Barger – Director, Economics and Infrastructure

Australian Petroleum Production and Exploration Association

- Mr Matthew Paull – Policy Director – Queensland

Lock the Gate Alliance

- Ms Carmel Flint – Campaign Coordinator

Adani Group

- Mr Hamish Manzi – Head – Environment and Sustainability
- Mr Llewellyn Lezar – Head – Mining

Mackay Conservation Group

- Mr Peter McCallum – Coordinator
- Mr Tony Fontes

Landholder Services

- Mr George Houen



Tony PERRETT MP

Member for Gympie



Dissenting Report

Opposition members of the Agriculture and Environment Committee do not support the recommendation that the *Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016* be passed. This recommendation has not been formally agreed to by a majority of the members of this committee.

While the committee report recommends the Bill be passed, it should be noted that the Member for Mount Isa was absent from the committee meeting which considered the Chair's final draft. Consequently, the recommendation that the bill be passed reflects the views of Government committee members only and not a majority of committee members.

From the outset, Opposition members of the committee would like to thank all of those individuals who made submissions to the inquiry and appeared at the committee's hearings on the bill. On the face of it, the objectives of the bill appear to be well intentioned, but we are very concerned about the practical implications of the proposed amendments.

The management of water resources, particularly the management of groundwater resources, is a notoriously complicated area of natural resource management. As such, the public policy settings associated with this issue is complex and there are a broad range of stakeholders with a direct and indirect interest, including in the proposed amendments in this bill.

As such, Opposition members of the committee wish to express our concern about the way in which the Government has presented these complex and complicated amendments to the parliament without a satisfactory consultation process. The potential for substantial negative impacts to local communities and industry was raised by numerous submissions.

The committee heard that hundreds of jobs in regional areas and the security and certainty of investment decisions by companies in resource project may be severely affected by the proposed amendments in this bill. The absence of a Regulatory Impact Statement has compounded this problem at the committee's consideration of the bill.

As mentioned earlier, the stated objectives of this bill appear well intentioned and Opposition committee members wish to express sympathy for proposals to strengthen arrangements for landholders in terms of negotiations with resource tenure holders over 'make good' arrangements. Unfortunately, these are overshadowed by flaws in the bill.

Opposition members have a strong commitment to appropriately protecting the interests of landholders and regional communities. It should be noted that we have received numerous representations and direct contact from regional landholders and regional employees who are concerned about the impact of the Bill and requesting that we oppose it.

Lack of consultation

A lack of proper consultation and limited timeframes for the completion of what consultation was undertaken, was a recurring theme which featured during the committee's deliberations on

this Bill. We would note that the committee has been expected to complete this report within 4 weeks of these complex and complicated proposals being introduced into the house.

There was little, or severely restricted consultation with relevant stakeholders and affected individuals prior to the introduction of the Bill. Inadequate timeframes curtailed the period for stakeholders to provide submissions to the committee, preventing a proper assessment of the economic and social impacts of the Bill on industry and the wider community.

Opposition members would also note that the timeframes impacted on the timeliness of the committee's interactions with the Departments that provided briefings and responded to requests from the committee. We also note that a bill on a similar subject matter, the *Water Legislation Amendment Bill 2015*, was consulted on for approximately 15 weeks.

Opposition members wish to advise the house that the consideration of this bill has been so rushed, committee members received the Chair's final draft less than 2 hours before being expected to consider the content of the report and the two recommendations which have been agreed to by government members. This is not an acceptable process.

Little or no consultation prior to the introduction of the Bill

Stakeholders presenting to the committee during its consideration of the bill made it very clear that there was almost no consultation with them prior to the bill being introduced. The Minister tried to gloss over this in his introductory speech, claiming that Water Engagement Forum meetings on 7 March, 29 April and 6 September 2016 constituted consultation.

However, it has emerged from evidence provided by some stakeholders to the committee that those forums were not about this Bill at all, and that the limited parts of the Bill which were disclosed were provided in confidence, with stakeholders prevented from consulting with their member organisations and were required to provide written responses within a week.

Mr Andrew Barger, Director, Economics and Infrastructure, Queensland Resources Council:

".....there was a process of seeing parts of the bill in confidence, not being able to share it with my members for a period of about a week and giving comments on that. Definitionally, for a whole new transition mechanism do I see that as consultation? No. There was not an ability to understand the complexity of the projects that it would affect. There was not an ability to engage with members, get their feedback and channel that through.

Fundamentally.....I do not think I was representing my members because I was precluded from engaging with them. There was an announcement. There was an ability for me to give my personal feedback on that over a very short time period for a complicated process. I would not characterise that as consultation and certainly not consultation in the context of such a complicated process as water licensing." (page 9 and 10, Transcript Public Hearing, 12 Oct)

And

Matthew Paull, Queensland Policy Director of the Australian Petroleum Production and Exploration Association said:

"We all got a series of quite significant changes put on the table on the Monday. We were given 24 hours to respond and told that they would be in parliament the next week. We met with EHP and asked a lot of questions on the Tuesday following. A lot of those questions could not be answered in terms of the scope and intent. Then we basically heard nothing until quite recently when again they were put to the Water Engagement Forum and we were given an opportunity to respond in a very limited window." (page 12 Transcript Public Hearing Oct 12)

Furthermore any consultation at the Forums was sufficiently cursory and inadequate to result in the Department of Natural Resources and Mines, which was a member of the Forums, to be *"unable to provide advice requested by the committee in the time available"* (page 11 of report) *"regarding the number of individual and small-enterprise resource tender holders affected by the provision of the Bill."* (Page 10 of report)

Affected stakeholders had only 15 working days to provide a submission to the committee.

The Resources Council described it as: *"....incredibly complicated legislation. It is not just a simple legislative bandaid that is being introduced. It is omnibus legislation. It amends acts that have not commenced. It amends bills that have passed but not commenced. You almost need a PhD in law to track through all the amendments."* (page 9, Transcript Public Hearing, 12 Oct)

The lack of time for consideration and consultation meant that the committee could not properly assess the flow on impacts of any interruption or production at New Acland and other similar projects. The committee advised that *"the number of anticipated job losses and the economic social impact on rural and regional communities are all beyond the ability of the committee to ascertain in the time available"* (page 6, Committee comment).

In the case of New Hope Group and the impact on the Acland Stage 3 mine project, there was no consultation at all. This is despite New Hope Group advising of job losses of more than 200 jobs from New Acland, New Hope's corporate office in Ipswich, from their QBH port facility at the port of Brisbane and additional losses of several hundred from various suppliers and service providers. (page 3, Transcript Public Hearing, Oct 12)

The Chair (Member for Gladstone) asked Ms Kylie Gomez Gane, Manager Environment Policy and Approvals, New Hope Group:

"At the start of your statement you mentioned that there has been a severe lack of consultation. Has there been any consultation with the departments or the minister's office in relation to this new bill with your company?"

Ms Gomez Gane: No.

CHAIR: None at all?

Ms Gomez Gane: No. "

(page 4, Transcript Public Hearing, Oct 12)

Lack of Regulatory Impact Statement

The normal Regulatory Impact Statement (RIS) process provides for an opportunity to test the reasons behind the proposed need for a change to the current legislative framework, to test the

inadequacy of the current arrangements and identify how the proposed changes would improve the current situation and/or environment. This has not occurred for this bill.

The absence of RIS had significant and severe consequences for the committee's consideration of this bill. A number of submissions received by the committee made conflicting and contradictory statements about the potential impact of the proposed changes to the legislation which could have and should have been addressed by the results of a proper RIS.

Relevant stakeholders have been prevented from providing proposals about alternative regulatory approaches to achieve proposed outcomes. The lack of concern shown by government members about the absence of a RIS when the subject matter is as complicated and complex as the management of groundwater resources is concerning.

Mr Andrew Barger, Director, Economics and Infrastructure, Queensland Resources Council:

"If you look at the explanatory notes for this bill, they identify no alternatives. That is an extraordinary statement. It is really difficult to believe that, with all the intelligence of the Queensland government, there is no other way to address the objectives of the bill other than the bill that we are seeing tabled in a great hurry..... Instead of having to delve into the introductory speech and the explanatory memorandum to try to work out what the effect of a tabled bill will be, it is a way of channelling feedback into the development of the legislation before it is drafted. It is a really good framework for providing consultation. It provides a lot more transparency. Unfortunately, with eleventh-hour omnibus bills being tabled, you run out of time to do that which is to the detriment of the outcome of the bill I think." (page 10, Transcript Public Hearing, 12 Oct)

Opposition members of the Agriculture and Environment Committee are unable to support the passage of this bill. In our opinion, the committee has been afforded an unacceptably inadequate amount of time to conduct a proper inquiry, given the complex and complicated nature of the subject matter and this report is not a sound treatment of the subject matter.

The evidence that we were able to take from stakeholders to the committee clearly outlines these concerns. The government did not consult properly when drafting the bill and there are major concerns about how the proposed legislative changes will impact on regional communities, individual projects and Queensland's reputation as a resource state.



Tony Perrett
MP for Gympie

October 24, 2016

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Robbie Katter MP

Member for Mount Isa

Monday October 24 2016

RE Statement of Reservation on Report No 25, Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016.

I write to lodge a Statement of Reservation to the Agriculture and Environment Committee on the Report No 25, Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016.

I would firstly like to thank the Committee and all stakeholders who participated in the inquiry. I'm generally supportive of the way in which the committee has conducted this inquiry, however I would like to express my concern at a number of the findings and it is these concerns that form the basis of my decision not to support the recommendations in this report.

My concerns primarily relate to the consultation process for the bill and the negative impact the bill may have on communities who rely on planned mining projects for a large portion of their economic security.

The following sections provide more specific detail on the factors that have led to my decision to make this Statement of Reservation.

Consultation

The lack of consultation is a major concern, particularly given the claims of serious negative impacts by some stakeholders.

The Committee recognises this lack of consultation including the absence of a Regulatory Impact Statement¹. The Committee cites the short time-frame before commencement of the provisions (of other Bills) which the Bill is seeking to amend as justification². In my opinion, this does not provide a reasonable justification for denying stakeholders the opportunity to have their position adequately considered.

Impact on communities and future development

I would like to note the issues raised by community groups and resource industry stakeholders in relation to projects that have achieved a number of approvals under existing processes³. Based on my own consultation I have some concerns that the extent of the negative economic impact of requiring specific projects to undertake a new process under the Environmental Protection Act 1994 is not well understood.

Although the economic and social impacts are beyond the scope of this committee (as noted in a Committee comment⁴), there is sufficient evidence from stakeholder consultations to suggest that the impacts in specific circumstances will be material. In this case it seems justifiable that any recommendation to support the Bill should only be provided on the basis of a better understanding of these impacts. If this understanding cannot be provided the recommendation to pass the legislation should include appropriate obligations to assess the materiality of the social and economic impacts.

¹ Report No 25, Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016, p. 3

² Report No 25, Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016, p. 2

³ Report No 25, Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016, p. 2

⁴ Report No 25, Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016, p. 7

Recommendations

I generally support a number of findings of the inquiry including,

- Strengthening of the rights of landholders who are negotiating, or are parties to, a make good agreement under Chapter 3, Part 5 of the Water Act⁵
- The application of these strengthened rights for landholders in negotiations with holders of both mineral mining licences and petroleum extraction licences⁶.

The concerns outlined in this report in relation to stakeholder consultation as well as the potential negative economic impacts associated with some existing projects, require greater consideration in order to understand the efficacy of the Bill. Therefore I cannot support the recommendations in this report in their current form.

Yours sincerely



Rob Katter

Member for Mount Isa

⁵ Report No 25, Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016, p. 2

⁶ Report No 25, Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016, p. 9