

18 December 2015

Erin Pasley, Research Director
Infrastructure, Planning and Natural Resources Committee
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Dear Erin,

Thank you for the opportunity to review the *Water Legislative Amendment Bill 2015* (the Bill). QRC would like to congratulate the Committee on the public briefing on this Bill which was held on 30 November. The live-streaming and transcript of this public briefing was extremely helpful in grappling with how the simple intent of the Bill is given effect through the complex set of nested amendments.

As you know, 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. The QRC works on behalf of members to ensure Queensland's resources are developed profitably and competitively, in a socially and environmentally sustainable way.

The QRC works to guarantee the resource industry's long-term water security by promoting the industry's credentials as Queensland's best water managers. QRC's collective policy efforts are intended to complement and augment the significant water management activities already conducted by QRC member companies.

While the *Water Legislative Amendment Bill 2015* is only a very short Bill, reading it is complicated by the fact that the Bill amends the *Water Act 2000* directly, as well as amending the *Water Reform and Other Legislative Amendment Act 2014* (WROLA) which itself amends the *Water Act*. To try and avoid the confusion that arrives from amending amendments, some of which have not commenced, QRC's submission will refer to the *Water Legislative Amendment Bill 2015* as the Bill, to the *Water Act 2000* as simply the Act and *Water Reform and Other Legislative Amendment Act 2014* as WROLA.

QRC's reading is that the *Water Legislative Amendment Bill 2015*, delivers on the Government's two election commitments on water, specifically to:

1. "Repeal the former 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; and
2. Return ecologically sustainable development (ESD) principles to the *Water Act* and remove Water Development Options (WDOs) in their entirety."

QRC supports both commitments and the way each has been expressed in the draft Bill. However, QRC expects that the Committee will receive representations that the purpose of the

Bill should be expanded to include an overarching duty statement to ensure that *all* decisions made under the Bill must expressly advance the purpose of the Act. The argument will be made that ecologically sustainable development principles should be applied to every aspect of every decision made under the Act.

QRC suggests that inserting such an open-ended requirement into the purpose of the Bill brings a high risk of unintended consequences. As an example, section 12 of the Bill, which would replace section 2 of the *Water Act 2000*, would see the principles of ecologically sustainable development applied to *all* decisions of a water authority, which seems excessive and unworkable. Such an expansive approach to drafting the Act's new purpose would generate multiple opportunities for legal appeals and delays, which may be in the interests of activists who routinely oppose development, but would not be in the State interest.

The explanatory memorandum is very clear on page 9 and 10 that the proposed new purpose of the Act has been carefully constructed in four parts; each of which specific relates to a distinct role performed by the Water Act. The structure of the new purpose of the Act was explained to stakeholders at the Water Engagement Forum meetings described on page 6 of the explanatory memorandum and the drafting of the Bill is entirely consistent with that consultation.

Recommendation 1: QRC recommends that the Committee retain the current drafting of clause 12 of the Bill.

On the issue of Water Development Options (WDOs), QRC supports the Bill's proposed removal of WDOs as they proved highly contentious for a number of stakeholders. That controversy directly lead to the Government's election commitment to remove them. While this controversy may have been a product of the limited time available for consultation on how WDOs would operate; the WDOs were designed to address a shortcoming in the way that proponents can access unallocated and reserved water. It would be useful for the Committee to suggest to the Department that they should revisit methods for giving projects, like large-scale irrigated agriculture projects, more certainty over their future ability to access water.

Recommendation 2: QRC recommends that the Committee consider asking the Department to revisit how large-scale projects can reduce their uncertainty around securing water.

QRC understands the rationale for the Bill to unwind the ability of WROLA to allow for declaration of a designated watercourse. Like the WDOs, this aspect of WROLA created widespread concern amongst some stakeholders and until the case can be made that this deregulation will not result in increased risks to water resources, QRC supports their removal.

Recommendation 3: QRC recommends that the Committee support the Bill omitting WROLA's provisions to declare a designated watercourse.

QRC suggests that the sequence of section 12 (2) on page 10-11 of the draft Bill could be reordered so that current number (d) is listed first and becomes new number (a). In previous consultations around water planning, QRC has heard Traditional Owners and Elders lament that their recognition was listed as the final in a set of eight considerations. QRC suggests that it would be appropriate that the first issue listed under sustainable management should be to "*recognise the interests of Aboriginal and Torres Strait Islander people and their connection with water resources.*"

Recommendation 4: QRC recommends that the Committee consider reordering subsection (2) so that (d) becomes (a) to better recognise the interest of Aboriginal and Torres Strait Islanders.

QRC supports the transitional provisions and miscellaneous amendments, (page 3 of the explanatory memorandum), many of which are complex in their drafting, but on QRC's reading have the common aim of ensuring the effective operation of the Water Act. QRC supports the reforms to underground water management which are designed to streamline the water planning framework and accelerate the conversion of water licences to water allocations. QRC also supports the reforms to speed up the process for simple water licence dealings.

Recommendation 5: QRC recommends that the Committee support the transitional and miscellaneous amendments in the Bill.

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.

Contrary to assertions by some anti-resources activist groups, QRC has never advocated for the reforms to the underground water management for resource activities and industry remains very concerned at the proposed changes set out in the *Water Reform and Other Legislative Amendment Act 2014 (WROLA)*. Industry's fundamental concern is that changes in water rights may imperil existing access to water, as well as create uncertainty around future access to water. In many cases, the water may be in very small volumes or taken for a very short period, but in the absence of a process to enable existing operations to continue, creates a risk of delaying current production while an uncertain new regulatory process is developed.

For the mining industry, the prospect of a new statutory right to take associated water, grafted hastily onto existing operations, creates substantial risk to the industry's social licence to operate without delivering benefits to these existing operations.

While QRC understands the goal of providing a single consistent system for managing the resource industry's access to water, there has not been sufficient consultation on key policy parameters – critical details on timing, application and transitional arrangements – to enable a genuine assessment of the impact of these reforms.

The process of applying the underground water management framework to mineral operations raises some complex questions. This existing framework was developed specifically to address the widespread and substantial impacts on underground water in the Darling Downs of coal seam gas production. While this CSG water framework is complex, the QCA's review of coal seam gas regulation in 2013 found that, for the most part, the framework works well. However, that does not mean that the framework can be simply extended to apply to all resource operations in Queensland.

QRC understands and supports the goal of developing a regulatory framework that provides consistency and statutory certainty for other water users. However, just as a specific regulatory framework was developed over a number of years for coal seam gas (CSG), QRC argues that mineral operations should also have a framework developed which reflects the mineral industry's operations, geology and water needs. While the starting point for developing such a framework should be a close review of the existing CSG underground water management

framework; QRC has always suggested it is too simplistic to apply wholesale, a framework developed for one sector to the entire resource industry.

The impact on the mining industry of these reforms cannot be sensibly understood until key policy parameters such as the scope, the extent of retrospectivity, the uncertainty of applying new rules to existing operations, and the suitability of a CSG groundwater management framework to a more universal application have been assessed.

QRC's mining members expressed a number of reservations as the original WROLA was being developed. These concerns reflect the coal mining industry in Central Queensland, the North West Mineral Provenance (around Mt Isa) and the bauxite operations on Western Cape York Cap are all mature industries, so issues of potential or actual impact with neighbouring land users have been resolved to the satisfaction of all parties. These issues will still need to be resolved before the groundwater provisions in WROLA can commence and include:

- How existing projects would demonstrate compliance with the new approach, (particularly if they are already conditioned to deliver substantially similar outcomes)?
- How the operation of cumulative management areas (CMAs) might work in areas of both coal and coal seam gas activity?
- What is the need to adopt universal consistency so quickly, rather than progressively applying the new requirements to new tenures?
- By volume, most mining take is passive take of groundwater in coal. There is also a small volume of groundwater take through seepage of water into open cut and underground mines, with a small number of 'wet' mines having larger seepage volumes. The number of mines is very small compared with the number of CSG wells and as mines are less likely to affect the bores of neighbouring landholders, tend to involve lower volumes of water;
- Most mining take tends to involve small volumes, which makes compliance very expensive per unit volume of water. QRC suggests that other than in regulated groundwater areas, the potential benefits from increased water resource security for landholders are likely to be very small, while the compliance costs to industry are likely to be substantial;
- The *Environmental Protection Act* already has sufficient power to require mines to monitor and investigate changes in groundwater quality and level, so it is difficult to see why these powers need to be duplicated in the *Water Act*;
- How to develop a risk-assessment approach rather than requiring all mines to make an abrupt transition – i.e. what does an appropriate transitional mechanism look like? QRC notes that WROLA provides a much more realistic transition for coal seam gas (five years in the Surat Basin and two years elsewhere) than is the case for mining. QRC recommends that the same transition period of five years should apply to all existing mines and applications; and
- A strong preference for introducing changes to new tenures as part of the existing review process for groundwater management areas (GMAs) through the water resource plans (WRP) and declared sub-artesian areas (DSAs).

All of QRC's CSG member are also members of the peak national body, APPEA. QRC supports the approach adopted by our CSG members under APPEA's banner.

A key issue for the CSG industry is ensuring that the removal of non-associated water rights is balanced with an effective alternative mechanism for sourcing water. Arrangements could

perhaps be split into a “high-volume, short-term” component (fracture stimulation, construction, construction camps etc) and a “low-volume, long-term” component (long-term camps etc). While industry may be content with a standard permitting system for the long term supply, supply for the short term component requires recognition that industry is generally operating in a water-scarce environment.

In addition, uncertainty regarding access to water has the potential to create pre-investment concerns for industry. If access to non-associated water is restricted for exploration or future development activities in specific areas, it would be more appropriate to identify this at the release of tenure stage.

Recommendation 6: QRC recommends that Committee seek the Department’s advice on how the commencement of the groundwater provisions for resources could be delayed until the important administrative and transitional issues have been resolved.

Thank you again for the opportunity to review the *Water Legislative Amendment Bill 2015* (the Bill). QRC would welcome the opportunity to expand on these comments or to answer any questions at a public hearing. The QRC contact on this submission is Andrew Barger, who can be contacted on 3316 2502 or alternatively via email at andrewb@qrc.org.au

Yours sincerely



Michael Roche
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