Queensland Conservation

PROTECT CONSERVE SUSTAIN

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Dear Agriculture and Environment Committee

Submission to the Inquiry into the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016

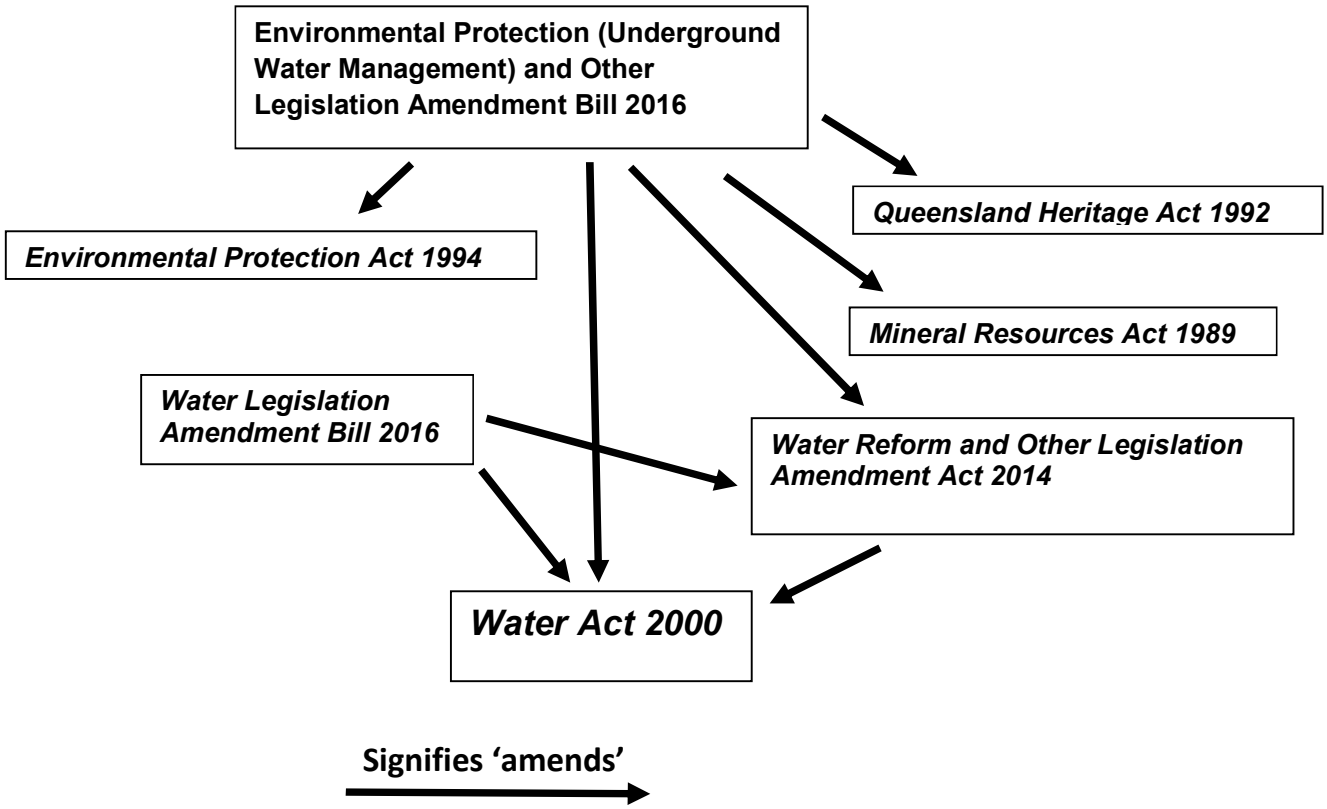
Thank for you the opportunity to make a brief submission on the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016 (referred to hereon as the 'EPOLA Bill').

Queensland Conservation Council (QCC) is Queensland's peak environment organisation, representing some 60 member groups including ten regional conservation councils across Queensland, as well as thousands of supporters. QCC's member groups in turn represent a wide range of conservation interests and many thousands of individual members.

QCC has a strong interest in water policy and legislation development. We have a representative on the Queensland Water Engagement Forum hosted by the Department of Natural Resources and Mines and have previously auspiced a water policy engagement position for the conservation sector.

We are very pleased to see the Queensland government move once more on water legislation reform, prior to when non-commenced components of the current Water Reform and Other Legislation Amendment Act 2015 (WROLAA) will trip into effect.

To be frank, water legislation and policy has been a mess over the last few years: the previous LNP government amended the Water Act via WROLAA but this legislation did not commence prior to change of government in 2015. The incoming Labor government could and in our view should have just repealed the WROLAA and started again. Instead it chose to cherry pick which bits of the WROLAA it would retain and which bits to remove via its own amendment legislation (the Water Legislation Amendment Bill 2016, which has yet to be passed into law).



So what we have now is a situation where there are multiple amending Bills and Acts, some of which amend each other as well as additional legislation. Through the intervening period of the current government finalising its legislative priorities, conservation groups have continued to press for changes to WROLAA, which are now reflected in the both the Water Legislation Amendment Bill (these include reinstatement of Ecological Sustainable Development (ESD) principles to parts of the Water Act, and removal of Water Development Options and Designated Watercourses). If passed these changes will make some big differences. But one key change sought – to remove a new entitlement for mining companies to water – in effect remains in the Water Legislation Amendment Bill amendments.

WROLAA was (and still is) designed to provide mining companies with a statutory right to take, or interfere with associated groundwater: free groundwater without any licensing process as required under the law today. Conservation groups and others in the community have expressed substantial concerns about the establishment of a statutory right to associated water for mining companies.

To date, the government's response has not indicated any policy shift on this. However, the government has acknowledged that the statutory right takes away a level of scrutiny of groundwater impacts posed by resource companies and the legal rights held by those concerned about groundwater impacts of existing projects that already advanced in the assessment process. It has therefore developed a proposed process to deal with the mining proposals which have not yet received a water licence under the old system, and would otherwise just slip into the new system (if passed).

Although the proposed amendments in the EPOLA Bill to the Water and Environmental Protection Acts will improve how impacts to groundwater that occur from exercising underground water rights are managed, the EPOLA Bill does not contain provisions needed to address other key issues that affect the long term sustainability of groundwater from exercising underground water rights by mining project proponents.

There are some core issues that we believe need to be addressed and incorporated into the EPOLA Bill to ensure that Queensland's groundwater resources are protected and sustainably managed. These include:

- ✓ Adding in new clauses to amend the Water Legislation Amendment Bill and/or WROLAA to prevent the establishment of a statutory right for resource projects to take groundwater without a licence (and retain current objection rights);
- ✓ Applying ESD principles including the Precautionary Principle to applications for associated water licences;
- ✓ Including applications for standard Environmental Authorities in the proposed new s126A of the Environmental Protection Act 1994;
- ✓ Assessing cumulative impacts; and
- ✓ Including requirement to make good impacts that occur to groundwater environmental values from exercising of underground water rights

Preventing the establishment of a statutory right to take groundwater

As a core principle of good policy and environmental regulation, QCC does not believe any resource company should be allowed to get free, unlimited access to groundwater. This is risky to the environment and creates an inequity with other water users. We therefore opposed the creation of a 'statutory right to take groundwater' for mining companies. Instead, a water licence should be required prior to water being taken or interfered with, with public submission and objection rights to a Court with powers of final determination.

Although it would add to the already messy legislative situation on current water reform, an option here is to use the EPOLA Bill as a vehicle for amending the Water Legislation Amendment Bill and/or WROLAA to prevent the establishment of a statutory right for resource projects to take groundwater without a licence, and retain current objection rights.

Recommendation

1. Amend the EPOLA Bill to prevent the establishment of a statutory right for resource projects to take groundwater without a licence, and to retain current objection rights.

Applying ESD principles including the Precautionary Principle to applications for associated water licences

Under the Water Act 2000, applications for water entitlements (including licences) are generally assessed against the principles of ESD to ensure the take and use of Queensland's water resources for consumptive purposes is ecologically sustainable, and considers the water use requirements of future generations.

However, applications by proponents of mining projects for the proposed associated water licence under Clause 36 of the EPOLA Bill will not be assessed against the principles of ESD. We are concerned this will mean there is a significant risk that the take of groundwater authorised under the associated water licence will be unsustainable. This could mean:

- Reducing the reliability of existing water users' entitlements, which may cause substantial socioeconomic impacts;
- Causing significant adverse impacts to the environmental values of surface and underground water resources; and
- Significantly altering catchment hydrology, which may cause a wide range of adverse socioeconomic and environmental impacts.

The application of ESD principles to assessment of an associated water licence will maintain current assessment tests which mining companies are subject to for water licences under the Water Act 2000.

Recommendations

2. Amend the EPOLA Bill to require applications for associated water licences to be assessed against Ecological Sustainable Development principles.

3. Include applications for standard Environmental Authorities in new s126A of the Environmental Protection Act.

Including applications for standard Environmental Authorities in the proposed new s126A of the Environmental Protection Act 1994

Clause 5 of the EPOLA Bill introduces a new section into the Environmental Protection Act, which outlines the information that must be provided and other criteria that must be addressed in applications for site-specific Environmental Authorities for resource projects and activities.

Given proponents of certain types of mining projects are able to apply for an Environmental Authority under the a standard or variation criteria application, and they will therefore not be required to comply with the requirements of the proposed new s126A of the Environmental Protection Act under Clause 5 of the EPOLA Bill.

As adverse impacts to groundwater can potentially occur from resource projects and activities with an Environmental Authority granted under the standard criteria, it is essential that standard and variation Environmental Authority applications must comply with the requirements under Clause 5 of the EPOLA Bill to ensure that a consistent approach is taken under the Environmental Protection Act to managing adverse impacts potentially caused to groundwater by all resource projects and activities.

Recommendation

4. Amend clause 5 of the EPOLA Bill to include standard such that it applies to all standard, variation and site-specific applications for Environmental Authorities for resource projects and resource activities in the new s126A of the Environmental Protection Act

Assessment of cumulative impacts

With high risks of cumulative impacts occurring to groundwater from individual and multiple mining projects, the EPOLA Bill needs to include provisions requiring proponents of mining projects to provide an analysis of the potential cumulative impacts that could occur to regional groundwater from theirs and other nearby mining projects when applying for standard and site-specific Environmental Authorities.

Applications for an Environmental Authority for resource projects and activities which cause unacceptable cumulative impacts to groundwater environmental values should not be approved.

Recommendation

5. Amend Clause 5 (new s126A in EP Act) of the EPOLA Bill to include the requirement that proponents of resource projects and activities must provide an analysis of potential cumulative impacts to groundwater when applying for standard and site-specific Environmental Authorities under the Environmental Protection Act

Including requirement to make good impacts that occur to groundwater environmental values from exercising of underground water rights

Under Chapter 3 of the Water Act 2000, proponents of mining projects must include a spring impact management strategy in the Underground Water Impact Reports they are required to provide.

However, because of the significant risk that measures in spring impact management strategies will not prevent adverse impacts to springs and other groundwater environmental

values from occurring, adverse impacts that inadvertently occur to springs and other groundwater environmental values as result of the exercising of underground water rights must be made good by the responsible proponent.

Options to make good adverse impacts that have occurred to springs and other groundwater environmental values includes the responsible proponent providing an equivalent offset and being required to rehabilitate any residual adverse impacts to springs and other groundwater environmental values following the cessation of the resource activity. Resource projects and activities that cause adverse impacts to springs and other groundwater environmental values which cannot be offset or rehabilitated should not be approved.

Recommendation

6. Amend the EPOLA Bill to include provisions in the Environmental Offsets Act 2014 and other relevant legislation to require proponents of mining projects to offset and rehabilitate impacts to groundwater environmental values that have occurred from exercising underground water rights

Thank you once again for the opportunity to make a brief submission on the EPOLA Bill. Queensland Conservation Council urges the Agriculture and Environment Committee to recommend key changes to the Bill as outlined above. These will make the Bill better and fairer, and conservation groups remain implacably opposed to creating a statutory right to associated groundwater for mining companies. Fundamentally, however, we do believe it is essential overall that the EPOLA Bill (and the current Water Legislation Amendment Bill) be supported and passed by Parliament before 6 December 2016, to ensure a number of other progressive changes to water legislation are secured.

Please do not hesitate to contact me for additional information about this submission[1].

Kind regards

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On behalf of Queensland Conservation Council Inc.

[1] The assistance of WWF Australia and EDO Qld in the development of this submission is acknowledged.