

Dear Environment Committee Members

Regarding the Proposed Amendments to the Environment Protection and Biodiversity Conservation Amendment Bill 2013

I am asking that the federal government

1. Ensure that these new powers are not handed straight back to the states after the election. The Coalition has stated its intention to hand approval powers under the EPBC Act 1999 to state governments after the election, and the Labor party has considered a similar hand-over of powers. If this eventuates, it will effectively nullify any benefits from the changes being introduced on Tuesday. We are asking for amendments to remove the bilateral approval provisions of the EPBC Act so that these powers cannot be handed straight back to the states after the election. Removing bilateral approval provisions is the only way to protect against an immediate hand-back of these powers post-election.

2. Remove the broad exemptions that mean numerous controversial projects will not be covered by the new rules

There are numerous, apparently very broad exemptions, contained in the Bill, which will dramatically reduce the number of projects it applies to, and will mean that key projects such as the Arrow Coal Seam Gas Project and the Camden Gas Project will not be caught by the new water resource provisions.

Section 22 2b) provides an exemption from the schedule for any project that has been deemed not a controlled action for other provisions. Section 22 2d) of the Bill provides an exemption for any development for which the IESC has already given advice to the Minister. Section 22 2e) provides a similar provision relating to advice sought by a State Government. The effect of s21 is very unclear, but it seems likely that it will exempt most existing applications from the water resource changes. The problematic exemptions need to be removed from the Bill, and the Schedule needs to apply to all current applications that are likely to have a significant impact on water resources.

3. Amend the Bill to cover all unconventional gas mining, including shale gas and tight gas.

The Bill only covers coal seam gas mining, and will not cover other forms of unconventional gas mining such as shale gas and tight gas, which both utilise fracking and involve serious risks to water resources. Shale gas exploration permits and applications currently cover almost 99% of the Northern Territory, and large areas of South Australia and Western Australia, including the Kimberley and the Ningaloo hinterland. It is estimated that there are 300 trillion cubic feet of shale gas in Western Australia alone. It creates a very piecemeal regulatory system to regulate one form of unconventional gas mining and not another.

4. Strengthen the role of the Independent Expert Scientific Committee (IESC)

The Committee still has only a weak, advisory role under the new scheme. The IESC should be required to advise on whether a project should be approved, and that advice should be binding on the Minister. Failing that, the IESC should be given a decision making role. IESC advice should be required to be made public prior to a final decision being made on a project.

5. Define significant impacts on water resources and/or introduce a set of requirements under Part 9 of the EPBC Act for the Minister to consider when making his decision in relation to water resources. The National Partnership Agreements signed between state and Federal governments in relation to coal and coal seam gas mining, provide a comprehensive definition of a significant impact on water resources. However, the Bill does not seek to include that definition in the EPBC Act. Furthermore, under Part 9 of the EPBC Act, requirements are provided for the Minister to consider when making his decision about an activity for each of the existing controlling provisions. However, the Bill does not seek to introduce any requirements under Part 9 in relation to water resources. The robustness of the amendments, and the ability of the courts to protect water resources in the future, will depend on the provision of a strong definition or requirements under Part 9 for water resources.

6. Amend the Bill to cover unconventional coal mining, including underground coal gasification. There are new coal mining techniques that represent a serious threat to water resources, that will not necessarily be captured by the scope of the Bill. The definitions need to be amended to ensure that all unconventional coal mining methods, including the extremely risky process of underground coal gasification, are covered by the Bill.

7. Remove the circularity from definitions of large coal and coal seam gas projects

The definitions of large coal and coal seam gas projects as currently contained in the EPBC Act 1999, relate to a project that 'has, or is likely to have, a significant impact on water resources'. However, the Act sets up a whole assessment process to determine whether such mining developments are likely to have a significant impact on water resources. There is considerable circularity involved, which if removed, may improve the legal clarity of the instrument.

8. Include a requirement for bioregional assessments which assess cumulative impacts

There should be a requirement for bioregional assessments to be conducted prior to the Minister approving a coal or gas development. These assessments should address the cumulative impacts of all current and proposed mines, and other developments, on water resources, as well as other ecological values.

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