



Reply to:

Our ref: FAME Underground Water2016

10 October 2016

Research Director  
Agriculture and Environment Committee  
Parliament House  
BRISBANE QLD 4000

By email only: [acc@parliament.qld.gov.au](mailto:acc@parliament.qld.gov.au)

Dear Research Director

**SUBMISSION: Environmental Protection (Underground Water Management) and  
Other Legislation Amendment Bill 2016**

We refer to the invitation for submissions in response to the Agriculture and Environment Committee's ("the AEC") inquiry into the *Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016* ("the Bill").

The North Queensland Land Council ("NQLC") is a Native Title Representative Body and we make this submission on behalf of ourselves and on behalf of our constituents, for whom the level and degrees of harm caused to the environmental and cultural values by interference with surface and underground waters is of grave concern.

In this respect NQLC supports and encourages proposals to enhance environmental protections, however, absent consideration to Indigenous values we can not support the Bill in its current form.

We acknowledge that a series of consultation sessions<sup>1</sup> were conducted between March and September 2016 with stakeholder groups representing the pastoralists, resource industry, environmental bodies and Local Government.

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<sup>1</sup> First reading of the *Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016*, Hon S.J Miles, 13 September 2016.

However, there has been no consultation with native title holders as affected stakeholders who are expressly recognised as an owner of land in the *Environmental Protection Act 1994* (Qld) (“the EPA”) at Schedule 4, relevantly:

The owner of land is—

- for Aboriginal land under the *Aboriginal Land Act 1991* (Qld)—the persons to whom the land has been transferred or granted; or
- for land for which there is a native title holder under the *Native Title Act 1993* (Cth)—each registered native title party in relation to the land.

Surface and underground water sources and supplies of all kinds, invariably have significant environmental, cultural and spiritual meaning to native title holders – beyond the ‘mere’ loss or impairment of a water source.

For example, if surface water or a spring dries up due to excessive use of underground water that can be considered as an environmental matter but may also impact on native title rights and interests in so far as the ability to gather from that place natural vegetation and may restrict hunting as animals abandon coming to that spot to drink meaning there will be none to hunt in that locality. Further, water sources are often linked to dreaming stories – vital cultural stories as to how certain things were created, such as flora and fauna, and its connectivity to the surrounding environment and features. As a crucial form of sustenance and survival, water sources are also typically associated with rituals associated with customary practices – for example, birthing places.

Without the benefit of consulting with native title holders, the Bill in its current drafting fails to recognise any of these environmental, cultural or spiritual rights, obligations and concerns of native title parties.

The substance of our comments and submissions below are specifically directed to redressing the cultural imbalance of the current drafting.

## **1. PROPOSED AMENDMENTS to the ENVIRONMENTAL PROTECTION ACT 1994**

### **Section 296A(2) – Requirements for Site-specific Applications**

The overall intent of the insertion of the requirements for site specific applications is welcome, nevertheless, it does not recognise the inherent connection between impacts on environmental values and consequent impacts on the native title rights and interests of the affected holding group.

**SUBMISSION:** NQLC submits that Aboriginal cultural heritage and native title rights and interests of native title holders could be addressed by the following insertions:

- following current paragraph (b) insert - “evidence that the areas in which underground water rights are proposed to be exercised are not areas containing a significant Aboriginal site and/or is not a significant Aboriginal area” [as defined in the *Aboriginal Cultural Heritage Act 2003* (Qld)]; and
- following current paragraph (d) insert - “assessment of the impact on native title rights and interests affected by the impacts on the environmental values by the exercise of underground water rights”; and,
- following current paragraph (e) insert - “assessment of the impact on native title rights and interests affected by the impacts on the quality of groundwater values by the exercise of underground water rights”.

Noting that such inclusions would also be captured at current paragraph (f).

We refer more specifically to the definition of ‘environmental values’ at point 4 below.

## **2. PROPOSED AMENDMENTS to the QUEENSLAND HERITAGE ACT 1994**

We make no submission in respect of the proposed amendments.

## **3. PROPOSED AMENDMENTS to the WATER ACT 2000**

We make no submission in specific respect of the proposed amendments. However, we note that the current definition of ‘owner of land’ in the Water Act is such that it does not adequately recognise native title holders as owners. Specifically, the only category which might be interpreted to recognise native title holders is that as “...*the registered proprietor of the land*” [emphasis added].

As the Queensland government does not yet ‘register’ native title rights and interests on the Torrens Title Register, it is conceivable that a proponent may inadvertently overlook a native title holding right.

**SUBMISSION:** NQLC submits that whilst this is not strictly related to the Bill’s proposed amendments, the AEC take the current opportunity to consider and recommend the following amendment to the Water Act to adequately recognise the rights and interests of native title holders by amending the definition of owner to include:

- for Aboriginal land under the *Aboriginal Land Act 1991* (Qld)—the persons to whom the land has been transferred or granted; and
- for land for which there is a native title holder under the *Native Title Act 1993* (Cth)—each registered native title party in relation to the land.

#### **4. PROPOSED AMENDMENTS to the WATER REFORM and OTHER LEGISLATION AMENDMENT ACT 2014**

##### **Section 87/Amending s376 – Content of Underground Water Impact Report**

Our submission in respect of this proposed amendment, consistent with our submission at point 1 above, is directed to expressly recognising Aboriginal cultural heritage and native title rights and interests and reporting on impacts of these values.

**SUBMISSION:** NQLC submits that Indigenous values and the rights and interests of native title holders could be addressed by the following insertions:

- following current paragraph (da) insert - “a description of the impacts on Aboriginal cultural heritage and native title rights and interests that have occurred, or are likely to occur because of any previous exercise of underground water rights”; and
- at current paragraph (db) amend – “an assessment of the likely impact described in paragraphs (da) and (db) above that will occur, or likely to occur...”

In the alternative, the definition of ‘environmental value’ at section 9 of the EPA be amended in accordance with the above.

##### **Section 1250E – Criteria for Deciding Application**

In furtherance of our submissions above:

**SUBMISSION:** NQLC submits that Indigenous values and the rights and interests of native title holders could be addressed by the following insertions:

- following current paragraph (f) insert - “any information about the effects of taking, or interfering with, water on Aboriginal cultural heritage and native title rights and interests”.

#### **In Conclusion**

Whereas NQLC supports the broad principles and intent to strengthen the assessment and scrutiny of environmental impacts in respect of underground water management, in the absence of any recognition of the unique Indigenous values attached to waters we are unable to support the Bill in its current form.

We urge the AEC to give favourable consideration to the Submissions set out herein with the view to respectfully recognising and protecting Indigenous values and most specifically native title rights and interests.

If you have any queries regarding this submission, please do not hesitate to contact Ms Rhonda Jacobsen, Senior Legal Officer – Manager, Future Acts Mining and Exploration (FAME) Unit on [REDACTED]

Yours faithfully



Steve Ducksbury

Chief Executive Officer

**North Queensland Land Council Native Title Representative Body Aboriginal Corporation**

