



# Roadvale Water Board

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14 March 2019

Committee Secretary  
 State Development, Natural Resources and Agricultural Industry Development Committee  
 Parliament House  
 George Street  
 Brisbane Qld 4000

Submission – Natural Resources and Other Legislation Amendment Bill 2019

Dear Sir/Madam

Thank you for the opportunity to provide the following submission. This submission relates to - Chapter 6 Amendments of water legislation – Part 3 Amendment of Water Act 2000.

**Section 1: A comparison of proposed and current legislation.**

Proposed legislation – Water Act 2000	Expected Impacts
<p><b>“598 Role of board</b>                      (1) <i>The board of a water authority is responsible for the way in which the authority performs its functions and exercises its powers. (2) Without limiting subsection (1), it is the board’s role—</i>                      (a) <i>to decide the objectives, strategies and policies to be followed by the authority; and (b) to ensure the authority performs its functions in a proper, effective and efficient way.’</i></p>	<p>The proposed legislation deletes clauses relating to ratepayers nominating and electing directors. The current legislation reads:  <b>“598 Composition of board for water authorities</b>                      (1) <i>As soon as practicable after a new water authority is formed on an amalgamation under section 690, the chief executive must publish a notice in the gazette stating—</i>                      (a) <i>the number of directors comprising the authority’s board; and</i>                      (b) <i>whether the directors are to be elected by the authority’s ratepayers or nominated and, if they are to be nominated, by whom they are to be nominated.</i>                      (2) <i>Directors that are to be elected must be elected—</i>                      (a) <i>in the way prescribed by regulation; and</i>                      (b) <i>to the extent the way is not prescribed by regulation—in the way approved by the chief executive.”</i></p>

<p><b>598 Role of Board cont.</b></p>	<p>The proposed legislation will remove any reference allowing ratepayers to elect directors. By definition, elected persons are chosen by vote, as for an office, contrasted with appointed. The proposed legislation reduces ratepayer input to optional. Any process by ratepayers to elect or nominate suitable candidates would be better described as a preselection process.</p> <p>Furthermore, as stated in the accompanying “Procedures for category 2 water authorities” when nominating and/or electing directors, and conducting special ballots, section 3- “Regardless of what process is used by a water authority to select suitable candidates, they must provide to the Minister for consideration of appointment, two additional candidates to the number of vacancies on the board.”</p> <p>There is no requirement in the water act for the Minister to regard any suitable candidates elected or nominated by ratepayers. Ratepayers lose control of a community service under this proposed legislation.</p>
<p><b>“600 Appointment</b>  <i>(1) The Governor in Council may appoint an appropriately qualified person as a director for a category 1 water authority. (2) The Minister may appoint an appropriately qualified person as a director for a category 2 water authority. (3) In recommending a person to the Governor in Council for appointment under subsection (1), or appointing a person under subsection (2), the Minister must have regard to— (a) providing balanced gender representation in the boards of water authorities; and (b) any other matter the Minister considers relevant. (4) Also, in appointing a person under subsection (2), the Minister must have regard to the names of suitable candidates, if any, given to the Minister under section 609.”</i></p>	<p>The proposed changes to the Water Act contradict the board requirements for Roadvale Water Board as published in the Queensland Government Gazette Vol 38 No 32 on 20<sup>th</sup> February 2019.</p> <p>The Gazette states -          “4 Directors in all comprising – 4 persons nominated or elected by ratepayers in the way approved by the Chief Executive.”</p> <p>The proposed change requires 6 candidates selected by the Board, without the requirement of any input from ratepayers. The Minister would then appoint 4 directors to office.</p> <p>The existing and true election process whereby 4 persons are nominated or elected by ratepayers, should be retained.</p> <p>The reported objectives of the Amendment Bill include removing ambiguity.<sup>1</sup> Any change which allows the Minister to appoint Directors with regard to “any other matter the Minister considers relevant” significantly increases ambiguity. This is very unclear and open ended and allows the Minister to regard any other matter above candidates provided by the Board.</p>
<p><b>“604 Term</b>  <i>(1) A director for a water authority holds office for the term stated in the director’s instrument of appointment. (2) The stated term must not be more than 3 years. (3) The director may be reappointed. (4) Despite subsections (1) and (2), a director for a category 1 water authority continues holding office after the director’s term of office ends until the day the director’s successor is appointed under section 600.”</i></p>	<p>Currently Category 2 water authorities continue to hold office until the director’s successor is appointed. Roadvale Water Board’s directors which were elected in April 2016 are yet to appointed by the Minister. The proposed legislation removes the ability for Category 2 directors to continue holding office after their term ends. The impacts of this change would leave the water board without directors and unable to continue operations. This would result in the Minister appointing directors of their choice under section 609B of the Water Act 2000.</p>

<sup>1</sup> Natural Resources and Other Legislation Amendment Bill 2019 – Explanatory Notes p14

<p><b>“608 Acting Director</b>  <i>The Governor in Council, for a category 1 water authority, or the Minister, for a category 2 water authority, may appoint a person to act as director for a water authority— (a) during a vacancy in the office; or (b) during any period, or during all periods, when the director is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.”</i></p>	<p>This change does not include provision for the board to seek and nominate suitable candidates. By allowing the Minister to appoint acting directors without board selection disregards the need for directors to reflect the characteristics of the community they serve. This is listed as desirable for effective Government Board performance in the Governments “Welcome Aboard” document, section 4.4</p>
<p><b>“609 Category 2 water authority board must seek and nominate suitable candidates</b>  <i>(1) This section applies to a category 2 water authority. (2) At least 6 months, but not more than 12 months, before the end of a director’s term of office, the board of the authority must— (a) seek suitable candidates for the office; and (b) give the Minister the names of suitable candidates for the office. (3) Also, the authority must comply with subsection (2)(a) and (b) within 3 months after a director’s office becomes vacant under section 607(1)(b), (c) or (d). (4) The chief executive may require the board of a category 2 water authority— (a) to seek suitable candidates under subsection (2)(a) in a particular way, including, for example, by asking the authority’s ratepayers or another entity to elect or nominate suitable candidates; or (b) to give under subsection (2)(b) a stated number of names. (5) If the chief executive makes a requirement under subsection (4), the chief executive must publish the requirement on the department’s website. (6) In performing the board’s functions under subsection (2), the board must have regard to providing balanced gender representation in the board. (7) Subsection (2) does not apply if the Minister gives the board a notice stating the Minister does not expect to appoint a person to the office of the director mentioned in subsection (2) because the water authority may be amalgamated or dissolved, or its functions transferred to a local government, under part 7. (8) In this section— suitable candidate means an appropriately qualified person suitable for appointment under this division as a director.”</i></p>	<p>(4) The Minister would be able to dictate how the board seeks suitable candidates. The Minister may require authorities’ ratepayers or another entity to elect or nominate suitable candidates. This is misleading as the candidates elected by ratepayers would not actually become directors. Elected candidates would be presented to the Minister for appointment which is in contrast to elected Directors.</p> <p>(7) This section provides the Minister with ability to give the board a notice stating the Minister does not expect to appoint a person to the office of the director mentioned in subsection (2) because the water authority may be amalgamated or dissolved, or its functions transferred to a local government, under part.</p> <p>The effects of this change would allow the Minister to dissolve, amalgamate or transfer the water boards functions without any vote by ratepayers. Ratepayers should be the ones who determine any amalgamation, dissolution or transfer by vote only.</p> <p>(8) Suitable candidates – The definition is ambiguous and allows the Minister to appoint directors without ensuring directors are suitable for our particular water board. Boards are not all the same, either in the service they deliver or the best method of operation. Selecting directors who are considered suitable on their written application is not guaranteed to be suitable in practice.</p>

**Section 2: Further discussion.**

The Roadvale Water Board, under the current legislation, operates an efficient & effective water supply. We are financially independent covering all expenses including depreciation. This is evidenced by our 2018 Profit & Loss Statement (Attachment 1). Our Board successfully meets government obligations and requirements through the Annual Report provided to the department and Audited Financial Statements.

The current legislation allows ratepayers to address issues with directors not acting in the interests of the community. The Queensland Governments commitment to community engagement is very important to the Roadvale Water Board. A Government priority in the Welcome Aboard document states – “Government Boards are one mechanism by which the Government seeks to engage with the community and make government decision making accessible to all Queenslanders.<sup>2</sup> We seek the Committees understanding regarding how these changes in legislation, will adversely impact our community.

The changes to Category 2 Water Boards is more about control without commensurate responsibility than the best method promoting diversity. It provides a mechanism for the government to avoid responsibility for failure and also limits the ability of the community to respond to the failure.

The community will face serious issues from Board failure, yet Boards will be less responsible to the community, as appointment is dominated by the Minister. This is the natural consequence of the proposed shift in emphasis to an appointment process from an electoral process. The removal of the election process also removes the only method available for communities to rectify poor Board management.

To the Roadvale Community the water scheme is an essential service as its’ alternative water sources are dependent on surface water storage. (Local underground water is of poor quality and limited). Surface water is severely affected in drought (currently many farmers outside the scheme are laboriously carting water for stock which the Roadvale community can avoid.) As such the scheme is an essential service delivering cost effective water supply to our small community.

The legislation also imposes significant extra cost in the selection process which may not seem much to a big government but is important to this small community organisation. It cannot be disputed that the administration of the selection process is more cumbersome, laborious and costly and less effective than encouragement. It is also cost shifting to achieve a government objective. Most importantly it sets in process a structure that the Board will become more focused on themselves and their relationship to government.

This shift in focus will inadvertently lead to increased Board costs and less service delivery. Over time it will be more costly and less effective as it moves away from community control. This will especially be the case if directors are chosen from outside the area and claim travel expenses.<sup>3</sup> The losers will be the small community of Roadvale which to date has avoided the significant rise in water costs experienced by other communities and caused by the corporatisation of their water supplies. Even slight increases to productions costs, are a burden on our already stressed rural community.

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<sup>2</sup> Queensland Government Welcome Aboard – Section 4.1 Government Priorities

<sup>3</sup> Queensland Government Welcome Aboard – Section 5.3 Travelling Expenses

An intended objective of the Amendment Bill is to remove unnecessary administrative burden on the department and community.<sup>4</sup> The cost of the current election process to our community is less than \$5000. The cost of the proposed process detailed in Attachment 2, is estimated at \$15,749 - 3 times the current cost. This amendment to legislation is not achieving its intended objectives on several points.

A further comment on the proposed legislation is the ongoing frustration experienced by Category II Water Boards and the length of time taken by various Ministers in actually completing the appointment process. Boards are required to complete tasks within set time frames. The same expectation should be placed on Ministers responsible for finalisations of appointments. In this way confidence in the government's ability to be a prudent partner in the delivery of water services will be retained.

### Section 3: Alternative Solutions.

The Government's goal of diversity could be more effectively achieved by community engagement – something that the Board has stated in all its submissions to date, is committed to and will contribute toward. This also has the advantage that it brings the community along with the government objective.

The challenges faced in achieving gender equality are recognised by the Workplace Gender Equality Agency.<sup>5</sup> The Agency acknowledges the opportunities for smaller organisations to achieve gender equality are more limited than those for larger organisations. We seek the Committees understanding to these challenges. Ensuring gender diversity is achieved without adverse effects, should be the objective of any legislative changes.

There are more effective ways for Category 2 Water Boards to achieve gender diversity and other objectives without changing the election of directors by ratepayers. Some suggestions include -

- Hold elections under the current legislation. Two positions are reserved for women. The two women who receive highest votes and two other candidates who receive the highest votes are elected as Directors.
- Should a board be found to discriminate against women, legislation could be changed to allow the Minister to appoint directors in this instance.
- If a Category 2 Water Board is not meeting its obligations through Annual Reports and Audit, legislation could be changed to allow the Minister to appoint directors in this instance.
- Exemptions could be added to legislation for boards with small number of ratepayers, where elections are not feasible.
- Should 50% female representation not be achieved through the current process – add to legislation to allow the Minister to appoint directors in this instance.

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<sup>4</sup> Natural Resources and Other Legislation Amendment Bill 2019 – Explanatory Notes p14

<sup>5</sup> Workplace Gender Equality Agency – How to set gender diversity targets

Hence, we request:

- that the electoral process remains unchanged as per current Water Act 2000
- suitability for election remains within the norms of the community (ie a fit and proper person in terms of criminal and financial background).
- request that the Board be required to provide 4 names to the Minister and that her/his rejection of a candidate should only be done if the candidate is found to be of unsound character.

Additionally, the following should be considered for inclusion:

- That the Minister has a set time limit to complete the process of appointment.

We agree that the Roadvale Water Board with the support of the Government will actively undertake steps to increase the diversity of the Board to achieve a better gender balance and sets 2020 as the objective for this process.

We call on the Queensland Government to honour their commitment to engage with the community and make government decision making accessible to all Queenslanders.

Yours sincerely



Melinda Gotke  
Secretary  
Roadvale Water Board



Ross Lehmann  
Chairman  
Roadvale Water Board