

Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016

Explanatory Notes

FOR

Amendments to be Moved During Consideration in Detail by the Honourable Steven Miles MP

Short title

The short title of the Bill is the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016.

Policy objectives and the reasons for them

The amendments to the Environmental Protection (Underground Water Management) and Other Legislation Amendment Bill 2016 correct minor errors and clarify the intent of provisions to ensure that the provisions operate effectively on their commencement. In addition, amendments are proposed to respond to issues raised by stakeholders during the consideration of the Bill by the Agriculture and Environment Committee.

Achievement of policy objectives

To achieve the objectives, the following changes to the Bill are proposed to:

- amend the cooling off period provision to allow bore owners to terminate make good agreements within five business days of execution
- clarify, for the avoidance of doubt, that advanced mining projects for which an associated water licence is required include mine expansion projects for which either an environmental authority application or environmental authority amendment application is currently in progress

- amend the circumstances in which a tenure holder is required to reimburse a bore owner for hydrogeological costs incurred during negotiation of a make good agreement
- provide that associated water licence applications are not subject to public notification in particular circumstances in which the groundwater impacts have been comprehensively assessed through earlier processes thereby giving recognition to the prior findings and outcomes of those processes
- correct drafting errors
- correct an error in the commencement clause
- make a consequential amendment to the *Queensland Heritage Act 1992* to ensure consistency in drafting.

Alternative ways of achieving policy objectives

The Bill must be amended to correct errors, clarify intent and to ensure the most effective operation of the provisions at commencement.

Estimated cost for government implementation

Amendments to the Bill are not expected to create any additional implementation costs for government.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles.

Consultation

The amendments that change the cooling off period, public notification requirements for particular associated water licence applications and requirements for hydrogeological advice respond to submissions made to the Agriculture and Environment Committee and further consultation with stakeholders.

No consultation was undertaken in relation to the other amendments as these amendments correct minor errors and provide clarity regarding the intent of the Bill.

Notes on provisions

Clause 2 (Commencement)

Clause 1 amends clause 2 of the Bill to correct an oversight in the commencement provision for amendments to the *Environmental Protection Act 1994*. The Bill should have provided for commencement of clause 9 and clause 10 (to the extent it inserts section 749) on assent, rather than immediately after the commencement of section 11 of the *Water Reform and Other Legislation Amendment Act 2014*. Clause 9 and clause 10 (to the extent it inserts section 749) are unrelated to section 11 of the *Water Reform and Other Legislation Amendment Act 2014*.

The amendment ensures that clause 9 and clause 10 (to the extent it inserts section 749) commence on assent.

Clause 22 (Amendment of s 153 (Compensation))

Clause 2 amends clause 22 of the Bill in response to a concern raised by the Agriculture and Environment Committee. The minor amendments are consequential to the amendments proposed by the Bill and ensure the term ‘compensation’ is employed consistently throughout section 153 of the *Queensland Heritage Act 1992*.

Clause 28 (Insertion of new s 423A)

Clause 3 is consequential to the amendment in clause 4 of the amendments to be moved during consideration in detail. The amended provision will allow a bore owner to terminate a make good agreement within five business days of its execution.

Clause 28 (Insertion of new s 423A)

Clause 4 amends clause 28 of the Bill to respond to concerns raised in submissions to the Agriculture and Environment Committee. The cooling off period is amended to provide for a standard five days within which a bore owner may terminate a make good agreement (provided the make good agreement is not subject to the provisions in Chapter 3, Division 4, Subdivision 4 (Land Court decision on dispute)).

Clause 31 (Insertion of new s 11A)

Clause 5 amends clause 31 of the Bill to clarify that the reference to ‘an application for an environmental authority’ includes an amendment application for an environmental authority. This amendment is made to avoid any doubt that advanced mining projects for which an associated water licence is required under the Bill includes mine expansions without a current water licence and for which an environmental authority amendment application has been made. This amendment makes it clear that an environmental authority amendment application that is associated with a take or interference with underground water in the area of the mining lease or mineral development licence related to the application is required to obtain an associated water licence if that take or interference is not already authorised.

Clause 35 (Amendment of s 119 (Amendment of s 423 (Requirement to enter into make good agreement and reimburse bore owner)))

Clause 6 amends clause 35 of the Bill. This is a consequential amendment required because of the amendment inserted by clause 7 of the amendments moved during consideration in detail.

Clause 35 (Amendment of s 119 (Amendment of s 423 (Requirement to enter into make good agreement and reimburse bore owner)))

Clause 7 amends clause 35 of the Bill to change the circumstances under which a tenure holder will be required to reimburse a bore owner for hydrogeology costs incurred during the negotiation of a make good agreement. The amended clause will provide that the requirement will only apply where the person providing the hydrogeological assistance has the qualifications and/or experience specified in the bore assessment guideline for a person undertaking a bore assessment.

Clause 36 (Amendment of s 201 (Amendment of ch 9 (Transitional provisions and repeals)))

Clause 8 amends clause 36 of the Bill to clarify that the reference to ‘an application for an environmental authority’ includes an amendment application for an environmental authority. This amendment is made to avoid any doubt that advanced mining projects for which an associated water licence is required under the Bill includes mine expansions without a current water licence and for which an environmental authority amendment application has been made. This amendment makes it clear that an environmental authority amendment application that is associated with the take or interference with underground water in the area of the mining lease or mineral development licence related to the application is required to have an associated water licence, if it does not already hold authorisation for that take or interference.

Clause 36 (Amendment of s 201 (Amendment of ch 9 (Transitional provisions and repeals)))

Clause 9 amends clause 36 of the Bill, where it inserts new section 1250D (Applying for an associated water licence) into the *Water Act 2000* to provide that associated water licence applications are not subject to public notification in particular circumstances in which the groundwater impacts have been comprehensively assessed through earlier processes. This gives recognition to the prior findings and outcomes of those processes.

Specifically this amendment provides that associated water licence applications are not subject to public notification if the chief executive is satisfied that the groundwater impacts of the mine were sufficiently assessed through an environmental impact statement, were subject to consideration in a Land Court hearing and the Land Court outcome did not specify any impediments to the granting of the application relevant to groundwater impacts.

An example of an impediment that might be specified in relation to the granting of an environmental authority or mining tenure application might include where the Court has made conclusions about groundwater that indicates that further or separate assessment of groundwater impacts should be undertaken in relation to the project.

The exemption from public notification will only apply where the objectors in the Land Court hearing led expert evidence on the impacts of underground water. Also, this exemption will only apply if the Land Court process was completed prior to the introduction of the Bill. This amendment is required to ensure that proposed mining projects for which groundwater impacts have already been subject to merit based appeal through consideration in a Land Court hearing prior to the Bill being introduced are not made subject to future appeals about the same matters as a result of the introduction of the associated water licencing requirement.

Clause 36 (Amendment of s 201 (Amendment of ch 9 (Transitional provisions and repeals)))

Clause 10 amends clause 36 of the Bill to correct a cross-referencing error.

Clause 36 (Amendment of s 201 (Amendment of ch 9 (Transitional provisions and repeals)))

Clause 11 amends clause 36 of the Bill to correct a cross-referencing error.

Clause 36 (Amendment of s 201 (Amendment of ch 9 (Transitional provisions and repeals)))

Clause 12 amends clause 36 of the Bill to correct a typographical error.

Clause 36 (Amendment of s 201 (Amendment of ch 9 (Transitional provisions and repeals)))

Clause 13 amends clause 36 of the Bill, where it inserts new section 1250F (Deciding application) into the *Water Act 2000*, to require the chief executive making a decision about an application for an associated water licence to first consult the chief executive of the department administering chapter 3 of the *Water Act 2000* and the chief executive of the department administering the *Environmental Protection Act 1994*. Chapter 3 of the *Water Act 2000* will be the framework in which the underground water impacts of mining projects will be administered into the future, and the holder of an associated water licence will be subject to obligations under that chapter into the future, therefore it is important that the responsible chief executive is consulted in advance of a decision being made. Further the Bill ensures the *Environmental Protection Act 1994* has a key role into the future in assessing underground water impacts of resource projects, therefore it is also important the chief executive of the department administering that Act is consulted on any decisions about whether to grant an associated water licence.

Clause 36 (Amendment of s 201 (Amendment of ch 9 (Transitional provisions and repeals)))

Clause 14 amends clause 36 of the Bill to make a consequential amendment as a result of clause 13 of the amendments moved during consideration in detail.

Clause 36 (Amendment of s 201 (Amendment of ch 9 (Transitional provisions and repeals)))

Clause 15 amends clause 36 of the Bill to make a consequential amendment as a result of clause 13 of the amendments moved during consideration in detail.

Clause 36 (Amendment of s 201 (Amendment of ch 9 (Transitional provisions and repeals)))

Clause 16 amends clause 36 of the Bill to make a consequential amendment as a result of clause 13 of the amendments moved during consideration in detail.

Clause 36 (Amendment of s 201 (Amendment of ch 9 (Transitional provisions and repeals)))

Clause 17 amends clause 36 of the Bill to correct a drafting error.

Clause 36 (Amendment of s 201 (Amendment of ch 9 (Transitional provisions and repeals)))

Clause 18 amends clause 36 of the Bill to correct a drafting error.

Clause 36 (Amendment of s 201 (Amendment of ch 9 (Transitional provisions and repeals)))

Clause 19 amends clause 36 to clarify that the reference to review and appeal is a reference to review and appeal under the *Water Act 2000* only.

Long title

Clause 20 omits the words ‘the *Mineral Resources Act 1989*’ from the long title of the Bill because the Bill does not directly amend that Act.