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*Using the law to protect
our environment.*

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Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
Sent via email only: ipnrc@parliament.qld.gov.au

Dear Mr Chair and Committee,

Submissions on *Water Legislation Amendment Bill 2015*

We welcome the opportunity to provide submissions to your inquiry into the *Water Legislation Amendment Bill 2015 (WLA Bill)*.

We provide our submissions in summary **below**, along with:

- **Appendix 1** - detailed submissions; and
- **Appendix 2** - excerpted sections of the WLA Bill with suggested amendments tracked.

Overview

The WLA Bill amends the *Water Reform and Other Legislation Amendment Act 2014 (Qld) (WROLAA)*, introduced by the previous LNP government. We acknowledge the work of the Queensland government in repealing some elements of the WROLAA through this Bill.

Notably we fully support the water development option and the deregulation of water use through the designation, as provided in the WLA Bill.

However, we note that the government made pre-election commitments to repeal the WROLAA in its entirety, promising to:

*'Repeal the Newman Government's water laws which will have a detrimental effect on the Great Barrier Reef catchment systems and allow for over allocation of Queensland's precious water resources.'*¹

'The Water Reform and Other Legislation Amendment Bill 2014 takes the errors of the Murray-Darling Basin and seeks to repeat them by facilitating the over-allocation of water for large 'coordinated projects' and mines. This legislation passed while 75 per cent of Queensland was drought declared and landholders are struggling to find water. ...

¹ Australian Labor Party, *Saving the Great Barrier Reef: Labor's plan to protect a natural wonder*, January 2015, p. 2.

If elected Labor will repeal these changes and implement proper monitoring and oversight for where a water authority is also the holder of a mining tenement, in order that proper make good arrangements are available to landholders.

If water is extracted on an unsustainable basis from the Great Artesian Basin it will be lost forever. Only a Labor Government will ensure the sustainable management of our State's water resources based on the principles of ecologically sustainable development.

*By repealing this legislation a Labor Government will restore the fundamental legal right to object and say no to a nearby mining development.*²

Repealing WROLAA - the more simple, democratic approach to improve water management

By not fulfilling this commitment to repeal WROLAA in its entirety, and only partly repealing some chosen elements, the Queensland government is not fulfilling their commitment to Queenslanders. These commitments were made with good reason. WROLAA was developed with heavy input by industry, and very little to no consultation with conservation groups. Only since the new government came into power were conservation groups invited to participate in the government's stakeholder forum to discuss the water reform agenda.

The current Deputy Premier herself stated in opposition that WROLAA was a 'shameful bill', 'an utter disgrace'³ and involved 'outrageous changes' ... 'in relation to above-ground and below-ground water management'.⁴ We do not therefore understand why the government has not simply repealed the WROLAA in its entirety and commenced the review afresh of how to actually improve water management in Queensland, with adequate stakeholder consultation. What's more, by not simply repealing the WROLAA and beginning again, the government has chosen instead the complicated and confusing path of requiring the introduction of amendment bills to amend amending legislation. This approach is arguably a larger drain on resources than simply repealing WROLAA and starting again, and disenfranchises the community through the unnecessary complexity it involves.

Summary of key submissions on the WLA Bill

Our submissions on the WLA Bill can be summarised as follows:

1. **The WLA Bill must be amended to include the repeal of the statutory right to associated water for the resource industry.** This was an LNP policy provided in the WROLAA which was not adequately considered or consulted on and does not lead to better regulation of the resource industries water use – it simply cuts out community appeal rights provided currently through the water licence framework. We do not need to lose community rights to gain a better water management framework for the resource industry.

² Letter Tim Mulherin (former) MP to Lock the Gate Alliance, dated 22 January 2015.

³ Queensland Parliament Legislative Assembly Hansard, 25 November 2014, p. 3938.

⁴ Queensland Parliament Legislative Assembly Hansard, 28 October 2014, p. 3593.

2. Significant amendments are necessary to the purpose of the *Water Act 2000* (Qld) (**Water Act**) provided in the WLA Bill to effectively implement the principles of ecologically sustainable development (**ESD**) as an integral part of the Water Act, and not simply such that it applies to one chapter of the Act. A section to require that decision makers advance the purpose of the Act is also necessary to bring meaningful effect to the purpose.
3. Amendments are suggested to the cumulative management area (**CMA**) framework of the Water Act, to clarify that areas that are not adjacent but which still have cumulative impacts can be declared to be CMAs, and to remove the administrative burden of providing for tenures to be dissected in the declaration of CMAs.

We would be happy to discuss or clarify our submissions as required. We would appreciate the opportunity to appear before the Committee to discuss and provide further information about the matters we have raised in this submission.

Yours faithfully

Environmental Defenders Office (Qld) Inc



Revel Pointon

Solicitor

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Appendix 1 - Detailed submissions

1. Statutory right to associated water for resource industry is unfair and must also be repealed from WROLAA

We do not support the statutory right to associated water being provided to mines. This is unfair to landholders and all other stakeholders who are not in the resource industry. Farmers are required to obtain water licences where their activities trigger the Water Act's application, why shouldn't the resource industry, who are significantly large users of water in Queensland, be subject to the same rules?

We agree with the need to improve the water licencing framework in the Water Act, as there are numerous deficiencies with this framework currently. However, the provision of a statutory right to the resource industry is not the ideal means of rectifying these deficiencies and instead is an attack on the community's existing right to have their concerns around water impacts heard by an independent court. Further, the decision of the current Queensland Government to allow the statutory right to water for mines in WROLAA to commence is incongruent with their commitments to community involvement in decision making, to integrity and accountability in governance⁵ and to '*restore the fundamental legal right to object and say no to a nearby mining development*'.

The public objection and appeal right to water licences for mines is an important right, separate from objection rights to environmental authority (EA) and mining lease (ML). It provides the opportunity to ensure proper independent scrutiny of water impacts posed by mines, which are often significant, with the ability to gain better conditions. The government's assessment is no replacement for the ability of a landholder or community group to make sure their concerns are adequately considered by a completely independent Land Court not subject to resource and political influence. Having this process sit separately from the Land Court objection decision on the EA and ML ensures that the best available assessment is considered by the public and assessors in the water licence application under scrutiny.

Further, the water licence framework ensures full scrutiny of impacts, including community and court assessment and determination, prior to the take of water commencing. Under WROLAA as currently proposed, the resource industry can commence taking water *prior* to the assessment documentation required under chapter 3 being assessed and approved.

We are pleased to see the government has prevented the automatic commencement of this proposed statutory right, which would have occurred in December 2015. This Government must learn from the mistakes of the previous government and ensure it makes up for this lack of consultation by providing sufficient opportunity to meaningfully work through improvements to the management of resource water use.

This delay allows the opportunity for the government to complete a review of the operation of chapter 3 in the Surat Basin cumulative management area, to assess the effectiveness of the operation of this chapter in protecting water resources and the rights of other water users.

⁵ Letter Hon Premier Anastacia Palaszczuk to Hon Peter Wellington MP, dated 5 February 2015.

This would be a sensible part of developing a considered plan for how to best improve the management of resource water use.

The delay is also useful in providing time to properly assess the appropriateness of the petroleum and gas industry being provided with the statutory right to all water needed for their operations; which was provided with limited scrutiny by other stakeholders, particularly the conservation sector. The petroleum, gas and mining industries pose uncertain impacts to the environment and other stakeholders' rights, particularly due to impacts to groundwater. It is essential that the utmost lengths are pursued to ensure that resource proposals are subject to tough scrutiny and assessment. The objection and appeal process to the Land Court is an essential part of this scrutiny and ensures the best possible decisions are made to protect our water resources.

We encourage the Parliamentary Committee to recommend that the Queensland government repeal the statutory right from the WROLAA and undertake further consultation on how to meaningfully improve the water licence framework, without sacrificing community appeal rights.

2. Application of the principles of ecologically sustainable development should be an essential part of purpose for the whole of the Water Act

The purpose of an act, along with a requirement to advance the purpose, are essential as these provisions set the framework for how the rest of the act is to be interpreted and applied.⁶

While we commend the government for reinstating the principles of ESD into the Water Act through the WLA Bill, it has only been reinstated for chapter 2. The government claims to have provided an 'overarching purpose' to the Water Act, however the effect of the drafting of the new purpose is such that it is effectively no different than the Water Act now (prior to WROLAA proposed amendments). Currently the principles of ESD are only applied to chapter 2, being the water allocation framework. The WLA Bill provides a purpose to the Water Act but in a way that still only applies the principles of ESD to chapter 2 again.

Statements have been made by Department officials that ESD principles are only applied to the water allocation framework because the principles of ESD are not relevant to the rest of the Act. This argument was made particularly with reference to the management of underground water; as far as we understand because the impacts are uncertain, therefore ESD principles could not apply and an impact management framework is more suitable. This is incomprehensible, since these activities are assessed under the *Environmental Protection Act 1994* (Qld) in accordance with the principles of ESD. It is further a fundamental misunderstanding of the principles of ESD to consider that the rest of the Water Act is not appropriate for the application of ESD principles.

Chapter 3 of the Water Act provides for numerous decisions to which it would be appropriate to apply the principles of ESD. For example, chapter 3 provides a requirement for the assessment and approval of an Underground Water Impact Report and a Baseline Assessment

⁶ *Acts Interpretation Act 1954* (Qld) section 14A(1) provides '[i]n the interpretation of a provision of an Act, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation'.

Plan, both of which should be assessed with consideration of the precautionary principle and intergenerational equity. The government is seemingly giving favourable treatment to the resource industry by not making the resource water management framework subject to the principles of ESD, but making the framework for farmers and other water users subject to these principles.

The purpose of ESD is to provide environmental and community protections where impacts are uncertain, including through applying the precautionary principle and principles of intergenerational equity. It is perfectly appropriate that ESD principles should be utilised throughout the Water Act to guard against irreversible impacts where insufficient scientific certainty is available. The arguments provided by the Department to date are tantamount to planning law drafters saying that the principles of ESD are not relevant to some planning decisions because we don't know what the impacts of some development will be so we should just develop it and see what happens. This would be unacceptable in any other framework – why is it acceptable with management of our water resources?

Our groundwater resources are precious, imperative to the livelihood of many rural landholders and businesses, and not well understood. Impacts to groundwater bodies are not easily remedied, and in the case of mining impacts are sometimes impossible to remediate; once a groundwater aquifer is dug up it cannot be replaced. Due to the slow rate of groundwater flow velocities, unforeseen impacts can take tens to hundreds of years to become apparent. All proposed water impacts, and particularly proposed groundwater impacts, must be subject to the strongest of protections to safeguard the quantity and quality of water.

We suggest the Parliamentary Committee recommend the following (as detailed in suggested amendments in Appendix 2):

- **that the principles of ESD be made applicable to all of the Water Act, including chapter 3;**
- **that the further amendments be made to the purpose, as recommended in Appendix 2, to improve the strength of the purpose. These further suggestions are mainly taken from the purpose currently provided in chapter 2 of the Water Act and therefore should not be considered to be controversial; and**
- **that a section be required to be inserted providing that decisions made under the Act advance the purpose of the Act. This will assist in giving effect to this purpose and to ensure that decision makers can be held accountable for not implementing the purpose in their decisions.**

Further, to ensure that the principles of ESD are effectively applied in the Water Act, we support the submissions of WWF in encouraging the Parliamentary Committee to recommend the reintroduction of provisions in the Water Act, through the WLA Bill, providing for:

- Riverine Protection Permits (**RPPs**) to be required where landholders seek to destroy riparian vegetation, which can cause adverse impacts to downstream water users and environmental values;
- Land and Water Management Plans (**LWMPs**) to be required where water entitlement holder activities pose a risk of land and water degradation occurring from using water to irrigate crops; and
- licencing requirements for mining proponents to diver a watercourse, which can also cause adverse impacts to downstream water users and environmental values.

These suggestions are provided to undo the damaging legislative reform provided by the previous Queensland government even prior to WROLAA, which weakened water regulation in Queensland. The government has included, in the proposed purpose for the Water Act, a requirement to ‘reverse degradation that has occurred’ to ecosystems.⁷ LWMPs, RPPs and LWMPs are particularly useful tools for assisting in ‘reversing degradation’ that has occurred to ecosystems, as required by the purpose.

We suggest the Parliamentary Committee recommend the reinstatement of the following requirements in the *Water Act 2000*:

- **requirement for landholders to obtain a Riverine Protection Permit (RPP) to destroy riparian vegetation;**
- **requirement for water entitlement holders to prepare and implement Land and Water Management Plans; and**
- **requirement for proponents of mining development projects to obtain a licence under the Act to divert watercourses.**

3. Amendments to the cumulative management area designation to clarify application

The WLA Bill proposes to amend section 73 of the Water Act, which provides for the declaration of CMAs. We suggest that the WLA Bill be amended, as provided in Appendix 2, to remove the ability to provide for declaration of part of a resource tenure. This will create more administration and uncertainty for all stakeholders, with minor benefit. If this is provided for, clear criteria will be needed to guide how decision makers should determine whether a part of a tenure is not necessary to be included in the CMA.

We suggest the Parliamentary Committee recommend the amendments to clause 16 of the WLA Bill be made as provided in Appendix B for the following:

- **to remove the ability to provide for declaration of only part of a tenure; and**
- **to clarify that, where cumulative impacts are possible from sites which are not directly adjacent to each other, a CMA can still be declared over the two sites to ensure that cumulative impacts of non-adjacent sites can still be managed under this framework.**

⁷ Water Legislation Amendment Bill 2015, clause 12, amending Water Reform and Other Legislation Amendment Act 2014, section 59 (replacement of *Water Act 2000* section 2) section 2(2)(c).

Appendix 2 – proposed amendments to the WLA Bill

Clause 12 –

Amendment of s 59 (Replacement of s 2 (Commencement)) Section 59, inserted section 2—

omit, insert—

2 Purposes of Act and their achievement

(1) The main purposes of this Act are to provide a framework which provides for the ecologically sustainable management of ~~for~~ the following—

- (a) ~~the sustainable management of~~ Queensland's water resources and quarry material by establishing a system for—
 - (i) the planning, allocation and use of water; and
 - (ii) the allocation of quarry material and riverine protection;
- (b) the sustainable and secure water supply and demand management for the south-east Queensland region and other designated regions;
- (c) the ~~management of~~ impacts on underground water caused by the exercise of underground water rights by the resource sector, including mitigating and avoiding impacts;
- (d) the effective operation of water authorities.

(2) For the purposes of this Act: subsection (1)(a), ecologically sustainable management ~~is~~ management that—

- (a) ~~incorporates~~ applies the principles of ecologically sustainable development; and
- (b) allows for the allocation and use of water resources and quarry material for the economic, physical and social wellbeing of the people of Queensland, within limits that can be sustained indefinitely; and
- (c) sustains or improves the health of ecosystems, water quality, water-dependent ecological processes and biological diversity associated with watercourses, lakes, springs, aquifers and other natural water systems, including, where practicable, reversing degradation that has occurred; and
- (d) recognises the interests of Aboriginal people and Torres Strait Islanders and their cultural connection with water resources; and
- (e) enables water resources and quarry material to be obtained through fair, transparent and orderly processes to support the economic development of Queensland; and
- (f) builds confidence regarding the availability, security and value of water entitlements and other authorisations; and

(g) promotes the *efficient use of water* through—

- (i) the establishment and operation of water markets; or
- (ii) the initial allocation of water; or
- (iii) the regulation of water use if there is a risk of land or water quality and or marine degradation; or
- (iv) increasing community understanding of the need to use and manage water in a sustainable way; and

(h) facilitates and encourages the community ~~to take~~ taking an active part in planning for the management and allocation of water, including ensuring adequate consultation with all relevant stakeholders, including appropriate representatives of Aboriginal and Torres Strait Islander interests.

(i) integrates, as far as practicable, the administration of this Act and other legislation dealing with natural resources.

(3) For subsection (2)(g), the *efficient use of water*—

(a) incorporates water demand management measures that achieve permanent and reliable reductions in the demand for water; and

(b) promotes ~~and~~ water conservation measures and appropriate water quality objectives for intended use of water; ~~or~~ and

(~~c~~) promotes water recycling, including, for example, water reuse within a particular enterprise to gain the maximum benefit from available supply; and

(d) considers the volume and quality of water required for particular circumstances, including releases ~~in~~ to the environment from water storage infrastructure to ensure that flows and water quality required to support aquatic species, freshwater ecosystems, estuaries and marine receiving waters are maintained.

Insert –

2A Advancing the Act's purpose

If, under the Act, a function or power is conferred on an entity, the entity must perform the function or exercise the power in a way that advances the Act's purpose

Clause 16 –

Amendment of s 73 (Amendment of s 365 (Declaring cumulative management areas))

Section 73(3), inserted section 365(~~3B~~)-

~~Omit, i~~Insert –

(6) To remove any doubt, a cumulative management area may be declared over areas which are not immediately adjacent to each other but where cumulative effects are demonstrated to be possible.