Submission No. 50
Received 07 October 2016

QUEENSLAND resources COUNCIL

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Friday, 7 October 2016

Mr Rob Hansen
Research Director
Agriculture and Environment Committee
Parliament House
George Street, Brisbane

via email: aec@parliament.qld.gov.au

Dear Mr Hansen

Thank-you for the opportunity to provide a submission on the *Environmental Protection (Underground Water Management) and Other Legislation Amendment (EPOLA) Bill* 2016.

As the Committee would be aware, the Queensland Resources Council (QRC) is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production, and processing companies and associated service companies. QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

The EPOLA Bill ("the Bill") represents the latest stanza in a complex policy discussion about how to best manage access to Queensland's groundwater resources – so that the aquifers and the complex micro-environments they support – are preserved for the use of future generations. In granting access to groundwater resources, an assessment needs to be made that balances social, cultural, environment and economic considerations in a way that is fair, transparent and predictable.

Queensland's *Water Act 2000* ("the Water Act") is a landmark piece of legislation. It formalised the Queensland system of catchment-scale water resource planning, but did so in a manner that was consistent with the national principles which were subsequently formalised in the *2004 National Water Initiative*. The Water Act is far from perfect, but its water planning and allocation processes has served Queensland well in a manner that has both protected the environment but also enabled development. These practical principles of sustainable development that underpin the Water Act enjoy broad support from all stakeholders. As such, the decision to amend or modify the Water Act should not be taken lightly.

Groundwater policy in the past four years has not experienced stability or certainty, with the policy pendulum swinging faster than is consistent with effective community consultation, which has always been a hallmark of water planning processes in Queensland. The result of this erosion of public confidence in a statutory process has been uncertainty, confusion and fear amongst many stakeholders. The situation has not been helped by some activist groups who have sought to capitalise on this policy uncertainty through strident campaigns for yet further restrictions of water access (as an example, please see attachment three).

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This recent historical context is important to understand the proposed further changes to water regulation. Rushing the Bill into Parliament and then hurried through a truncated Committee process is a missed opportunity for the consultation that effective water reform requires to build enduring stakeholder support.

The complexity of the Bill in amending another amendment Bill[1] and an as yet un-commenced amendment Act[2] while also directly amending the Water Act, the *Mineral Resources Act 1989* and the *Environmental Protection Act 1994* is only further reason to eschew haste in favour of a genuine consultation process.

In the absence of a regulatory impact statement for the Bill, it is very difficult for any stakeholder to have confidence that they have understood this complex cascade of late amendments and amending amendments. This lack of confidence undermines one of the key principles of the Water Act; in water planning processes, stakeholders have always had a chance to provide comments and get feedback on those issues of concern.

Like all other groundwater users, QRC's mining and energy members simply want to understand how their access to groundwater will be assessed and managed. Like the other key regional industries that rely on groundwater – agriculture and tourism – the resources industry needs confidence that their existing access to groundwater will continue and that a fair process exists to apply for future water access.

The shame is that the Bill contains many reforms which industry would likely support as reflecting existing practice, but the rush to table black letter law means that industry has not been consulted on these reforms and is yet to understand how these reforms might be implemented or how they might affect ongoing operations. Nor are the regulations and guidelines yet available to more clearly describe the mechanics of these regulatory processes. Once again, the Bill is a missed opportunity, where groundwater stakeholders have to react on the run to an announcement that is not yet fully fleshed out.

Further, the important review process of a Committee inquiry is being presented as an alternative to genuine consultation on developing a Bill. While this approach may seem procedurally expedient, the relevant functions of the Agriculture and Environment Committee are described on the Parliamentary website as including to:

- examine Bills to consider the policy to be enacted;
- examine Bills for the application of the fundamental legislative principles set out in section 4 of the *Legislative Standards Act 1992*.

There is no mention of a role for the Committee in conducting consultation with stakeholders, as this should be an intrinsic part of the policy development process.

QRC suggests that it is not appropriate for consultation with stakeholders to be postponed and grafted on to the Committee inquiry process as an ex post step after the legislation has been drafted and introduced. Not only does this limit the opportunity of stakeholders to understand the legislative intent, it also reduces the opportunity for the drafting to reflect constructive stakeholder feedback. QRC's plea is that the government of the day should stop taking shortcuts on consultation on groundwater policy and engage with stakeholders in good faith in advance of reaching for drafting instructions.

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1 The *Water Legislation Amendment Bill* 2015 (WLA)
2 The *Water Reform and Other Legislative Amendment Act* 2014 (WROLA)

Policy development
For Queensland's resource projects, the regulation of groundwater use has been developing quickly over the past few years.

In particular, the WROLA Act was passed in 2014 identifying that mining operations would have the same statutory right to take groundwater as petroleum activities (with the same legislative restrictions). The passing of the WROLA Act confirmed to industry the way in which groundwater management would be regulated in the future and was taken into account for project planning and scheduling by the industry.

Until the recent introduction of the EPOLA Bill, the mining industry had no notice that 'advanced mining projects' would be subject to an additional new approval requirement to obtain an associated water licence, before these projects could take the associated water necessary for safe mining. This additional approval requirement can impact on project scheduling and financial investment decisions which can delay projects being delivered in Queensland.

During the same period, the Coordinator General has made decisions (and imposed and recommended conditions relating to groundwater) on coordinated resource projects and the Land Court has made recommendations about specific groundwater conditions. This has meant that industry practice has got well ahead of the current regulatory minimum. In particular, detailed groundwater models have been prepared by many proponents as part of the environmental impact statement (EIS) process, and proponents have proactively entered into make good agreements with potentially affected landholders.

In addition, mining and petroleum projects in Queensland are subject to strict environmental requirements though the Environmental Impact Assessment processes. Projects are also subject to extensive review through the Independent Environmental Scientific Committee and the Commonwealth Government's *Environmental Protection and Biodiversity Conservation Act 1999* approval process. These Commonwealth processes extensively scrutinise any impact or take of groundwater and explicit conditions imposed to deliver environmental outcomes.

The changes proposed in the Bill would further increase the duplication with these increasingly redundant Commonwealth groundwater laws unless there is a means of recognising earlier public consultation (and in many cases also appeals) around Commonwealth decisions on groundwater.

Advanced mining projects
For QRC, the standout issue about the objectives of this Bill is the need for a better transitional process for 'advanced mining projects'.

The QRC's position is as follows:

1. There should be no requirement for an 'associated water licence' (or a public submission phase for an associated water licence) for 'advanced mining projects' that have:
    a. already completed an EIS process, where the terms of reference for the EIS expressly included potential impacts to groundwater; and
    b. developed a detailed groundwater model which identifies potentially affected third-party landholders, and entered into make good agreements with the majority of those landholders.

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The above is a reasonable position because:

a. the project has already been through a public submission phase as a result of the EIS process. Non-duplication of public submission phases where an EIS has been completed is an accepted principle in the EP Act; and

b. the proponent has been proactive in entering into make good agreements with potentially impacted landholders, on the basis of detailed groundwater modelling.

2. Alternatively, and in addition to the above, a similar transitional process for the groundwater use of petroleum projects based around amending section 1277 of the WROLA Act would see a single consistent regulatory system for both mining and petroleum. QRC's submissions and appearances at Parliamentary Committees on WROLA and WLA have both requested the same regional transitional mechanism for mining as is provided to petroleum projects.

3. Alternatively, and in addition to both of the above, the Bill could be amended to make it clear that a company with an advanced project could choose not to seek an associated license, ie opt in to the new groundwater framework and commence discussions with the regulator as to whether their existing assessments and groundwater management conditions meet the 'as of right' process and can therefore step straight into the new regime (along with all of its extensive requirements).

4. Where an advanced project has already had conditions imposed on their access to groundwater through their environmental authority or other equivalent mechanism, they should not face regulatory double jeopardy by having a second round of assessment imposed – particularly when this assessment reopens the door for further activist 'lawfare' from appeals designed to delay and halt resource projects.

While QRC appreciates that the need for a transitional process has been recognised, the transitional process outlined in the Bill is difficult to support if it creates another risk of open-ended court appeals or an opportunity for activists to try to reopen approvals that were granted in the past. Recent history has shown that Judicial Review is a sure recipe for further disruption and delay.

The harsh reality is that regulatory surprises cause uncertainty and cost jobs. Queensland simply can't afford an unworkable transitional process for these important new groundwater laws.

As the groundwater use of petroleum projects is grandfathered for up to five years, it is difficult to see why the same approach does not apply to mining projects. As the whole premise of a groundwater reform for resources was to deliver a single consistent regulatory system for both mining and petroleum, QRC has been advocating for a consistent transitional process for both industries. QRC's submissions and appearances at Parliamentary Committees on WROLA in 2014 and WLA in 2015 have both requested the same regional transitional mechanism for mining as is provided to petroleum projects (please see attachment 2). Establishing a genuine transition process based around amending section 1277 of the WROLA Act would require identification of mature mining areas such as the Bowen Basin, Mount Isa Inlier and bauxite mining precinct around Weipa and Aurukun.

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Rather than proposing a transition process for mining operations that is consistent with the transition for petroleum projects in both the WROLA Act and WLA Bill, the Government has instead rushed to table legislation that proposes a completely different hybrid transitional water licence and only for advanced mining projects. The Bill's proposed new transitional mechanism is complex and the duration of this new regulatory decision process appears highly uncertain.

While the attached submission makes detailed comments and suggestions on the Bill, QRC would like to emphasise four key points for the Committee's consideration:

1. While QRC welcomes the belated recognition of the need for a transition mechanism for mining, the proposed process duplicates many of the assessment processes that, by definition, an advanced project has already completed. QRC recommends instead that the transition process:
   - set down in section 1277 of WROLA for petroleum projects should be extended to apply to all mining projects; and
   - for 'advanced mining projects', the Bill needs to be amended so that those projects which are significantly advanced and have already been subject to: an EIS, and entered into make good agreements, are not required to obtain an associated water licence.
2. That enduring reforms to water policy need to secure stakeholder support through a genuine process of consultation and engagement. From QRC's perspective, the development of the EPOLA Bill was seriously deficient in terms of consultation.
3. The complexity of the Bill's nested amendments and cascading amendments make the final policy intention difficult to divine. A regulatory impact statement would help stakeholders more clearly understand how the Bill might affect them.
4. The combination of the very limited time before the Committee has to report back to Parliament, the lack of stakeholder consultation and the inherent complexity of the Bill will make it very difficult for the Committee to be confident that it is consistent with fundamental legislative principles[3]. Absent that confidence, the Committee should not support the Bill.

QRC confirms this submission may be made public and would welcome the opportunity to appear before the committee to answer any questions on any of the matters raised in this submission. Please contact Andrew Barger Director, Infrastructure & Economics on 3316 2502 or andrewb@qrc.org.au for further information on this matter.

Yours sincerely

Michael Roche
Chief Executive

[3] Not withstanding the assertion of the Department of Environment and Heritage at the Committee hearing on 30 September 2016 [redacted]

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ENCLOSED:

Attachment one: QRC's detailed comments on the explanatory notes and the *Environmental Protection (Underground Water Management) and Other Legislation Amendment (EPOLA) Bill 2016*.

Attachment two: Links to QRC's earlier submissions on groundwater legislation.

Attachment three: Balancing the arguments. What are the inconvenient truths that the template submissions will neglect to mention?

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ATTACHMENT ONE:

QRC has structured this submission in two parts; first addressing the issues raised in the explanatory memorandum (in the same order as those notes). The second part works through the drafting of the EPOLA Bill in more specific detail.

1. Explanatory Notes

Policy objectives and the reasons for them
It is difficult to see how a Bill that is so late to be tabled can have six distinct objectives.

QRC would be interested to understand when it was that the Department of Environment and Heritage Protection (EHP) realised that omnibus legislation was necessary in order to achieve such a diverse set of objectives. For example, when did EHP realise that they were unclear about their ability to require amendments to an environmental authority (EA) in response to the results of an underground water impact report (UWIR)? This seems like a late and sudden realisation given that the Surat Cumulative Management area was declared in March 2011 (see OGIA's website for details) and that the second of the underground water impact reports has just been finalised for the Surat after an extensive public consultation process.

The protracted nature of the assessment process for resource projects means that often laws and regulations are amended during the assessment process. In other areas, such as planning laws, an application is decided on the laws that applied at the time the application was made rather than at the time the decision is taken. This gives the applicant much greater regulatory certainty and provides investors with confidence that they understand the legislative framework.

One of the unfortunate aspects of the EPOLA Bill is that it will create appeal rights against a new set of transitional criteria with no guidance available for applicants as to how the regulators or Courts may interpret the requirements of these criteria. This fresh uncertainty that the risk of protracted court appeals brings with it is undesirable for resource projects that have already been undergoing assessment for multiple years. In some of these advanced cases, the project's impact on groundwater has already been assessed and tested before the Courts.

The transitional process outlined in the Bill is difficult to support if it creates a new risk of open-ended court appeals or an opportunity for activists to try to reopen approvals that were granted in the past. The transitional mechanism proposed is complex and the duration of this new regulatory decision process appears highly uncertain. Recent history has shown that Judicial Review is a sure recipe for further disruption and delay. Queensland simply can't afford an unworkable transitional process for these important new groundwater laws.

Where an advanced project has already had conditions imposed on their access to groundwater, they should not face regulatory double jeopardy by having a second round of assessment imposed – particularly when this assessment reopens the door for further activist 'lawfare' from appeals designed to delay and halt resource projects.

Advanced projects may have had groundwater conditions imposed under the environmental authority, by the Coordinator General's report, under the Commonwealth Water Trigger or by the Land Court. A genuine transition mechanism would take full account of all the public consultation and consideration that has preceded the application for a transitional water licence.

While QRC welcomes the belated recognition of the need for a transition mechanism for mining, the process proposed for advanced mining projects is too convoluted. QRC recommends instead that the transition process set down in section 1277 of WROLA for petroleum projects should be extended to apply to all mining projects. In addition, QRC recommends that where resource projects have already had conditions imposed on their access to groundwater that these approvals should not be reopened under the proposed EPOLA amendments.

Alternative ways of achieving policy objectives
Given that the Bill has six distinct objectives, it is disappointing that the explanatory memorandum simply asserts that there are no other viable alternatives.

QRC would like to see a brief discussion of the best alternative to the Bill for each of the six objectives. This would enable stakeholders to understand why these alternatives are not viable and also which alternatives were considered by the Department. With consultation having been effectively jettisoned in the development of the Bill, stakeholders simply don't have this context of understanding alternative means of achieving the policy objectives. QRC believes that there are viable alternatives to achieving the Bill's objectives, particularly in relation to advanced mining projects.

Estimated cost for government implementation
It is difficult to believe that a sophisticated compliance and monitoring regime across the Bill's six different objectives can simply be absorbed within current budget allocations.

QRC suggests that the more likely scenario is that in the haste to develop the Bill, EHP has simply not had the time to identify the necessary future budget to properly administer the provisions in this Bill, particularly as a number of the costs will be incurred by other agencies. This creates a risk that the Bill will short-change the necessary resourcing of the assessment, compliance and monitoring work to implement the changes effectively.

Consistency with fundamental legislative principles
At the public hearing on Friday 30 September, the Department of Environment and Heritage were directly asked whether the Bill was consistent with fundamental legislative principles (page 11 of the draft transcript. The Department didn't refer to the potential breaches described in the explanatory notes (page 4), but simply confirmed that the Bill was consistent with these principles (page 11 of the draft transcript).

The explanatory notes explain that in order to satisfy these fundamental legislative principles, legislation should not (a) adversely affect rights and liberties, or (b) impose obligations retrospectively. QRC suggests that the EPOLA Bill fails both of these tests.

The explanatory notes say that the proposed amendments do not affect rights and liberties as they do not materially amend the current process, but rather provides a *"different mechanism"* for the assessment of underground water by resource activities (page 4). The calm assurances of the explanatory note are difficult to reconcile with the description in the Minister's explanatory speech where he says:

> "*This Bill addresses both of these concerns with tailored amendments to existing obligations and processes*" (page 3, emphasis added).

The Minister went on to say:

> "*This associated water licence will involve an environmental impact test with outcomes comparable to that which will be required (for new projects) through the EP Act Amendments*", (page 9).

The Minister had previously described this new process in saying:

> *"This Bill also strengthens the assessment undertaken as part of an environmental authority application",* page 3, emphasis added).

It is difficult to understand how the Minister can table a Bill and describe a tailored strengthening of the assessment that amends existing obligations and processes, but that according to the explanatory notes for the Bill this new strengthened process doesn't affect rights and liberties.

If passed without amendment the Bill would require a mining project that may have long since gone through an environmental impact statement process to revisit parts of that assessment for the purposes of applying for a transitional groundwater licence. In this case, revisiting conditions in a granted environmental authority and allowing a fresh round of appeal processes seems like a retrospective application of these new laws to an existing project.

It is difficult to see how this new decision step, which does not exist under the WROLA Act, is not retrospective for these projects.

A further example of the retrospective changes in the Bill are set out on page 7 of the explanatory notes, which describes new section 749 that amends the process for approval of environment authority applications and amendments applications associated with mining leases which were made *before* 31 March 2013 (the date on which the *Environmental Protection (Greentape Reduction) and Other Legislative Amendment Act 2012* commenced). QRC suggests that this change is explicitly retrospective.

In conclusion, the combination of the (a) very limited time before the Committee has to report back to Parliament, (b) the lack of stakeholder consultation, and (c) the inherent complexity of the EPOLA Bill will make it very difficult for the Committee to be confident that it is consistent with fundamental legislative principles. Absent that confidence, the Committee should not support the Bill.

2. The *Environmental Protection (Underground Water Management) and Other Legislative Amendment (*EPOLA*) Bill 2016*

Clause 5, page 7 – 126A
The list of requirements for site-specific applications is drafted in a very prescriptive manner and may not reflect the uncertainties and balance of probabilities that are often associated with even the best hydrological modelling. For example, 126(2)(c)(ii) requires an analysis of the movement of underground water to and from the aquifer, including how the aquifer interacts with other aquifers and surface water. Even for some of the most studied aquifer system in Queensland, for example the Condamine alluvium, which has been relied on for irrigating cotton since the 1960s, new information is still coming to light about how waters flow in the aquifer.

Ideally this section would be accompanied by a regulatory guideline that would spell out how the section will be applied in practice. The reality of an adaptive management framework, (which is central to the Government's underground water policy), is that not all the information will be available at the time of the first assessment, so stakeholders need to understand how this assessment process described in 126A will be applied.

On a procedural note, QRC is not sure why this amendment is only been made in the EPOLA Bill rather than in the earlier WROLA or WLA Bills.

Clause 6, page 8 – amendment of s 207
QRC suggests that the *Environmental Protection Act 1994* already has extensive powers to impose conditions, for example under section 203(1)(a) and so this amendment seems unnecessary.

Clause 7, page 9, - amendment of s 215
QRC suggests that this amendment should not proceed as it is unnecessary. Under section 215, the Department already has very broad powers to amend an environmental authority for a resource activity, if the Department considers the amendments to be necessary or desirable.

Existing grounds include:

a. the authority was issued on the basis of a miscalculation of the environmental values affected or likely to be affected by the relevant activity (215(2)(f)(i)); and
b. a significant change in the way in which, or the extent to which, the activity is being carried out (215(2)(n)).

The above grounds are sufficiently broad to apply if the impacts to groundwater are materially different from those predicted in an underground water impact report.

In the absence of any regulatory guideline or other detail regarding the proposed changes, there is no reason for the amendment.

Clause 8, page 9 – 227AA(1)(b)
This subsection mentions, "*the proposed amendment involves changes to the exercise of underground water rights*." While this seems reasonable for an increase in the volume of water take, an application to reduce the volume of water take seems excessive. QRC suggests that the Bill be amended to reflect that the application process only apply to an increase in volumes or impact and not reductions.

The explanatory notes state the amendment would only apply where there is a *"significant change to the nature of scale of activities or volumes of waters proposed to be taken or there are likely to be different impacts on environmental values"*, but the drafting of 227AA(1)(b) only refers to "*changes to the exercise of underground water rights*." It is difficult to see where the focus on significant changes described in the explanatory notes is applied in this drafting and QRC requests that this be resolved. The term 'significant' has a number of fundamental precedents in the Environmental Protection Act.

Clause 10, (page 10) – new chapter 13, part 26
New section 749 (page 11) amends the process for approval of environment authority applications and amendment applications associated with mining leases which were made before 31 March 2013 (the date on which the *Environmental Protection (Greentape Reduction) and Other Legislative Amendment Act 2012* commenced), impacts on the rights of individuals and is therefore a breach of fundamental legislative principles.

Clause 26, page 19 – amendment of s 412
This amendment delivers a material change in the definition of impairment as one of the six objectives of the Bill. Feedback from industry is that the drafting largely reflects existing industry practice in terms of triggering make good agreements on the balance of certainty. As a new policy being applied to new make good decisions, it is likely that industry would support such a change as providing landholders with greater certainty. Once again, this was a missed opportunity to provide industry with the full details of this new approach so companies understand how these new definitions might be applied in new make good agreements.

Clause 27, page 20 – amendment of s 420
As was the case for s 412 above, the addition of a cooling off period in a make good agreement is likely to be supported by industry for new make good agreements.

Clause 28, page 20 – insertion of new s 423A
New section 423A(2) seems to make the cooling off period asymmetric in that only the bore owner can terminate a make good agreement without penalty. QRC recommends that it be amended to ensure that the new cooling off period applies equally to both parties.

Also the cooling off period appears to be open ended in the way it is defined by 423(2)(a). QRC's understanding was that the cooling period was intended to be a period of ten (10) business days after the make good agreement is signed. This section seems to create a second opportunity which commenced from the conclusion of the bore assessment, which may be several months after the original make good agreement was signed. QRC requests that this apparent second cooling off period should have a clear time limit.

Clause 31, page 23 – 839(1)(b)
Where an advanced project has already been assessed with respect to impacts on groundwater and had conditions imposed on their access to groundwater, managing, monitoring and mitigating impacts on groundwater resources and protecting other groundwater entitlements, they should not face regulatory double jeopardy by having a second round of assessment. Similar amendments should also made for the other sections which mirror this structure, for example section 1250A(1)(b).

The proposed clauses create complexity if a water licence is granted, but then appealed. The tenure holder could commence the take of associated water under subsection (2), but it is unclear what the status of this take would be if the appeal was successful. QRC suggests that most companies would wait for the appeal to be finalised before the activity that generated the associated water take was allowed to commence, creating further delays for projects.

Clause 33, page 25 – s 87 (amending s 376)
QRC is concerned that the amendments of section 87, which amends s 376 appears to have some retrospective effect. The new section 376(1A)(da) requires an underground water impact report to report on "*impacts on environmental values that have occurred or are likely to occur because of any previous exercise of underground water rights.*" The drafting of this clause could create an unlimited underground water impact report depending on how key phrases such as "any previous", and "likely" are interpreted.

Clause 34, page 26 – s 116 (Amending s 418)
QRC supports this change to allow the Chief Executive greater latitude to direct that a bore assessment be conducted. The inclusion of free gas as a trigger will allow the regulatory regime to adopt an adaptive management approach.

Subdivision 1, page 27 – associated water licence
QRC appreciated the recognition that a transition mechanism is required for advanced projects. As outlined earlier, industry's first preference would be the consistent application of the principle of grandfathering all petroleum tenures rather than creating a new interim regulatory instrument.

Division 3, page 39 – 1280B
QRC appreciates the recognition of the need for a transitional process for advanced underground water impact reports (UWIRs), but questions whether three-month period is sufficient. QRC suggests 12 months after commencement would be a more realistic reflection of the complexity of the UWIR process.

ATTACHMENT TWO:

Water Legislation Amendment Bill (WLA) 2015

On 10 November 2015, the Minister for State Development and Minister for Natural Resources and Mines, Hon Dr Anthony Lynham MP, introduced the *Water Legislation Amendment Bill (WLA) 2015*. The Bill was referred to the Infrastructure, Planning and Natural Resources Committee for examination by 1 March 2016.

QRC's 18 December 2015 submission (#65) to the Committee is available at:
https://www.parliament.qld.gov.au/documents/committees/IPNRC/2015/WLAB2015/submissions/065.pdf

In particular, QRC draws the attention of the Committee to recommendation five, on page 3 of the submission:

> *"QRC notes that a commencement date for the groundwater provisions for the resource industry in the WROLA have not yet been set, but effectively have a commencement deadline of 6 December 2016, when the WROLA postponement regulation will lapse.* ***QRC remains concerned that the complexity of the transition issues posed by these sweeping changes will be difficult to resolve in that time"*** (emphasis added).

The Infrastructure, Planning and Natural Resources Committee's March 2016 report is available at:
http://www.parliament.qld.gov.au/documents/committees/IPNRC/2016/WLAB2015/12-rpt-019-1Mar2016.pdf

The Water Reform and Other Legislation Amendment (WROLA) Bill 2014

On 11 September 2014 the Minister for Natural Resources and Mines, Hon Andrew Cripps MP, introduced the *Water Reform and Other Legislation Amendment (WROLA) Bill 2014* to the Queensland Parliament. The Bill was referred to the Agriculture, Resources and Environment Committee for consideration for report by 17 November 2014.

QRC's 9 October 2014 submission (#41) to the Committee is available at:
https://www.parliament.qld.gov.au/documents/committees/AREC/2014/26-WaterReformOLA14/submissions/041QRC.pdf

In particular, QRC draws the Committee's attention to page 4 of QRC's submission:

> ***"Complex resource reforms – changing water rights***
> *The final category represents the most complex and contentious changes in the Bill. While QRC fully understand the reasons for these changes, the speed with which they are being enacted increases the risk of unexpected consequences. This risk is exacerbated because* ***critical regulatory details*** *such as timing, application and* ***transitional arrangements*** *are not yet available to enable a genuine assessment of the impact of these changes."*

The Agriculture, Resources and Environment Committee's report on the *Water Reform and Other Legislation Amendment Bill 2014* was tabled on 17 November 2014.
http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2014/5414T6459.pdf

Submission No. 50
Received 07 October 2016

ATTACHMENT THREE: *What are the inconvenient truths that the template submissions will neglect to mention?*

Balancing up the arguments

One of the strengths of the anti-mining campaigns is their ability to deploy a large number of template letters, submissions and even phone calls at very short notice. A couple of committed staff can develop a template or script which can then be readily replicated by hundreds of community members who then create the impression of a very well informed grass-roots campaign; when in reality it is a centralised message from a small core of anti-resources activists.

What are the arguments being deployed around the EPOLA Bill?

The central message from activists is a great one for motivating an immediate response – "*make sure that mines don't get free open-slather access to water*". Such an alarming message to the community is a great headline for recruiting a wave of click-bait responses and perhaps translating that some of that concern into future donations.

Dozens of template submissions will argue passionately that…	**What the template argument neglects to mention is that…**
1. *'Free unlimited water is risky to the environment and unfair to other water users.'* • *'Current laws for gas companies should also be changed.'*	1. The water is not unlimited or free. The process only applies to water that cannot be avoided (called associated water) as a byproduct of production. Water that seeps out of a coal measure into a mine or is pumped from a coal seam gas well is associated water. The use of associated water is carefully and expensively regulated – so it is far from free. It can only be used in certain ways, (which includes treating it and providing it to farmers for irrigation), but any use must be approved in advance by the regulator. When resource companies need water they can use (for vehicle wash-downs, for dust suppression, even for drinking and showering), they have to buy a water licence just like everyone else. The template submissions also gloss over the fact that associated water is generally of very low quality. Generally water licences are sought for high quality aquifers, so there are rarely any interest from other water users in holding licences for these low quality groundwaters. The template fundamentally misrepresents the situation and any talk of industry's 'unlimited statutory take' is mischievous, misleading and politically motivated. The activists can't substantiate claims of the resources industry being 'environmentally risky' because the science says otherwise. • While access to associated water was initially contentious for gas companies, the existing regulatory process has been working well in Queensland for more than 15 years. There is a complex safety net of protections for existing and future water users as well as for the environment. • 'Changing the laws for gas companies' is just a campaign sound-bite. Retrospective changes to existing approvals are not consistent with fundamental legislative principles.

Dozens of template submissions will argue passionately that…	**What the template argument neglects to mention is that…**
2. *'Impact assessments for groundwater at the environmental authority stage are supported.'* • *'This process will require more information on the possible impacts of their use of groundwater.'* • *'Groundwater resources are essential to many farmers, businesses and ecosystems.'*	**2.** For a new resource project that is just commencing the multi-year assessment process, the environmental impact statement (EIS) is exactly the right place to assess any impacts on groundwater and also to work with local stakeholders to design the best management regime. What the template submissions neglect to mention is that moving the goalposts for a project that has already applied for a decision two, three or more years ago is inefficient and unfair. The delays and uncertainties of these regulatory resets can be very frustrating for the regional stakeholders who want a decision. It is also a good way of driving investors away from Queensland. QRC agrees that: • This process will require more information on the possible impacts of their use of [*and how they will manage these impacts on*], groundwater. • Groundwater resources are essential to many farmers, businesses and ecosystems [*but low quality groundwater is not essential*].
3. *'The proposal that advanced mines obtain an associated water licence is positive.'*	**3.** The reality is that there's not yet enough information available to know how the associated water licence will work. For these advanced mining projects (some of whom will have applied for an environmental authority a decade ago), it *should* be a case of clarifying that the regulator already has sufficient information from earlier assessment processes (including the Commonwealth processes) to make a decision. What the template submissions fail to mention is that the activist groups love appeals and Court processes. Appeals are great for the profile of their campaign, which generates more donations. Appeals create project delay that cost companies a lot of money and place jobs at risk. The template submissions see more Court appeals as positive; but the activists need to explain why it is that they see the absolute need for a Court to make all final decisions?

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4. *'The Bill needs to ensure that these licences are assessed against the principles of ecologically sustainable development (ESD).'*	**4.** What the template submissions fail to explain is that these licences are for *associated* water. That is the water that can't be avoided as a result of operating. So, the appropriate assessment is impact management, which looks at what the impacts might be, how they can be measured, managed, mitigated and reduced. What the template submissions don't say is that an impact assessment is designed to assess whether the impacts are acceptable or not. It can still stop projects, force them to totally rework their plans and impose strict compliance and reporting conditions. The overall *project* is assessed against these ecologically sustainable development (ESD) principles as part of the environmental authority (see #3 above), it's not then necessary to revisit every single decision on the project against these principles over and over again (ie, is this road ESD sustainable? Are these pens ESD sustainable?). In water planning, the total volume of water allocations are tested against the principles of ecologically sustainable development. But each individual water licence is not subsequently tested against these ESD principles (water used for stock and domestic purposes doesn't even require a water licence). The template submissions are arguing not for equivalent regulation for associated water, but for the test to be applied to an individual licence. That is inconsistent with how farmers, local councils and other groundwater users secure their water licences. The industry supports the application of ecologically sustainable development and supported them being restored to the purpose of the *Water Act*, but it is important to understand the difference between applying them to a *project* and trying to micro-manage *every decision* made on the project against these principles. Retrospective changes to approval processes that are underway are not consistent with fundamental legislative principles.