Water Legislation Amendment Bill 2022

Submission No: 7

Submitted by: Kalamia Cane Growers Organisation Limited

Publication:

Attachments:

Submitter Comments:

KALAMIA CANE GROWERS ORGANISATION LTD ACN 092 708 337

MANAGER: Dave Paine [redacted]
CHAIRMAN: Robert Malaponte [redacted]
DEPUTY CHAIRMAN: Denis Pozzebon [redacted]
DIRECTOR: Joseph Quagliata [redacted]
DIRECTOR: Frank Mugica [redacted]

[redacted] | PO Box 597, AYR Q 4807 | Email: admin@kalagro.com.au | Ph: (07) 4783 1312

10 November 2022

Ms Stephanie Galbraith
Committee Secretary
State Development and Regional Industries Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: SDRIC@parliament.qld.gov.au

Dear Ms Galbraith

Submission addressing the *Water Legislation Amendment Bill 2022*

Kalamia Cane Growers Organisation Limited **(KCGO)** is a bargaining representative pursuant to section 33(3) of the *Sugar Industry Act 1999* (Qld), representing approximately 150 growers who supply 1.6 million tonnes of cane to Wilmar Sugar mills in the Burdekin. Accordingly, the comments made in this submission responding to the *Water Legislation Amendment Bill 2022* **(the Bill)** pertain to sugar cane growing in the Burdekin, however, may have relevance to other agricultural regions in Queensland.

Set out below is KCGO's comments in relation to the Bill.

Opening comment

The Explanatory Notes to the Bill states that the primary objective of the Bill is to establish a "*regulatory framework for…..measuring the take of non-urban water*". The scope of the Bill is very wide arching, covering vast areas of regional Queensland, impacting numerous agricultural industries. Improving reporting of water taken pursuant to the *Water Act* 2000 **("the Act")** may, in certain circumstances, have merit. However, as is typically the case, the Bill applies to all water users within the nomenclature, imposing a broad brush approach when regional circumstances make such an approach impractical, onerous and harmful. It is predominantly because of differing regional circumstances, that vast sections of the Bill cannot be supported.

Clause 17 – Renewal of water licences would be assessed as if a new water licence

The proposed amendment to section 130 of the Act would make a yearly renewal of a water licence, even where there has been **no change in circumstance**, a new water licence and subject to refusal by the chief executive and/or granted but subject to new conditions.

Section 130 of the Act currently prescribes that if there has been a change in circumstance, for example, an increase in the amount (ss (1)(a)), rate (ss (1)(b)), location or interference (ss (1)(c)), of water taken pursuant

to the licence, the renewal would be dealt with as a new water licence and subject to the scrutiny of new applications. Change in circumstance would be a legitimate reason to process a renewal in this way. Further, as stated in the Explanatory Notes, the chief executive has discretion when considering renewal of water licences, including whether to approve the licence with conditions. This power is without Parliamentary oversight. Given potential negative consequences of refusing renewal or renewal with onerous conditions (discussed below), the exercise of such powers without defining criteria in the exercise of such discretion, should be the realm of the Queensland Government, not the chief executive.

A mere yearly renewal, without change in circumstance, does not merit the licence to be subject to refusal or new conditions. Of relevance –

- This creates uncertainty in relation to the "value" of the water licence and the farming land/business;
- This creates uncertainty in relation to surety of access to water for the farming land/business, particularly given that a renewal of a licence may be refused by the chief executive or have attached onerous conditions that make compliance commercially detrimental;
- The imposition upon individual growers/licence holders is substantial;
- Adds substantial red tape, cost and bureaucracy for both the Government and growers, without justification.

Amendments could have been made to section 130 to widen the circumstances which justified when a renewal should be treated as if it were an application for a new water licence should the Queensland Government have such concerns, without creating uncertainty every year on whether each and every water licence will be renewed or renewed but subject to additional conditions, impacting the surety of access to water.

The Burdekin is the dry tropics and relies upon irrigation to grow crops. Potentially such uncertainty may negatively impact investment in crops, farms and agriculture.

Clause 36 – Change to the conditions of a water licence

Clause 36 seeks to amend section 118(2)(a) of the Act to include the requirement that the holder of the licence may, if required by the chief executive, in addition to installing a measuring device, calculate, record, transmit or report the information taken from the measuring device.

This is additional red tape imposed upon growers (in circumstances where growers already wear a heavy burden of compliance with other statutory requirements, for example data collection of usage of nutrients and chemicals), particularly when the interval of recording/reporting requirements is at the whim of the chief executive. There is no guidance from the Explanatory Notes as to the extent of this imposition, or criteria which would trigger the imposition. This potentially, in light of the fact that a single grower is reporting for multiple water licences on their farm, is a substantial imposition on growers. The amendment should be defined by criteria when such onerous requirements could be triggered.

Clause 39 – Imposition of measurement requirements for taking water under the Act

Clause 39 inserts a new division (sections 217A to 217J) that pertains to the measurement requirements of taking water pursuant to the Act via "authorisations". It potentially applies to all water licences/authorisations to take water under the Act.

The amending sections and Explanatory Notes fail to recognise the practicality of compliance:

- The licence holder's/grower's ability to source very specific water meters at a reasonable commercial cost;
- The fact that only "*duly qualified*" persons can install the meters, which will be difficult to locate in regional parts of Queensland;

- Should standards for measurement requirements change, this may trigger a requirement to replace multiple existing water meters at a cost to the licence holder/water user;
- Changing standards, given the chief executive's discretionary powers to make standards relating to measurements requirements, without Parliamentary oversight;
- The licence holder is responsible for identifying and rectifying faulty measurement devices, again at the cost of the licence holder.

The cost of a water meter (noting that changes to measurement standards may render some existing meters non-compliant with regulations), including installation and changes to other infrastructure (such as pipes or pumps regulating outflow) is estimated between $10,000 and $15,000. A grower with potentially 4 or 5 pumps (subject to the Act) on a relatively small farm of approximately 100 hectares, is likely to incur compliance costs in the order of $40,000 to $75,000, noting that any such regulation is likely to apply to all water licences/authorisations pertaining to a farm in a particular water management area, such as Delta and BRIA farms in the Burdekin.

There is no recognition in the Explanatory Notes of the potential costs to be borne by licence holders/growers, or assistance with the practicalities of actually complying with such requirements. For these reasons the amendment is not tenable.

Clause 48 – Reversal of Onus of Proof in Legal Proceedings

Clause 48 amends section 921 of the Act by including a power that the chief executive, by merely issuing a certificate pertaining to information collected by a water meter, becomes evidence of such matters, thereby reversing the onus of proof.

The Explanatory Notes provides alleged justification of the reversal of the onus of proof on the basis that it would be inherently impractical and costly to the Queensland Government to prove that a licence holder breached the requirements of the water licence as it pertains to the timing, rate or volume of water taken by the licence holder. Thus the Queensland Government acknowledges that it is costly to obtain evidence to prove that a breach of a water licence has occurred to the requisite legal standard.

Water meters are mechanical in nature and therefore (and have in the past) fail/ed. Therefore the reversal of the onus of proof is not reasonable, having regard to matters of fairness. The resultant being that the State Government finds it acceptable that a licence holder be put to the costs of disproving the matters pertaining to the certificate, potentially an event or period that has occurred at some time in the past, to defeat an alleged infringement/offence. There are no circumstances where this is acceptable and should be removed from the Bill.

Exemption where the water management area is subject to a Water Authority pursuant to Chapter 4 of the Act or SunWater

It is clear from the Explanatory Notes that the purported primary objective of the Bill is improving management of underground water and water in the aquifer.

In the Burdekin monitoring of water is undertaken by the Burdekin Water Board and SunWater. Each entity monitors and collects data pertaining to the usage of water, inflows of water and water levels. For example, the Burdekin Water Board has approximately 50 sites wherein it monitors the height of water in its water management area, which is colloquially referred to as "the delta". It reports to the State Government on matters pertaining to the aquifer, including usage, inflows and the level of water in the aquifer. Likewise, SunWater collects data from sites monitoring ground water levels in the BRIA, together with existing meters on bores and pumps recording water usage in the BRIA. All water extracted from SunWater's channel systems is metered.

It is a reasonable assumption that all Water Authorities and SunWater collect comparable data in each water management area under their respective purviews.

Thus if the primary purpose of the Bill is the collection of information pertaining to the usage, inflows and levels of water in the Burdekin (and in other water management areas across regional Queensland), this is already occurring within the existing structures, and the likely imposition of costs upon licence holders/growers in the Burdekin (and growers across Queensland) to collect duplicated information is unwarranted and the Bill should be amended to include exemptions.

Conclusion

It is sufficiently important to reiterate that onerous legislation is not required if the Bill is likely to duplicate the collection of data that is already available to the Queensland Government. There is sufficient evidence to establish that the likely compliance costs will be substantial, without achieving any substantive improvement in the understanding of usage of water.

KCGO is of the opinion that there cannot be proper consideration of the Bill by the Committee unless there is proper consultation, including holding public hearings in regional Queensland (being the areas most likely impacted by the Bill) and hearings open to agricultural producers and representative organisations for the Committee to properly understand the practical implications of the Bill on growers/licence holders. KCGO is not a member of the DRDMW's Water Engagement Forum and therefore has not been involved in any consultation process. The impact of the Bill will vary from region to region and different agricultural industries.

KCGO is also seeking to appear at any public hearing/s held by the Committee to discuss this submission and the Bill further.

Please do not hesitate to contact the writer should you wish to discuss any matter or this submission further.

We await your reply.

Yours faithfully

[redacted]

David Paine
KCGO Manager