AGRICULTURE AND ENVIRONMENT COMMITTEE

Members present:

Mr GJ Butcher MP (Chair)
Mr AJ Perrett MP
Mrs J Gilbert MP
Mr R Katter MP
Mr JE Madden MP
Mr EJ Sorensen MP

Staff present:

Mr R Hansen (Research Director)
Mr P Douglas (Principal Research Officer)

PUBLIC BRIEFING—INQUIRY INTO THE ENVIRONMENTAL PROTECTION (UNDERGROUND WATER MANAGEMENT) AND OTHER LEGISLATION AMENDMENT BILL 2016

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 12 OCTOBER 2016

Brisbane

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Committee met at 1.10 pm

BARBELER, Ms Leanne, Acting Executive Director, Water Policy, Department of Natural Resources and Mines

BRENNAN, Ms Deborah, Manager, Environmental Policy and Legislation, Department of Environment and Heritage Protection

GORDON, Mr Ian, Director, Water Operations Support, Department of Natural Resources and Mines

HODGMAN, Mr Laurie, Director, Environmental Policy and Legislation, Department of Environment and Heritage Protection

JOSEPH, Mr Saji, Director, Strategic Water Programs, Department of Natural Resources and Mines

ROBSON, Mr Geoff, Executive Director, Strategic Environment and Waste Policy, Department of Environment and Heritage Protection

CHAIR: Good afternoon officers from the departments. Would you like to make any points of clarification from the discussions we have had today at the hearing?

Mr Robson: We certainly appreciate the opportunity to continue to assist the committee in its inquiry. At the outset, I would like to acknowledge the assistance of my colleagues both from EHP and DNRM. I was enjoying some leave during the time of the previous hearings so my colleague Laurie Hodgman was filling my shoes. Laurie is here today to ensure continuity for the committee and to support me. I also acknowledge the close work that we have undertaken with the Department of Natural Resources and Mines. I obviously thank them for their participation at the previous hearing in my absence. I understand my colleague Leanne Barbeler would like to make some additional remarks.

Ms Barbeler: I thank the committee for the opportunity to provide an opening statement relating to issues raised in submissions about the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016, which I will refer to as EPOLA. It is acknowledged that there is a great deal of interest in underground water management. That is shown through the participation in today's hearing. I would like to take the opportunity to acknowledge the individuals and groups that took the time to prepare submissions, particularly those who have attended the hearing today.

I would like to briefly provide broad context that will assist in responding to questions from committee members. The government has made a decision that the best long-term approach to underground water management of the resources sector is through impact management. This is why it has decided to proceed with the underground water impact management framework in the Water Reform and Other Legislation Amendment Act 2014, which I will refer to as WROLA.

The EPOLA bill reflects the government policy position through the associated water licensing process being set in the context of impact management where applications are assessed for their impacts on natural ecosystems and existing water entitlements amongst other things. Adopting an impact management framework is consistent with a legislative purpose of the underground water management reforms contained in WROLA.

You will have heard today that there are some stakeholder views that applications should be assessed in accordance with the sustainable management purpose that applies to chapter 2 of the Water Act which includes assessment against the principles of ecologically sustainable development. The sustainable management purpose is relevant to decisions under chapter 2 of the Water Act because those decisions are directly about the allocation, planning and use of the state's water

resources. The associated water licence is not about the allocation of water resources, rather it is about authorising the extraction of associated water for the safe operation of a mine and conditioning that authorisation to manage acceptable impacts of that extraction.

Assessing associated water licence applications in the context of impact management, consistent with the purpose relevant to chapter 3 of the Water Act, recognises that mine dewatering will lead to some impacts and that mine dewatering is an unavoidable activity in the resource extraction process. The intent of the associated water licence will therefore be to authorise and manage acceptable impacts which will be assessed against criteria that includes the consideration of the impacts on natural ecosystems and water entitlements and takes public submissions into account. Decisions about associated water licence applications provide for third party review and appeal processes.

The resources sector has concerns that the associated water licensing process for advanced mining projects is an additional requirement. However, under current law in the Water Act mining projects are currently still required to obtain a water licence to dewater in a regulated area which means following a similar process to that which is proposed in the EPOLA bill, including public notification, submissions and rights of appeal. We are now happy to take questions from the committee.

CHAIR: That was very brief. Thank you very much. We have heard quite a bit from the companies this morning—New Hope and Adani—about the retrospectivity of it. We heard this morning, particularly from New Hope, that it would put their project back 12 months. Can you see that actually happening? What is the process going forward with that particular proposal?

Mr Robson: I will give the first response to that question with respect to retrospectivity. In terms of the provisions of the bill, there are no provisions that are retrospective. I think, Chair, your question does go beyond that in terms of what is the process and impact of some of the provisions with respect to associated water licences. We can give some further comment on that. I just thought I would respond initially by saying that the bill in and of itself—the provisions—are not retrospective.

Ms Barbeler: The current law, as it stands, does currently require a mine that is intending to dewater in a regulated area to obtain a water licence, which does have the same or similar process requirements as the associated water licence such as public notification and opportunity for submissions and appeal rights. Because it is akin to those same process requirements, it is understood by the department that that would be a very similar time frame to the current requirements.

Mr Gordon: I would also refer back to a comment from my colleague Darren Moor from the previous hearing. Very pragmatically Leanne has touched on the process. There are parts of any process for water licences that are within the control of the parliament in a statutory sense and that is an example where we would require a minimum of 30 business days for the public submission and appeal process. The time frame beyond that is very much driven by the content in the application made to us and how effectively it addresses or deals with the requirements we have to assess. The second part is obviously subject to what is provided by the submissions during that 30-day process. To an extent, that is where we cannot provide a set time frame but that is the link of the operational and process components. I would like to reiterate earlier comments as well that all of the work that was going towards EISs, the Commonwealth Water Act triggers and others could all be very important information that would be repackaged in any application, so there is a lot of really good work that is not lost by any process for application.

CHAIR: Just to clarify, these companies could have been doing this during their applications many, many months ago or years ago even. Is that right? This process could have been happening now?

Mr Gordon: Absolutely. Under the current law, as it stands today, an application can be lodged for a water licence on the basis that an application has been made for a mining licence.

CHAIR: Thanks for clearing that up.

Mr PERRETT: We have heard from a number of submitters this morning about the RIS, regulatory impact statement, process. A number of submitters have indicated to us that that would have assisted them and the broader process of dealing with some of the issues that have been identified and not just directly to them but other stakeholders that may have contrary views to theirs.

This has been a fairly rushed process, even for us as a committee. We have to report back to the parliament by 25 October. There is a lot to do in a fairly short period of time. What is your response to the comments that have come forward from a number of submitters this morning about the RIS process and the lack of consultation that has informed the development of this bill?

Mr Robson: I certainly acknowledge the comments that were made by witnesses earlier in the hearing today. I will give a brief overview of the process with which you may be familiar and try to give an understanding of where our consideration of the benefit of a RIS fitted into that.

As the committee is aware, this proposed bill does come at the end of a process for two other pieces of legislation—the WROLA and the WOLA Bill. In terms of the consultation process, this bill does address some of the matters raised in the consideration of those previous bills including matters that arose out of committee processes.

I appreciate the comments that the deputy chair made about the time frames. Part of the parameters that we have been working within has been the fact that certain legislative provisions will commence in December of this year. In order to bring all of the provisions and the three bills together in a consistent way, that has been one of the time frame pressures that the deputy chair refers to.

We have made the best endeavours to do consultation within that time frame process. I understand from the earlier hearing that there was discussion around the Water Engagement Forum. Again, you heard from stakeholders about that today. In terms of the RIS process, we have engaged with the Office of Best Practice Regulation and submitted a preliminary impact assessment to them. That is part of the process for consulting with our colleagues in that office about the benefit you would get out of a RIS process given all the parameters, including the consultation that had been undertaken to date and the parameters I mentioned before around the timing of this particular bill.

Mr PERRETT: I understand the time pressures around commencement of certain parts of acts that are already in existence. I am concerned that perhaps there may be some things that could have been resolved—some of the concerns that have been raised here today—through a more extensive consultative process, a more direct process, associated with the provisions of this bill. I know you can only work within the provisions that the government provide. The importance of that process generally is good policy and ultimately good legislation. Are there any similar situations that you could use as examples of where perhaps these things are better framed over a longer period as opposed to such a short time frame? Are there any other examples that you can point to?

Mr Robson: Are you talking of examples of other pieces of legislation?

Mr PERRETT: I am.

Mr Robson: I am getting outside the scope of this particular bill, but I appreciate the nature of your question. There are examples where legislation for particular reasons is being assessed within a short period of time. I have appeared before parliamentary committees before to give explanations—for example, the chain of responsibility bill where there was, I think, a shorter period of time than in the context of this inquiry, if I remember rightly.

I do draw out the fact that this bill has not come in in and of itself. It has come in in the context of two other bills, or pieces of legislation more correctly—the WROLA and the WOLA Bill. This is part of the package of that. That makes it difficult for me to draw that parallel back to the chain of responsibility bill, which was a stand-alone piece of legislation.

Obviously, the consultation that has occurred in the context of this particular bill cannot be separated out from the process that has led us here with those previous pieces of legislation. For that reason, it is a bit difficult to draw—there might be other examples of particular bills that have come at the end of a process that relate to a package of legislation. I am struggling to think of a specific example at the moment.

Mr PERRETT: I accept that. I know it is difficult. In the interests of good practice and getting legislation right, I draw a parallel between this in some ways and the end of sandmining on North Stradbroke Island and some of the RIS questions that were asked at that stage too that could have perhaps resolved a lot of the concern that was there through a different process rather than coming in at the eleventh hour. That is probably more of a political statement.

CHAIR: They are previous examples under a former government.

Ms Barbeler: If I could add to Geoff's statement in relation to the assessment that was undertaken and whether or not a regulatory impact statement was required, I can certainly add a little bit more detail there. With regard to the associated water licence component of that assessment, it was determined that the associated water licence was very much consistent with the existing and current law, which is the requirement to obtain a water licence. An assessment of the impacts comparing the two determined that there was no requirement for a further regulatory impact statement.

Mrs GILBERT: In terms of the mining companies that have spoken today that are now going to apply for a water licence—I know that you have touched on it backwards and forwards. For large companies, who have people employed to follow process and regulations, to be caught out not having a water licence now, is there a process where they have been caught out unaware, without enough consultation or warning that this is coming?

CHAIR: By the looks on their faces, you might want to clarify that a little.

Mr Robson: Just to clarify your question, I am trying to consider what aspects of the bill—

Mrs GILBERT: Has it been made clear to the mining companies that they would actually need a water licence?

Mr Robson: With respect to the way the existing legislation operates, I would expect so. That is a matter that is administered under chapter 2 of the Water Act. I am sure my colleagues from DNRM would like to respond to that question of what the existing arrangements with industry have been around requirements for water licences.

Ms Barbeler: I can add to that. Certainly the current requirement is that for a mine that intends dewatering in a regulated area there is a clear requirement in the Water Act that a water licence is required. I acknowledge that the WROLA as an act of parliament has passed but has not commenced. While it has not commenced, that means that there is no implementation of that legislation. While it is an act, it is not legislation that is in place. The current legislation, as it stands, is that there is a water licence required for that activity.

Mr Robson: Just to clarify my comments, I think I mentioned chapter 2 of the Water Act. You would need to consider the Water Act more broadly in that context as well.

Mr MADDEN: I wanted your comment on some statements made by Mr Andrew Barger on behalf of the Queensland Resources Council. One of the suggestions he made was that there may have been short time frames for consultation. I am satisfied that you have dealt with that. There was another issue he raised that was probably of more concern to me. I hope I have not quoted him wrong, but there was a suggestion that this legislation was not consistent with fundamental legislative principles. I note that in the explanatory notes there is one particular aspect of established legislative principles that is dealt with, and that is that legislation should not adversely affect rights and liberties or impose obligations retrospectively. That is dealt with in the explanatory notes. Would you like to comment on that and confirm that this legislation is not inconsistent with fundamental legislative principles?

Mr Robson: It is certainly our understanding that this legislation is not inconsistent with FLPs. We are looking up the particular reference to the explanatory notes that you just mentioned.

Mr MADDEN: That was my understanding, that they were two of his criticisms.

Mr Robson: With the committee's indulgence, I am refreshing my memory of those particular elements of the explanatory notes. It has certainly been the advice to the department with respect to the nature of the drafting of the bill that it does not breach FLPs. That is the understanding within which we have operated.

I think your question gets to, as you said, the infringement of rights and liberties. Certainly, in terms of the way that this bill amends processes, that is done very much within the context of existing legislation, existing regulatory requirements, existing assessment processes. Yes, there are amendments and modifications to those processes, but it is not considered that those changes are breaching FLPs; they are amending the processes.

Mr MADDEN: Thanks for clarifying that. I have no other questions.

Mr KATTER: I have a bit of a general question. A lot of the discussion we have had today and from yourselves seems to be focused on the activity on the frontend of development—that is, getting it right with approvals et cetera. I have had some experience of this at the backend—where a conflict is identified and there is a dispute. That is the point where a lot of legislation seems to be dysfunctional. I think there is always an implied imbalance in power, whether it is done deliberately or not, from the larger mining company to the landholder. They are facing that process or that activity and often they will back out of it because they think it is a difficult course. There is always, in my opinion, that imbalance that needs to be addressed. Is there an acknowledgement in what you have tried to set out here with these changes that that is an issue that needs to be addressed?

Mr Robson: You mention the backend of the process—and I want to make sure I understand your question. We have discussed today a lot of issues around the assessment processes, but there are provisions in this bill—

Mr KATTER: It is if the mine goes ahead and they discover they have disrupted the overland flow or their bores have all gone. We have talked about the make-good and those sorts of things, but they have hit a point—and you might have addressed this earlier—where they are facing a $500,000 court battle against a mining company. I am sure the mining company do not want to spend the money either, but obviously there is going to be a bias in one court in most of the cases because you have the landholder versus the mining company.

I think that has been a consistent theme with a lot of this legislation that has come through the parliament. That seems to be a problem on the backend of all this activity—that is, you can do all of your planning, approvals and everything right at the front, but on the other side you have these adverse outcomes in some cases. I think one consistency there is that often there is an imbalance when they are confronting a large court case or whatever. How is that addressed through this?

Mr Robson: Where this bill is relevant to your question is with respect to those make-good provisions in chapter 3 of the Water Act. To be clear, they are with respect to groundwater, because I think you mentioned both groundwater and overland flow in your question. To be clear, it is only with respect to groundwater that these provisions have an effect.

In terms of the negotiation between landholders and the resource company, the bill proposes to provide some additional support or rights to the landholders in that negotiation process for the make-good arrangements. You have heard already about the arrangements for hydrogeological costs to be included, also for alternative dispute resolution processes. They are some of the means in which the bill has proposals that would assist landholders through those negotiations. There are some further details. I think that is the type of information you are hoping to draw out.

Mr KATTER: That is with my understanding, so you have answered as best you could relevant to this.

Mr Robson: Yes, I have been specific to the bill itself. I appreciate that your question is drawing on your broader experience of the range of issues between landholders and resource companies, but the focus of this bill, with respect to that matter, would be the changes to chapter 3 of the Water Act and the make-good arrangements.

CHAIR: Thank you very much. I thank all of the officers who have appeared today. You have given very informative answers to our questions. I want to thank the people sitting in the audience today for your behaviour. It is always good to hear both sides of the story and have no sniggering in the audience, so I do thank you very much for your cooperation. I declare this meeting of the Agriculture and Environment Committee now closed.

Committee adjourned at 1.36 pm