

7 October 2016

Research Director
Agriculture and Environment Committee
Parliament House
Sent via email only: aec@parliament.qld.gov.au

Dear Chair and Committee Members

Submission to Committee on Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016

Thank you for the opportunity to make this submission to your inquiry into the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016 ("EP(UWM)OLA Bill").

The Australian Lawyers Alliance ("ALA") is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

Summary

ALA supports the passing of the EP(UWM)OLA Bill, particularly the provisions in the Bill which introduce the 'associated water licence' under the *Water Act 200* (Qld) and therefore temporarily preserve some legal rights that will be lost through the introduction of a statutory right to associated water for mining companies.

However, ALA raises concern that the 'associated water licence' does not reinstate the full legal rights of submission and appeal held by individuals prior to the statutory right to associated water commencing. The 'associated water licence' is subject to a weaker assessment than what is currently required under the Water Act for other water licences as it will not be assessed with regard to the principles of ecologically sustainable development ("ESD").

Background

Our key concern with respect to the statutory right to associated water is that the statutory right removes community submission and appeal rights that currently exist for mining water licences for associated water. Submission No. 24
Received 07 October 2016

Currently, mines are generally required to obtain a water licence under the *Water Act 2000* (Qld) ("**Water Act**") for taking or interfering with groundwater during the course of, or resulting from, the carrying out of an authorised activity for the licence or lease ("associated water"). This licencing process is open to public notification, review and appeal rights for community members concerned with the impacts posed by the water licence application.

When the statutory right to associated water commences, which we understand will occur by 7 December 2016, then mines will no longer require a licence, and community public submission and appeal rights with respect to this water use will be removed. ALA do not support the removal of public objection and appeal rights.

Ensuring sustainable water use is vital in the drought prone State of Queensland, where many landholders and businesses are dependent on groundwater to survive. Taking away the check and balance on decision making provided through community submission and appeal rights is unfair to stakeholders dependent on groundwater. Community court appeal rights provide protections for the assessment and approval process against corruption, bias, and departmental resource fluctuations, as well as providing the community with some power in having their concerns heard in the decision making process.

Submissions in detail

ALA recognise that the government is taking positive action through the introduction of the EP(UWM)OLA Bill to address issues that will arise on the commencement of the statutory right, being through:

- strengthening the assessment of groundwater impacts under the environmental authority assessment in the *Environmental Protection Act 1994* (Qld) ("**EP Act**") – introduced to ensure adequate assessment of groundwater impacts once assessment under the Water Act is no longer necessary due to the statutory right; and
- providing for an 'associated water licence' which will be required to be applied for by those mines that won't have the benefit of the strengthened groundwater impact assessment under the EP Act due to having already applied for their EA or undertaken an environmental impact statement under a coordinated project assessment ("**advanced mining projects**").

ALA support that the associated water licence will restore the legal rights of anyone concerned with an advanced mining project so that they may provide submissions to the decision maker on the licence, and appeal any decision on the licence to the Land Court. These are rights that many stakeholders may have been relying on when the advanced mining projects were undergoing assessment. It is therefore appropriate that these rights are restored.

ALA recommends that the associated water licence should be subject to assessment against the principles of ESD, as required for water licences prior to the commencement of this act. These principles include elements such as intergenerational equity, and the precautionary principle which in the Water Act is "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".¹ These principles underpin most other environmental legislation in Queensland and protect landholders dependent on groundwater. They are critical to decision making relevant to potential environmental impacts.

Any landholders, business owners, or conservation focused groups or any other stakeholders with concerns around an advanced mining project, would have considered an advanced mining project with an expectation in mind that these mines would need water licences under the current water licence provisions. These stakeholders would therefore have an expectation that their public submission and appeal rights would be available with respect to a water licence assessment which had regard to principles of ESD.

Also, while the environmental authority assessment process provides for objectors to refer their objection to the Land Court, the Land Court only makes a recommendation in this instance. This is compared to the judicial role played by the Land Court for water licence and associated water licence decisions, in which the Land Court undertakes a merit review of the decision post-approval and has the final determinative power on the decision if it is appealed. The environmental authority assessment process is therefore not an adequate replacement of the legal rights held under the Water Act for water licences, nor for associated water licences.

Further, the assessors considering any potential environmental impacts proposed in the applications for the advanced mining projects would have assessed the advanced mining projects with an expectation that these projects would be required to obtain water licences under the current provisions of the Water Act. Their expectation would be that the assessment would be on the current water licence provisions subject to ESD principles, not a weaker version of the licence assessment process. This is particularly true for the assessment of groundwater impacts under the EP Act environmental authority assessment process. This may have affected the degree of attention they paid to proposed groundwater impacts under the environmental authority assessment.

Transitional provisions typically provide for the law as it is in effect to apply for a transitional period, to even out any issues or injustices caused by a change of regulation. The transitional provisions which provide for the associated water licence in fact create a new law which, while more beneficial than if it were not in effect, do not fully provide for injustices created through the statutory right.

ALA therefore supports that the Bill should be passed, to provide for the reinstatement of public submission and appeal rights to advanced mining projects through the provision of the

¹ *Water Act 2000* (Qld), s11(b).

associated water licence, however that this associated water licence be subject to assessment with consideration of the principles of ESD.

Yours faithfully

Submission No. 24
Received 07 October 2016

A handwritten signature in dark ink, reading "Michelle James". The signature is written in a cursive style with a large, sweeping initial 'M'.

Michelle James
Queensland President
Australian Lawyers Alliance

Encl.