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11.1.12

The Infrastructure, Planning and Natural Resources Committee
Queensland Parliament
George Street
BRISBANE QLD 4000
Email: ipnrc@parliament.qld.gov.au

Dear Sir/Madam

Wilderness Society submission to the Water Legislation Amendment Bill 2015

Please accept the following submission in the context of the Infrastructure, Planning and Natural Resources Committee's Inquiry into the *Water Legislation Amendment Bill 2015*.

The Wilderness Society is one of Australia's leading conservation organisations, with a long history of engagement and practice in Queensland environmental policy and legislative development. We have been closely involved in analysis and responding to the *Water Reform and Other Legislative Amendments Act 2014*, and more recently the development of the present Water Legislation Amendment Bill 2015. We were invited to become a member of the Queensland government's Water Engagement Forum earlier this year, having been essentially excluded from that process by the previous government.

We have previously provided advice and feedback to the Department of Natural Resources and Mines on earlier proposals for this legislation, and have appreciated the space to present our views and hear the views of others. We look forward to a similar constructive engagement with the Committee.

Introduction

The Wilderness Society welcomes and appreciates the opportunity to respond to this Bill, which amends some parts of the *Water Reform and Other Legislative Amendments Act 2014* (WROLAA), which in turn amends Queensland's main water legislation (namely the *Water Act 2000*), as well as directly amending some other parts of the Water Act.

We believe this approach of amending an Act that is itself an Amendment Act yet to be fully commenced is a rather messy way forward, and are of the view that a better, 'cleaner' option would have been to repeal WROLAA in its entirety, and to start the process of consideration of water reform from scratch.

During the parliamentary debate on WROLAA in November 2014, the now Deputy Premier The Hon Jackie Trad MP, stated "...In essence, this is a shameful bill. It is an utter disgrace..", neatly summing up the tone for Labor's opposition to WROLAA. During the subsequent 2015 Queensland state election, in official policy correspondence with the Wilderness Society, Labor made specific commitments regarding water reform and WROLAA, including the written statement from the now Deputy Premier that, "...within our Great Barrier Reef policy, is a commitment to repeal the Newman LNP Government's water laws, which Labor has consistently argued, allows for over-allocation of our precious water resources." We understood this as a clear statement of intent and commitment to repeal WROLAA.

It is clear from the *Water Legislation Amendment Bill 2015* that rather than scratch WROLAA and start again, substantial parts of WROLAA are being retained by the Palaszczuk government. Notwithstanding our continuing view, previously advanced in the Water Engagement Forum that we and other conservation groups have been recently allowed into, that repealing WROLAA is the best approach, we welcome a number of changes to that legislation as foreshadowed in the current Bill. At the same time, we also note that it is proposed that Part 4 of WROLAA (dealing with groundwater use and management by resources sector) be retained, despite very the strong opposition to this from conservation groups, and in fact public distancing from the issue by the Queensland Resources Council and other stakeholders.

While retention of Part 4 of WROLAA is not an explicit part of the *Water Legislation Amendment Bill 2015*, this part of WROLAA will be allowed to become operational in the absence of further scrutiny or action. We believe it is important that the Committee appreciates the significance of this issue, and as discussed further on in this submission, we urge the Committee to recommend amendment of the Bill to remove the necessary provisions of WROLAA, to trigger a more comprehensive analysis of the options available.

Notwithstanding the above comments on scrapping WROLAA and starting again, we offer the following comments on specific issues from the *Water Legislation Amendment Bill 2015*.

Clause 11 of the Bill: Recommended change to insert "ecologically sustainable" into s58 WROLAA.

We agree with removal of "responsible and productive" in the long title of the *Water Act 2000*, but as the current government's commitment is to restore principles of ecologically sustainable development in the Act, making it explicit that it is "ecological sustainability", and "ecologically sustainable management" rather than other considerations, best ensures good public policy and fulfilment of the government's commitments.

Clause 12 of the Bill: Recommended changes to the Purposes of the Water Act 2000, via s59 WROLAA.

The removal of “responsible and productive” from the purpose of the Water Act is strongly supported, but we believe this should be replaced with clear references to achieving the principles of “ecologically sustainable management”, rather than the vaguer ‘sustainable management’.

We further believe there are better means of capturing the full intent of Ecologically Sustainable Development (ESD) and ecologically sustainable management of water in the proposed wording for s59 of WROLAA (and thus the proposed new s2 of the Water Act). Most critically, we believe that the achievement of ESD and ecologically sustainable management of water is best served by the elevation of these principles and processes to the entire Water Act and not just Chapter 2 of that Act, which is the effect of the Bill as it stands. We note that in a briefing to the Committee, the Department of Natural Resources and Mines advised that,

“Members of the conservation sector sought the application of the ecologically sustainable development principles to apply across the entire Water Act including for Chapter 3, which deals with the management of underground water impacts associated with the resources sector. Applying the principles of ecologically sustainable development in these circumstances would be in conflict with the purpose of Chapter 3, which is to provide a transparent impact management framework for already approved resource projects.”

While the application of ESD may require some changes to the way that resource sector projects are conceived and approved (or not), the application of ESD to all parts of the Water Act is an obvious means of modernising the legislation and in keeping with the spirit of Labor’s comments and commitments on ESD. Otherwise, the effect of the Bill is to continue the message and practice that resource projects are not expected to manage water sustainably, and it becomes a nonsense to imply that ESD is being restored to the Water Act, when in fact it will only apply to one Chapter of it. ESD principles should apply to each of the purposes of the Act and thus the entire Water Act, ie including securing water supply and demand management, managing impacts on underground water, and the operation of water authorities.

Finally, in ensuring that ecologically sustainable management is properly pursued and achieved, we believe that the word “incorporates” in the proposed amendments to s2 (2)(a) and s2 (3)(a) *Water Act 2000* is not appropriate because this word is effectively definitional rather than requiring implementation. It should be replaced with “**applies**” in to s2 (2)(a), and with “**promotes**” in s2 (3)(a) *Water Act 2000*.

To give effect to these changes, we **recommend** that Clause 12 of the Bill be reworded as follows (consistent with wording developed by and with EDO Qld):

“Amendment of s 59 (Replacement of s 2 (Commencement)) Section 59, inserted section 2—

omit, insert—

2 Purposes of Act and their achievement

(1) The main purposes of this Act are to provide a framework which provides for the **ecologically sustainable management** of the following—

- (a) Queensland’s water resources and quarry material by establishing a system for—
 - (i) the planning, allocation and use of water; and
 - (ii) the allocation of quarry material and riverine protection;
- (b) the sustainable and secure water supply and demand management for the south-east Queensland region and other designated regions;
- (c) the impacts on underground water caused by the exercise of underground water rights by the resource sector, including mitigating and avoiding impacts; and
- (d) the effective operation of water authorities.

(2) For the purposes of this Act, ***ecologically sustainable management*** is management that—

- (a) applies the principles of ecologically sustainable development; and
- (b) allows for the allocation and use of water resources and quarry material for the economic, physical and social wellbeing of the people of Queensland, within limits that can be sustained indefinitely; and
- (c) sustains or improves the health of ecosystems, water quality, water-dependent ecological processes and biological diversity associated with watercourses, lakes, springs, aquifers and other natural water systems, including, where practicable, reversing degradation that has occurred; and
- (d) recognises the interests of Aboriginal people and Torres Strait Islanders and their cultural connection with water resources; and
- (e) enables water resources and quarry material to be obtained through fair, transparent and orderly processes; and
- (f) builds confidence regarding the availability, security and value of water entitlements and other authorisations; and
- (g) promotes the ***efficient use of water*** through—
 - (i) the establishment and operation of water markets; or

- (ii) the initial allocation of water; or
- (iii) the regulation of water use if there is a risk of land or water quality and or marine degradation; or
- (iv) increasing community understanding of the need to use and manage water in a sustainable way; and

(h) facilitates and encourages the community to take an active part in planning for the management and allocation of water, including ensuring adequate consultation with all relevant stakeholders, including appropriate representatives of Aboriginal and Torres Strait Islander interests.

(i) integrates, as far as practicable, the administration of this Act and other legislation dealing with natural resources.

(3) For subsection (2)(g), the *efficient use of water*—

(a) promotes water demand management measures that achieve permanent and reliable reductions in the demand for water; and

(b) promotes water conservation measures and appropriate water quality objectives for intended use of water; and

(c) promotes water recycling, including, for example, water reuse within a particular enterprise to gain the maximum benefit from available supply; and

(d) considers the volume and quality of water required for particular circumstances, including releases to the environment from water storage infrastructure to ensure that flows and water quality required to support aquatic species, freshwater ecosystems, estuaries and marine receiving waters are maintained.”

Clause 14 of the Bill: Recommended changes - new s7 of Water Act heading should be amended to “Meaning of ecological sustainability and principles of ecologically sustainable development”, via s65 WROLAA

Consistent with the recommendations above, the proposed new s7 of the Water Act, first paragraph should be amended to “The following describe ecological sustainability and principles of ecologically sustainable development”.

Clause 15 of the Bill: recommended changes to ‘Amendment of s 68 (Insertion of new ch 2)’ of WROLAA

Consistent with the recommendations above, Clause 15 of the Bill should refer to ecologically sustainable”, rather than just “sustainable”:

- Clause 15 (1): Recommended change to insert “ecologically sustainable”.
- Clause 15 (2): Recommended change to insert “ecologically sustainable”.

- Clause 15 (4): Recommended change to insert “ecologically sustainable”.
- Clause 15 (9): Recommended change to insert “ecologically sustainable”.
- Clause 15 (25): Recommended change to insert “ecologically sustainable”.

Consistent with our previously stated positions, and Labor’s policy commitments, we strongly support the removal of Water Development Options from WROLAA:

- Clause 15 (3): Deletion of s39(2) of WROLAA.
- Clause 15 (7): Deletion of s51(2)(c) of WROLAA.
- Clause 15 (8): Deletion of s52 of WROLAA.
- Clause 15 (16): Deletion of Chapter 2, part 2, Division 7 of WROLAA.
- Clause 15 (24): Change to Section 68, inserted section 147, heading of WROLAA.

Consistent with our previously stated positions, and Labor’s policy commitments, we strongly support the removal from WROLAA of the deregulation of water take from designated watercourses, via Clause 15 (17): Deletion of s101(1)(e) of WROLAA.

Clause 16 of the Bill: dealing with resource tenures that intersect Cumulative Management Areas

We **do not** support Clause 16: (tenure) of the Bill. We believe that automatic inclusion in the Cumulative Management Area of the full resource tenure where part of the tenure straddles the CMA boundary provides greater certainty and appropriate ecologically sustainable management of water in and close to CMA.

Clause 19 of the Bill: Amendment of s 202 (Amendment of sch 4 (Dictionary))

We recommend that the words in Clause 19 (3) should read “ecological sustainability and principles of ecologically sustainable development see section 7”.

Addition of a Clause 20 to the Bill: conversion of water licences

We **do not** support Clause 15 (14), and instead recommend the **addition of a Clause 20 to the Bill**, which should read:

‘Amendment to s68 WROLAA, creating Subdivision 2 (new s146) ‘Converting water entitlements and granting water allocations’ – **omit**.

Addition of a Clause 21 to the Bill: removing Part 4 of WROLAA

We note that in a briefing to the Committee, the Department of Natural Resources and Mines advised that,

“...the underground water management framework included in the WROLA Act for protecting water users against impacts from the resources sector is consistent with government policy. The framework is therefore not a matter for the Bill”.

The effect of Part 4 of WROLAA in the Bill is to provide, the proponents of mining development projects with statutory rights to interfere with and/or take unlimited volumes of groundwater, via changes to several pieces of legislation including the *Water Act 2000* and the *Mineral Resources Act 1989*. Such statutory rights to underground water will result in removing third party objection rights presently attached the process for acquiring a water licence. They will also effectively reduce government’s capacity to manage Queensland’s underground water resources under ecologically sustainable principles and practices.

We fundamentally disagree with this policy, and also with the advice that this matter is not an issue in terms of what the Committee should consider and propose in relation to the Bill. We recommend the Committee supports the addition of a Clause 21 to the Bill, which would read:

“Part 4 (WROLAA) Amendment of Mineral Resources Act 1989” – **omit**.

Several conservation groups have written jointly to the Minister for the Environment, the Hon Dr Steven Miles, and to the Minister for Natural Resources and Mines, the Hon Dr Anthony Lynham, proposing a comprehensive analysis of the issues with groundwater and mining, and further discussion and deliberation by the Water Engagement Forum on the best policy and legislative way forward. We urge the Committee to support this process.

Thank you once again for the opportunity to comment on the *Water Legislation Amendment Bill*. I look forward to further engagement on the development of water legislation and policy, including making presenting at a Committee hearing. In the meantime, please do not hesitate to contact me should you require any clarification of the responses above or any additional information in that regard.

Yours sincerely



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