12 April 2013

Sophie Dunstone
Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

By email: ec.sen@aph.gov.au

Dear Ms Dunstone

Environment Protection and Biodiversity Conservation Amendment Bill 2013

Thank you for the opportunity to comment on the Environment Protection and Biodiversity Conservation Amendment Bill 2013 (**the Bill**).

QGC operates the QCLNG project, the world's first coal seam gas (**CSG**) to liquefied natural gas (**LNG**) project. QCLNG is one of Australia's largest capital infrastructure projects, involving US$20.4 billion of investment from 2010-14. Nearly 9000 people are working with QGC and its QCLNG Project and the company's investment is over A$11 billion so far.

The Bill has serious implications for the QCLNG project even though it has previously been referred to the Federal Minister and approved. The QCLNG project has more than 1,500 conditions (1,200 from the state and 300 from the Commonwealth) and 8,000 sub-conditions.

The amendments have been described as giving the Federal Minister powers over the development of CSG and coal mining industries by adding water as an MNES only in relation to these activities. According to the Australian Bureau of Statistics, mining accounts for only 4% of water consumption by industries and households in Australia, compared with 5% for manufacturing, 13% for households and 54% for agriculture. It seems inconsistent for the amendments not to include coverage of agricultural activity. There is no rationale for impacts on water to be an MNES when they are caused by some activities, but not when the same impacts are caused by others.

The Bill should be withdrawn for the following reasons:

- The Bill was introduced hurriedly without industry consultation and without a Regulatory Impact Statement;
- Given the extensive assessment and monitoring framework already in place, the Bill is likely to impose unnecessary costs, project delays and complexity with no commensurate environmental benefit; and
- The Bill has several unintended consequences for existing projects, projects currently being assessed and exploration activities, that will impede investment.

Parliamentary Processes

The introduction of the Bill into Parliament has been a swift one. The policy amendment was announced by the Government on 12 March 2013 and the Bill was introduced into Parliament the following day.

Notwithstanding the potentially wide-ranging implications the Bill carries for Australia's multi-billion dollar CSG industry, the Bill was introduced into Parliament without any stakeholder consultation.

The process by which the Bill came to be considered by Parliament:

- is void of satisfactory industry consultation ordinarily and reasonably afforded to regulatory amendments of such a significant nature; and
- runs counter to the Government's recent commitment to effective, proportionate and beneficial regulation through the mandatory Regulatory Impact Statement Process (**RIS**).

RIS plays an important role in public policy making and the accountability of Government. This was reinforced by a recent Independent Review into RIS commissioned by the Government in December 2011 (**the Review).** The Government in its response to the Review reaffirmed its commitment to mandatory RIS.

While, as has occurred, it is within the scope of the Prime Minister's executive powers to exempt the Bill from an RIS, the Review recommended this course of action only in genuinely exceptional circumstances:

- truly urgent and unforeseen events requiring a decision before a RIS could be properly undertaken; or
- a premature announcement that could cause unintended market consequences or speculative behaviour.

Neither of these circumstances exists in this case.

In addition, the Review recommends an exemption only where fulsome consultation and analysis have already been undertaken through another mechanism such as the White or Green Paper process. Such consultation has not occurred.

It is imperative that a transparent and consultative approach is adopted for the remainder of the legislative process so that the wide ranging implications of the Bill are able to be properly considered. The Bill in its current form represents a significant obstacle to further investment in an industry which has created tens of thousands of jobs and which represents a potential increase in real GDP for Australia of some $516 billion from 2015 to 2036 in Queensland alone. This has significant flow-on effects for the tens of thousands of stakeholders in regional communities whose livelihoods are strongly linked to the continued investment in, and growth of the CSG industry.

QGC therefore recommends that the Senate Committee hold extensive public hearings including in regional Queensland and NSW to afford the opportunity for the communities directly affected by the Bill to express their views. QGC also requests the opportunity to be heard, given the significant implications we anticipate for our business.

Duplication for no environmental benefit

The current regulatory framework comprehensively assesses potential environmental impacts including impacts on surface water and groundwater. For example, where a project is proposed to be developed in Queensland, potential impacts on surface water and groundwater are already assessed and regulated by:

- the Federal EPBC Act which requires assessment of impacts as they relate to existing MNES, including impacts to surface and groundwater. Conditions of any EPBC approval generally require that proponents prepare and implement Water Monitoring and Management Plans;

- the *Water Act 2000 (Qld)*, which provides for the management of impacts on underground water including through the preparation of underground water impact reports (UWIRs);

- the *Water Act* also provides for assessment of future impacts using a regional modelling approach and the development of management responses - such as monitoring programs - that are relevant to determining potential cumulative impacts. For example the Queensland Water Commission (now the Queensland Office of Groundwater Impact Assessment) has prepared an underground water impact report (UWIR) in respect of the Surat cumulative management area, which has been approved by the State. The UWIR includes:

  - a prediction of impacts on water levels
  - a water monitoring program
  - a spring impact management strategy
  - an assignment of responsibilities to individual petroleum tenure holders to undertake water management activities in the area including monitoring, bore and baseline assessments, and negotiating make good arrangements;

  Further, the Bill fails to account for the Federal Government's existing practice of accepting that studies of the Office of Groundwater Impact Assessment satisfy various EPBC Act approval requirements relating to underground water impacts. To date, the Federal Government has accepted Queensland's "adaptive" management approach in relation to groundwater impacts;

- the *Environmental Protection Act 1994 (Qld)* – where more site specific assessment is required to obtain environmental authorities (a prerequisite before production can commence). Conditions imposed on environmental authorities regulate impacts to both groundwater and surface water and generally require the preparation of a number of management plans, including CSG Water Management Plans and Groundwater Management Plans;

- the *Water Supply Safety and Reliability Act 2008 (Qld),* which regulates potential impacts to town water supply and requires the preparation of recycled water management plans;

- the *Waste Reduction and Recycling Act 2011 (Qld)*, which provides a process for CSG water to be approved for beneficial use;

- the *Fisheries Act 1994 (Qld),* which requires assessment of impact to surface water as it relates to fisheries resources.

Generally, obtaining the secondary approvals under the legislation listed above requires the prior approval of an environmental impact statement. For example, in order to secure approvals for the QCLNG Project, an environmental impact statement was prepared under the EPBC Act and Queensland's *State Development and Public Works Organisation Act.* Third-party experts, including hydrologists, geologists, engineers, environmental scientists, anthropologists, archaeologists, economists and social planners, were engaged to perform

rigorous scientific studies as part of the detailed environmental impact assessment which comprised 13 volumes and additional supplementary assessments.

The thorough nature of the existing legislative framework outlined above highlights the duplication the Bill will add. The Bill adds an unnecessary layer of regulation which only serves to increase delays and complexity to the assessment process, increase avoidable costs for the Federal Government and proponents as well as result in greater uncertainty for proponents. The Bill implies a fundamental change in approach from "adaptive" management of impacts through secondary approvals such as Water Monitoring and Management Plans to certainty of impacts prior to a project approval being given at the EIS stage.

Based on our experience relating to Water Monitoring and Management Plan (**WMMP**) approvals and implementation, we estimate the new water trigger could add 2 or more years to the EIS process. The introduction of the new MNES trigger appears designed to require information previously obtained through the implementation of WMMP approvals to be finalised before the EIS is approved.

For example, in QCLNG's case, an approved WMMP is still being implemented to obtain data required to inform later stages of development. Arguably, had the "adaptive" management framework not been applied to QCLNG, the QCLNG gas fields referral made in August 2008 and approved in October 2010 would still not be approved today.

Unintended consequences

The Bill has unintended consequences for:

1. Already approved projects;
2. Projects partway through assessment;
3. Exploration activities.

1. Already approved projects

The Bill represents a shift in regulatory goal posts for already approved projects. In particular, it introduces the potential for conditions of a new or amended approval to directly impact how already authorised activities are carried out. That is because already approved projects include authorised infrastructure for which future gas supply is required. Obtaining environmental approval for that gas supply will, in general terms, be achieved in one of two ways:

(a) by obtaining separate environmental approvals for the gasfields; or

(b) by having the project's existing environmental approvals amended to allow for additional gasfields.

The Bill does nothing to protect proponents from the risk that conditions may be imposed in the context of an amended approval, which might necessitate changes to how existing production activities are carried out. There is no justifiable policy reason, environmental or otherwise, for the Bill to affect existing approved projects in such a manner. The QCLNG project:

- has been issued with conditions requiring groundwater study, management and monitoring plans (the Water Monitoring and Management Plan under the EPBC gas field approvals);
- responded to the requirements of the Queensland Water Commission "Underground Water Impact Report for the Surat Cumulative Management Area 2012";
- is required to comply with Chapter 3 of the Water Act with respect to make good agreements and impacts on bores; and
- will continue to be required to address potential impacts on existing MNES by complying with conditions imposed on previous approvals issued under the EPBC Act, and management plans prepared pursuant to those conditions, some of which are currently overseen by an independent expert panel.

Even though the QCLNG project has already been referred to the Federal Environment Minister and approved, any amendments to the project and any complementary projects required to feed the already approved LNG trains will be caught by the Bill. Supply planning will now need to factor in the likelihood of substantial delays in approval and the impact of a change from "adaptive" management to certainty in the approvals process as described in the previous section.

Recommendation:

Schedule 1, Part 2, item 22(2) of the Bill currently lists circumstances in which the Bill's amendments will not apply to proposed actions. QGC recommends that an additional circumstance be inserted into item 22(2):

(g) the Minister has, under Part 9 of the old law, approved the taking of an action by the person for the purposes of a provision of Part 3 of the old law; the proposed action is related to an action approved under the old law; and the proposed action is proposed on or after the day this item commences.

2. Projects part way through assessment

The Bill was intended to provide a mechanism whereby impacts of projects currently in the system could be assessed against the new MNES, without unnecessary disruption to the process.

Subject to certain exemptions relating to the provision of advice by the Independent Expert Scientific Committee (**IESC**) given no later than 13 March 2013, the Bill proposes that for such projects, the Minister will have a discretion, exercisable within 60 business days of commencement of the amendments, to decide that the new MNES be a controlling provision for those projects.

Although the Bill does provide that such a decision cannot affect the validity of a State or Territory assessment under a bilateral agreement, this is of little comfort to industry. This is because a decision by the Minister to apply the new MNES to a project part way through its assessment process would very likely mean that the proponent will be subjected to unpredicted delay and expense due to the fundamental change of approach from "adaptive" management to certainty before commencement of activities.

The Bill proposes to provide further protection to projects that the Minister decides that the new MNES should apply to, where the assessment approach (under section 87 of the EPBC Act) had already been decided after commencement (Item 24(8) and (9)). However this also provides little comfort to industry because the intention of the provision is unlikely to be achieved given that the Act requires the Minister to consider relevant impacts to all controlling MNES in deciding whether or not to approve an action and the conditions to impose on a proposal, should it be approved.

Given recent industry experience, QGC assumes that the IESC would effectively be given exclusivity to consider the impacts of a proposed action on the new MNES. The only formal opportunity for a proponent to provide any input would be if the Minister exercised discretion to request such information under section 132 of the EPBC Act. This clearly has the potential to cause significant and unnecessary delays to the assessment and approval process, particularly since no time limits are imposed for the IESC's final advice to be provided to the Minister.

Applying new provisions to projects part way through the assessment pathway is inconsistent with the approach that has been adopted in the past when new MNES have been introduced.

For example, transitional protection has previously been afforded to "active referrals", where "active referrals" were defined as:

- a proposal to take the action had been referred to the Minister under Division 1 of Part 7 of the EPBC Act;
- the Minister had not decided that the action (or a larger action of which the action is a component) was not a controlled action for the purposes of that Act; and
- no decision was in operation under Part 9 of the EPBC Act approving or not approving the taking of the action (or a larger action of which the action is a component).

Recommendation:

QGC urges the Bill be amended so that the new MNES only applies to projects for which a referral is made after the Bill's commencement or, at the very least, only to projects for which a controlled action decision is made after the Bill's commencement.

3. Exploration activities

Presently, petroleum (oil and or natural gas) exploration activities generally do not require Federal approval under the EPBC Act. That is because although exploration activities usually involve the extraction of small amounts of gas and water for production testing purposes, such extraction, and any resulting environmentally impacts, will typically not pass the threshold of being likely to have a significant impact on an MNES.

There is a real risk the Bill may result in exploration activities requiring Federal approval as the Bill applies to CSG "developments", defined as any activity involving CSG extraction that has, or is likely to have, a significant impact on water resources. Water resources are defined as including "surface water and groundwater, watercourses, lakes and aquifers, whether or not they have water in them". As an example, exploration activities involving construction through a dry gully (e.g. an access track) could have a significant impact on the gully. The gully would be an MNES by definition, regardless of its environmental value.

Further, it would be an MNES only if the access track was constructed for mining or CSG purposes, but not if the access track was constructed for other purposes. Such an outcome is clearly perverse.

Exploration by its nature does not have the same impacts as production. Exploration activities are already assessed and approved under State legislation. It is important that exploration activities are able to be carried out without the additional expense, delay and uncertainty that would arise from this change in regime.

Further, it would be a perverse outcome if the Bill unintentionally restricts exploration activity. Exploration activities are essential for proponents and, ultimately, the Federal Government to obtain initial information about a project's likely MNES impacts.

Recommendation:

QGC recommends that the Bill's definition of "coal seam gas development" be amended so as to insert, at the end of the definition, the following text:

"but does not include exploration, assessment or appraisal activities conducted under a petroleum tenure granted under a law of a State or Territory."

The Bill also increases uncertainty for the ongoing conduct of existing exploration activities which were authorised under State environmental approvals, and did not require referral under the EPBC Act to be lawfully undertaken.

That is because:

(a) the definition of "specific environmental authorisation" provided in item 19 is unclear and therefore item 22(3)(b) doesn't adequately accommodate the complexity of State approval regimes; and

(b) circumstances where a particular activity will be considered to have required "further specific environmental authorisations" to allow the action to be taken lawfully as at commencement for the purposes of item 22(3)(c) is also unclear.

If a previously approved project (which did not require assessment under the EPBC Act) is considered to require further State level authorisations, then transitional protection is lost for the entire project. This could potentially result in a situation where currently lawful exploration activities automatically become unlawful.

Without clarifying the meaning of "specific environmental authorisation" and strengthening the application of transitional provisions for projects which previously did not require referral under the EPBC Act, the Bill has the potential to result in opening up those projects to retrospective assessment under the EPBC Act where:

- amendments to existing State environmental approvals (which could be completely unrelated to water resources - for example, an amendment necessary to clear additional vegetation for a particular piece of infrastructure) - are required after commencement of the Bill;

- a lower level approval is required to be obtained under State legislation (for example where construction of an access track across one watercourse could no longer comply

with a relevant code because of a change in culvert size) even where no change to the primary authorisation for the action (e.g. EP Act and P&G Act) is required.

Recommendation:

Provide a more detailed definition of "specific environmental authorisation" in Item 19 and delete items 23(3)(c) and (d)

4. Other amendments

Under the EPBC Act (section 505D), the Minister must obtain advice from the Independent Expert Scientific Committee for CSG or large coal mining projects likely to have significant impact on water resources. The IESC has two months to provide their advice.

That section does not address timeframes for any further advice requested from the IESC, although that is likely to be required.

Also, under section 132, the Minister can seek further information including from an "appropriate person" (e.g. IESC). There are no time limits imposed on the provision of such advice.

This could lead to an ongoing and unlimited information loop. This situation is already a characteristic of the Federal approvals regime and would be exacerbated by the new provision.

Given the additional delays already imposed by the Bill, a tight timeframe on the provision of any further advice by the IESC should be included to limit the impacts of the Bill. The IESC should also be accountable to public service standards.

QGC recommends an amendment to 505D of the EPBC Act (additions in underline)

(a) Within 2 months of an <u>initial</u> request by the Minister – to provide scientific advice to the Environment Minister in relation to proposed coal seam gas development or large coal mining developments that are likely to have a significant impact on water resources, including any impacts of associated salt production and/or salinity.

<u>(aa) Within 1 month of any further request by the Environment Minister – to provide scientific advice to the Environment Minister in relation to proposed coal seam gas development or large coal mining developments that are likely to have a significant impact on water resources, including any impacts of associated salt production and/or salinity.</u>

Consequential amendments to clarify that these provisions apply should the Minister rely on section 132 to request information from the IESC would be desirable.

Conclusion

QGC urges the Senate Committee to recommend that the Bill be withdrawn. If the passage of the Bill proceeds, QGC asks that the unintended consequences of the Bill are addressed by making the amendments set out in the recommendations above.

Further, there is no rationale to apply this regime to an industry that uses only 4% of Australia's water resources when agricultural activity uses 54%. It follows that the coal mining and CSG industries would need to study and report comprehensively on the impact

of other users (particularly agricultural activity) on water resources in order to quantify its own relatively small contribution to total impacts.

While the Committee has nominated two days for hearing in Sydney and Canberra, given lack of consultation prior to the introduction of the Bill, including the exemption from preparing a Regulatory Impact Statement, it is important for stakeholders to be properly heard. This is particularly the case for stakeholders in regional communities who are most directly affected. QGC requests the Committee hold further hearings in regional Queensland and NSW in the heartland of the communities who experience the impacts of the industry, which are overwhelmingly positive.

Yours sincerely

Tracey Winters
Vice-President Environment