

Water Legislation Amendment Bill 2015

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable Anthony Lynham MP, Minister for Natural Resources and Mines

Title of the Bill

The short title of the Bill is the *Water Legislation Amendment Bill 2015*.

Objectives of the Amendments

The objectives of the amendments are to:

- ensure certainty for existing operating mines in current regulated underground water areas of their past and continued taking of or interfering with associated water ('underground water taken as an unavoidable consequence of carrying out mining activities, such as dewatering'); and
- correct minor errors and oversights.

An operational policy was in place within the Department of Natural Resources and Mines, and its various forms, between 2003 and 2012 that provided guidance to water licensing officers in providing exemptions from water licensing requirements to mining projects for operational works for dewatering where they were considered to have little or no impact. For example, the mines were expected to take small volumes, or to take poor quality water unsuitable for use in irrigation or water supply, or the mines were in locations where there were no existing water users. As a result, the department chose not to proceed with licensing these mining operations. This administrative approach was adopted to minimise the regulatory impact on both mining operators and the regulator where it was deemed appropriate to do so.

The operating policy was not consistent with the provisions of the *Water Act 2000*, and therefore not was not lawful. As a result a number of existing mining operations have been taking or interfering with associated water for many years without the appropriate water authorisations. Companies that owned these existing operating mines have made significant investment decisions on an assumption that their operations comply

with all regulatory requirements and there are significant communities that derive economic and employment benefits from these mines.

The objective of the proposed amendment, to ensure the certainty of the past and ongoing operations of these existing mines, is to correct this administrative and operational error by validating their associated water take or interference of the past and authorising that take or interference in to the future. This will ensure that the operations of the affected mines are not disadvantaged by this erroneous administrative decision.

The *Water Reform and Other Legislation Amendment Act 2014* provides new arrangements for underground water management for mining companies under chapter 3 of the *Water Act 2000*. It is not intended that these existing mines will be exempt from these new provisions, however it is intended that these new underground water management arrangements will apply to these existing operating mines in the same way as they do to other existing operating mines. This will mean the general obligation to enter a make good agreement will apply. Also, the chief executive responsible for administering chapter 3 of the *Water Act 2000* may require an underground water impact report to be prepared if potential for underground water impacts is identified in the future.

It is also intended to address minor errors and oversights in the Water Legislation Amendment Bill 2015 and the *Water Reform and Other Legislation Amendment Act 2014*, which it amends. These are errors and oversights identified since the introduction of the Bill that relate to the transition from the current water planning framework under the *Water Act 2000* into a new water planning framework under the *Water Reform and Other Legislation Amendment Act 2014*.

Achievement of the Objectives

To ensure the certainty of past and ongoing operations for existing mines operating at the time of commencement that do not hold the appropriate water authorisations, but are within regulated underground water areas the Bill proposes to:

- validate the taking or interfering with associated water in the past and authorise the continuation of that taking of or interfering with associated water in the future
- recognise the above authorisation to be an authorisation under a water licence granted under chapter 2 of the *Water Act 2000* and
- ensure that safeguards of the underground water obligations under Chapter 3 of the *Water Act* will apply to these existing operating mines following the commencement of the *Water Reform and Other Legislation Amendment Act 2014* in the same way as existing mines that hold a water licence.

A small number of errors and oversights in the .Water Legislation Amendment Bill 2015 and the *Water Reform and Other Legislation Amendment Act 2014*, which it amends, are also addressed, including:

- To correct a cross-referencing error to make it clear that a water plan amended under transitional provisions still requires approval by the Governor in Council
- To ensure a water resource plan is not renamed a water plan until such time as it is transitioned to become a water plan and

- To replace an incorrect reference to 'statutory water resource plan' with 'water plan'.

Alternative Ways of Achieving Policy Objectives

An alternative approach would be to require these mines to go through the process of obtaining a water licence. However, these existing mining operations are already generating significant employment and economic benefits without any known concerns about impacts on springs or other groundwater users. Validation and authorisation of these mines is preferred over bringing them into compliance over time, as compliance would be a highly resource intensive task that would not be commensurate with the level of risk associated with these sites.

In the future if these mines present a risk of impacts on the environment or other water users, under the proposed amendments they may still be required to prepare an underground water impact report, or enter into good agreements, under Chapter 3 of the *Water Act 2000*, as is the case for all other existing mines.

Minor changes to correct drafting errors

There are no alternative ways of achieving the policy objectives.

Estimated Cost for Government Implementation

The amendments are not expected to increase the administrative cost to government of implementing the amendments in the Bill.

Consistency with Fundamental Legislative Principles

Existing operating mines

Individual's rights and liberties: retrospectivity

This amendment potentially breaches the fundamental legislative principle that legislation should not adversely affect the rights and liberties, or impose obligations, retrospectively. The amendment will provide, in certain circumstances, that the taking of, or interfering with underground water by existing operating mines is taken to be, and to always have been, an authorisation under a water licence. This validating declaration, while it is retrospective in effect, is necessary to ensure continuity in operation for these existing projects that generate significant employment and economic benefits without any known concerns about impacts on springs or other water users. This validating declaration is considered justified because the provision does not impact the rights or adversely affect the mining operation.

Consultation

Consultation has not been undertaken as the amendments are to correct administrative and operational errors (in the case of existing operating mines) and minor corrections to water planning provisions in the Bill or *Water Reform and Other Legislation Amendment Act 2014*.

NOTES ON PROVISIONS

Amendment 1 – Clause 8 (Insertion of new ch 9, pt 9)

Clause 1 amends clause 8 of the Water Legislation Amendment Bill 2015 to replace the word ‘provision’ with ‘provisions’.

Amendment 2 – Clause 8 (Insertion of new ch 9, pt 9)

Clause 2 amends clause 8 of the Water Legislation Amendment Bill 2015, to include new section 1283 of the *Water Act 2000*. This new section ensures that existing operating mines that are currently or have been in the past taking or interfering with underground water in regulated areas that is a necessary and unavoidable consequence of carrying out mining activities (associated water), are and always have been authorised.

New section 1283 (1) outlines the mineral development licences and mining leases that the validation provisions in subsection (2) applies, which are the following existing operating mines:

- the holder of a mining lease or a mineral development licence under the *Mineral Resources Act 1989* that:
 - is taking or interfering with associated water in the area of the lease or licence; or
 - has previously taken or interfered with associated water in the area of the lease or licence;
- the holder of the lease or licence must have commenced operation of the mining lease or mineral development licence prior to the commencement of the Water Legislation Amendment Bill 2015; and
- the taking of, or interfering with, the underground water in the area of the lease or licence must be subject to a relevant limitation or alteration under a moratorium notice, water resource plan or a regulation under section 1046 of the *Water Act 2000* (this means that the mine is within an area where the taking or interfering with groundwater is regulated and would generally require a water entitlement or permit); and
- the holder of the mining lease or mineral development licence does not hold a water entitlement or permit for the taking of, or interfering with associated water for the relevant lease or licence.

‘Started Operations’ is defined so that it is clear that for the mine to have started operations, it must have been extracting a mineral on the mining tenure prior to the commencement of the provision. For a mineral development licence, this would capture operations where dewatering is undertaken for example, as part of bulk sampling. For a mining lease, the start of operations means the start of winning the mineral resource in payable quantities.

New section 1283 (2) prescribes an authorisation for associated water for these projects defined in subsection (1) that validates:

- past taking of, or interfering with, associated water, which is taken to be, and to always have been authorised under a water licence; and
- the continuation of the taking of or interfering with associated water as though they continue to hold a water licence.

To make it clear, it is not intended that this authorisation apply to a mining operation if:

- The mining lease or mineral development licence is an expansion (mining tenure A) to a mine that has commenced operations that is on a different mining lease or mineral development licence (mining tenure B); and
- The holder of mining tenure A and B holds a water entitlement or permit for the taking of associated water for mining tenure B, but not tenure A.

In effect the amendment will validate the taking of, or interfering with, associated water that has occurred prior to the commencement date of the Water Legislation Amendment Bill 2015, for which the mine did not have the appropriate authorisation. The amendment also provides that upon the commencement of the Water Legislation Amendment Bill 2015, any mine that is an existing operating mine as defined above, is 'taken to be' authorised to take or interfere with associated water, as if a water licence had been issued for the take or interference.

The authority provided to these existing mines under this provision is to be taken to be a water licence under chapter 2 of the *Water Act 2000*. The 'water licence' under this section will be continued as a water licence under the *Water Act 2000* as amended by the *Water Reform and Other Legislation Amendment Act 2014*, through the operation of transitional provision 1251 of the *Water Act 2000* which states that a licence, permit, notice or other authorisation granted or otherwise given under chapter 2 of the *Water Act 2000* is taken to continue under the corresponding provisions of the amended Act.

It is clarified that the water licence that is taken to be continued under this section attaches to the mineral development licence or mining lease. This is intended to ensure that if the mineral development licence or mining lease was to be sold or transferred to a new owner the water licence would continue to authorise the taking or interfering with associated water to ensure the mining activities are not required to cease. However, to remove any doubt, a water licence under this section that attaches to a mineral development licence would not authorise the taking or interfering with associated water on a mining lease that replaces the mineral development licence.

Recognising this authority as a water licence is intended to ensure the holder is treated as the holder of a water licence for the purpose of amendments to chapter 3 of the *Water Act 2000* and the *Mineral Resources Act 1989* by the *Water Reform and Other Legislation Amendment Act 2014* that expand the application of the underground water impact management framework to mining tenures, for example new section 334ZP of the *Mineral Resources Act 1989* and new sections 369A and 394A of the *Water Act 2000*. This is made clear by subsection (4) which provides from 6 December 2016 the provisions of chapter 3 of the *Water Act 2000* and the *Mineral Resources Act 1989* apply as though the licence was a water licence granted under chapter 2. The 6

December 2016 is the date that amendments under the *Water Reform and Other Legislation Amendment Act 2014* to chapter 3 of the *Water Act 2000* and the *Mineral Resources Act 1989* are set to commence. This ensures that these new underground water management arrangements apply to these existing mines in the same way they apply to existing mines that hold a water licence for their associated water take or interference. This includes the general obligation to make good under section 406 of the *Water Act 2000* as amended by the *Water Reform and Other Legislation Amendment Act 2014*, also these existing mines might be required to prepare underground water impact reports in the future if it is identified there may be a risk of underground water impacts to other water users or springs.

Amendment 3 – Clause 18 (Amendment of s 201 (Amendment of ch 9 (Transitional provisions and repeals)))

Clause 3 corrects an error in the *Water Reform and Other Legislation Amendment Act 2014* to make it clear that a water plan amended under transitional provisions still requires approval by the Governor in Council.

Amendment 4 – Clause 19 (Amendment of s 202 (Amendment of sch 4 (Dictionary)))

Clause 4 correct an error in the *Water Reform and Other Legislation Amendment Act 2014*, by replacing an incorrect reference to ‘statutory water resource plan’ with ‘water plan’.

Amendment 5 – (Insertion of new clause 20 (Amendment of sch 2 (Amendment of Water Resource Plans)))

Clause 5 fixes an oversight in the Bill to ensure a water resource plan is not renamed a water plan until such time as it is transitioned to become a water plan. The Bill proposes particular transitional arrangements for water resource plans for which the relevant resource operations plan has a deferred aspect. In this case the water resource plan is not taken to be a water plan. It remains a water resource plan and is to be dealt with under the unamended *Water Act 2000* until such time as either the deferred aspect is incorporated into the resource operations plan or notice is given that the resource operations plan will not be amended to include the deferred aspect. The *Water Reform and Other Legislation Amendment Act 2014* includes amendments to rename all water resource plans as water plans, however there is one plan that relates to a deferred aspect, the Water Resource (Whitsunday) Plan 2010. This amendment will ensure that this plan is not renamed a water plan until the relevant deferred aspect is dealt with.