DEVELOPING A LEGAL FRAMEWORK FOR MANAGING THE CUMULATIVE IMPACTS OF MINE DEWATERING

THE UNIVERSITY OF WESTERN AUSTRALIA: FACULTY OF LAW WATER RESOURCES LAW CONFERENCE
8 APRIL 2015

Daniela Tonon, Special Counsel, +61 9211 7798, daniela.tonn@hsf.com
Fiona Sinclair, Senior Associate, +61 9211 7132, fiona.sinclair@hsf.com
# SESSION OUTLINE

## 1. What are cumulative impacts?

## 2. Regulation of mine dewatering in WA
- Environmental approvals and EIA: EP Act
- Water licensing: RIWI Act
- Mining approvals: Mining Act

## 3. Limitations of the WA system

## 4. National Water Initiative

Interstate insight: Queensland

## 5. What are the options for WA?
WHAT ARE CUMULATIVE IMPACTS?

Cumulative impacts are effects which combine from different projects and which persist to the long-term detriment of the environment. Cumulative impacts refer to progressive environmental degradation over time, arising from a range of activities throughout an area or region, each activity considered in isolation being possibly not a significant contributor.


*Cumulative impact means an impact on the environment that results from the incremental impact of a proposal, when added to other past, present and reasonably foreseeable future proposals.*

EIA Administrative Procedures.
CUMULATIVE IMPACTS AND MINE DEWATERING

• Mine dewatering may result in cumulative impacts
  – Drawdown points
  – Discharge points
  – Pit lakes
• Impacts may be offsite or delayed

Source: dmp.wa.gov.au
REGULATOR TOOLBOX

Environmental approvals: EP Act

Water licensing: RIWI Act

Mining approvals: Mining Act
HOW ARE THEY MANAGED THROUGH EIA?

EP Act provides for environmental impact assessment (EIA). Cumulative impact assessment; examining the environmental impact of a project in combination with past, existing and future activities.

Process:

1. Scoping
2. Assessment
3. Avoidance and mitigation measures

Result: Conditioning on Part IV Ministerial Statement and/or Part V Environmental Licence
Environmental Assessment Guideline 10: Scoping a proposal

Section 16e Advice
DOW LICENSING

s5C licence required to take water

Relevant considerations include public interest, ecological sustainability, environmental acceptability and current and future needs: cl 7 Sch 1

Powers for conditioning: Appendix to Schedule 1
DOW GUIDANCE DOCUMENTS

- Discussion Paper: Water Resources Management Options
  November 2009
- Pilbara Regional Water Plan 2010 – 2030
  May 2010
- Strategic policy 2.09: Use of mine dewatering surplus
  May 2013
- Water in Mining Guideline
  May 2013
- Securing Western Australia’s water future Position paper
  September 2013
- Pilbara groundwater allocation plan
  October 2013
MINING APPROVALS

Tenement Conditions

Approval of Mining proposal
LIMITATIONS OF THE WA SYSTEM

- Project based approvals
- No express statutory requirement for CI to be considered
- State Agreements
- Competitive tensions
NATIONAL WATER INITIATIVE

Water Access Entitlements and Planning Framework

- Water Access Entitlements (Note – clause 34)
- Environmental and Other Public Benefit Outcomes
- Water Planning (Note – Schedule E)
INTERSTATE INSIGHT: QUEENSLAND

**Water Act 2000 (Qld)**
- Currently mine dewatering subject to ad hoc conditioning

**Water Reform and Other Legislation Amendment Bill 2014**
- Same framework for petroleum and mining sectors
- Statutory right without the need for licensing
- Compliance with cumulative management framework
  - ‘Make good agreements’
  - Baseline monitoring requirements
OPTIONS FOR WA?

- Existing regulatory regime
- NWI
- Water Resource Management Bill
- Others?
QUESTIONS?