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Research Director
Agriculture and Environment Committee
Parliament House
BRISBANE QLD 4000
Sent via email to: aec@parliament.qld.gov.au

Dear Mr Chair and Committee Members

Re: Submission to the Agriculture and Environment Committee

Please accept this submission on the *Environment Protection (Underground Water Management) and Other Legislation Amendment Bill 2016* (EPOLA) from Lock the Gate Alliance.

We would welcome an opportunity to present to the Committee in relation to the Bill.

We support the EPOLA Bill if certain amendments are made to it, as outlined below.

An amended EPOLA Bill would, together with the Water Legislation Amendment Bill 2015, result in improved protection of groundwater resources from mining, when compared with laws introduced by the Newman Government, specifically the *Water Reform and Other Legislation Amendment Act 2014* (WROLAA).

However, we note that the regulatory regime created overall is still far weaker than it should be, and will still provide a statutory right to take unlimited associated groundwater for all new mines in the future and will markedly reduce community objection rights in relation to that take of water.

Our preferred regulatory regime is one that provides a strengthened water licensing scheme, which subjects the water use of mining and CSG companies to strict, defined limits and maintains the Land Court as the final decision-maker.

Basically, the current system of managing groundwater for mining and CSG in Qld has been specifically designed to allow unsustainable take and to enable the mining industry to evade the constraints on groundwater impacts that apply to agricultural water users.

Despite the improvements contained in the two Bills currently before the House, this is ultimately still a system that is designed to allow the resource industry to dewater beneficial aquifers and which entrenches a weak 'suck it and see' mentality to groundwater risks.

The end result of this system will inevitably be serious harm to other water users and agriculture, and long-term damage to the environment.

Positive Elements of the Bill

This Bill addresses to a certain extent two of the worst failings of the WROLAA:

1. The removal of water licencing requirements for associated water without any concomitant strengthening of upfront groundwater assessment processes.
2. The failure to create any transitional provisions to address mines that were approved on the understanding that the water licensing process would follow, creating a loophole for mining projects with heavy groundwater impacts like Acland and Carmichael coal mines.

This Bill seeks to rectify those two failings. In particular, it explicitly strengthens the initial groundwater assessment requirements for mines under the *Environmental Protection Act 1994*, which is an important step.

The Bill also addresses the loophole WROLAA created for 'transitional' mines, by requiring that such mines must still obtain an 'associated water licence'. Although we note this has been described by the QRC as adding an 'additional regulatory burden', it does no such thing. These mines currently require a water licence, and that requirement would have been summarily removed if Part 4 WROLAA were allowed to automatically commence on the 6th December without amendment. The associated water licence simply preserves the current regulatory framework for those mines that are caught in the transition. Providing such transitional arrangements is a standard legislative mechanism.

However, as part of the proposed associated water licence scheme, the criteria the decision-maker must consider when approving a water licence have been weakened. Specifically, the decision-maker is no longer required to consider Ecologically Sustainable Development principles. Therefore, we are seeking amendments to address this matter, which are described in the following section.

Two other positive measures that the EPOLA Bill introduces are:

1) Powers to amend Environmental Authorities in response to groundwater impacts
2) Improvements to the make good agreement framework to the benefit of landholders

The make good agreement framework as it currently operates for CSG mining has been very difficult for farmers. In particular, farmers who have experienced major problems with their bores due to excessive gassiness due to depressurisation of coal seam aquifers by CSG companies, have had no rights to require CSG companies to make good.

In fact, the requirement to make good has been limited to bore water drawdown of a certain depth, and there has been no recourse for other impacts. It is also a very expensive process, with landholders often incurring costs of acquiring technical advice. Landholders are having to deal with all these matters whilst dealing with negative water impacts from CSG and all the stress and worry that brings.

The changes contained in the Bill to require make good agreements where CSG or mining is 'likely' to have been the cause is a very important step, as is the specific requirement to make good in relation to 'gassy' bores. The requirement that the resource holder must pay for hydrogeological assessments, and alternative dispute resolution, is a crucial step to reduce some of the pressure on landholders.

However, confining the technical issues covered by resource holders to 'hydrogeology', is likely to artificially limit the costs that landholders can recover, particularly when bore drilling experts and hydrologists are also likely to be required, depending on the nature of the make good agreement. There are additional amendments that could be made to further improve the make good agreement framework to try to reduce further the severe negative impacts on landholders.

Amendments Sought

The EPOLA Bill could be substantially improved with certain amendments.

The two most crucial amendments amendment that we are seeking are:

1) Require 'associated water licences' to be assessed against ESD principles

An amendment to require any grant of an 'associated water licence' to be assessed against principles of Ecologically Sustainable Development. The removal of ESD from the principles considered by decision-makers when granting a water licence as proposed by EPOLA is a severe weakening of the licensing process. It means that there are no established legal principles against which to assess a decision, and it means that proper consideration of the precautionary principle does not apply.

The precautionary principle is a crucial matter for consideration in relation to the groundwater impacts of mining, where there is so much uncertainty in play. The level of uncertainty in relation to groundwater impacts of the Galilee Basin mines, for example, is substantial. In such a situation, proper application of the precautionary principle is crucial, so that the lack of certainty is not used as a means to cause irreparable impacts.

In fact, due to the uncertainty about the groundwater impacts of the Alpha coal mine, the Land Court recommended that either the mining lease be rejected, or that it be granted '*subject to the condition that approval be subject to Hancock first obtaining licences to take,*

use and interfere with water under s 206(1)(a) and (b) of the Water Act such that all concerns pursuant to the precautionary principle are resolved".[1]

However, the EPOLA provisions in relation to decision-making on associated water licences means that the precautionary principle will NOT be considered. Therefore, it effectively ignores and overturns an important recommendation of the Land Court in relation to the Alpha coal mine, which has not yet obtained water licences. Landholders who challenged the Alpha coal mine rightly expected that the recommendations of the Land Court on the matter would be met, and it is a very poor outcome for them to have it reversed in this manner.

We consider this a very serious matter. Given that the combined import of the WLA, EPOLA and WROLAA means that in future the Land Court will ONLY have a recommendation role in relation to Environmental Authorities, and will no longer have a decision-making role in relation to water licences, it is very disturbing to see a specific recommendation of the Court overturned in this manner. It does not bode well for the integrity of environmental law in Qld.

It is crucial to the basic administration of justice and a fair consideration of the risks posed to landholders and agricultural water users, that ESD principles and the precautionary principle must be considered by decision makers in relation to associated water licences.

2) Expand the matters paid for by resource companies in relation to make good agreements to ensure that they must cover any advice from experts experienced in bore drilling, hydrology or hydrogeology.

The intent of the measure contained in EPOLA to require resource companies to pay for hydrogeology is a good one, but we are concerned that it is too specific and will miss other types of advice that landholders are likely to require in negotiating make agreements.

Therefore, we propose that it should be expanded to cover 'advice from experts experienced in bore drilling, hydrology or hydrogeology'.

Other amendments that should also be considered include:

a) Introduction of an independent Resources/Make Good Commissioner and a Code of Conduct for resource companies:

The current dispute mechanisms available to landholders are limited and are not sufficient to resolve issues simply in a satisfactory manner, and there are insufficient powers and requirements to hold resource companies to account. Therefore, an independent Commissioner is needed who has the power to adjudicate and resolve disputes between landholders and resource companies. Furthermore, a clear and binding Code of Conduct to require resource companies to operate in good faith and abide by a set of requirements in negotiating make good agreements would also improve the situation for landholders.

[1] http://www.austlii.edu.au/au/cases/qld/QLC/2014/12.html

b) Require resource companies to cover costs of Land Court appeals on make good:

Currently, the cost that a landholder might incur in mounting a challenge to the Land Court in relation to a Make Good agreement must be borne by the landholder. In other jurisdictions, like NSW, the costs of Land and Environment Court challenges in relation to access will be borne in the future by the proponent (as a result of recent legislative changes[2]).

Therefore, amendments are need to require tenure holders to cover all costs the landholder might incur in pursuing a challenge to the Land Court.

c) Implement a set of enforceable guidelines for Make Good Agreements:

Currently there are no minimum standards to provide landholders with a baseline from which to commence negotiations with tenure holders in relation to make good agreements. This leaves landholders very vulnerable to pressure and manipulation by tenure holders and their lawyers.

Therefore, **t**he Act should be amended to require the development of statutory, enforceable Make Good Agreement Guidelines, which set minimum standards and requirements in relation to matters such as expert hydrological assessments, trigger values for action, monitoring, and compensation.

d) Protect landholders against risk of tenure holder bankruptcy on make goods:

Currently there are no provisions to protect landholders in the event of bankruptcy by mining companies. This is particularly problematic, for example, for landholders who may have agreements which require mining companies to truck in water during drought periods or the like.

Therefore, the Act should be amended to introduce a set of upfront cash bonds which must be paid by companies to ensure that landholders are protected in perpetuity.

e) Require proper upfront assessment of cumulative impacts during the EIS phase:

One of the most notable failures of the current regime is the failure to properly consider the cumulative impacts of proposed mining and gas projects on water resources early in the assessment process.

Therefore, the Act should be amended to include a specific requirement to consider the cumulative impacts of all other proposed or likely developments in the region on groundwater resources, during the EIS phase.

This will include cumulative impact assessment work by the developer, and by the relevant agency. This should not be limited to cumulative management areas declared under the

[2] Note that these changes have been passed by the NSW Parliament but not yet proclaimed.

Water Act, but should apply to all groundwater impact assessments to ensure that cumulative impacts are considered *prior* to project approval.

f) Require completion and approval of UWIR prior to approval of a project:

There is no requirement for Underground Water Impact Reports to be prepared prior to approval of a project. This means that the full impacts of a project on other water users, and specifically on groundwater bores and resources, has not been addressed prior to a project getting a green light.

Therefore, the Bill should be amended to require that Underground Water Impact Reports are completed and approved as part of the Environmental Authority assessment process prior to approval of a project

There is concern that adaptive management will be used as a surrogate for proper assessment by EHP. This directly relates to the quality of the UWIR development with adaptive management as the intended mechanism for managing impacts. Proper and independent interrogation of the UWIR is needed at the stage of EA assessment, to ensure reporting veracity and to fully assess potential impacts and to avoid or mitigate these as far as possible prior to project approval and commencement or water take or interference.

g) Provide a decision-making power to the Land Court:

The commencement of Part 4 of WROLAA will mean the loss of rights of Queenslanders concerned with proposed groundwater impacts , including those whose water resources will be affected or lost due to mining operations, to challenge the grant of a water licence, and will thus diminish the objection rights currently available to them. The Qld Labor Government come to power on a promise to restore objection rights, not to weaken them. However, where the Land Court currently has a determinative power in relation to water licences, it will be reduced to a recommendatory power only on Environmental Authorities.

Therefore, the Bill should be amended to adjust the assessment process to provide a power to appeal to the Land Court after the government makes their decision on the environmental authority, with the Land Court to hold the power to make a determinative decision, rather than just recommendations. This is currently the process for the assessment of site specific environmental authorities for petroleum leases, and should also apply to mines – for consistency, natural justice and due process.

Yours sincerely,

Carmel Flint