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19 April 2012

MS Sophie Dunstone
A/Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Dunstone

Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012

The National Environmental Law Association of Australia (**NELA**) is a multi-disciplinary organization serving the needs of practitioners in law, planning, natural resources and environmental management, environmental science and environmental impact assessment, to obtain and exchange information on issues relevant to environmental law and policy.

NELA was established in 1982. Its vision is to be the leader in the development of environmental law to promote the conservation and sustainable use of the environment across all Australian jurisdictions in accordance with internationally recognized principles. NELA is a member of the International Union for Conservation of Nature (IUCN) and has official NGO status with the Australian Government.

Thank you for the opportunity to comment on the *Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012* (Cth) (the **Amendment Bill**).

The purpose of the Amendment Bill is to amend the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) to facilitate the establishment of an Independent Expert Scientific Committee (**IESC**) to provide advice to Commonwealth and State and Territory Governments on large coal mining and coal seam gas projects.

We note that the Amendment Bill is part of the Commonwealth's intention to negotiate a National Partnership Agreement (**NPA**) with State and Territory Governments whereby signatory Governments would agree to consider the advice of the IESC when making assessment and approval decisions on large coal mine or coal seam gas projects within their jurisdiction. We also note that the intention of the NPA is not to change existing State or Territory approval processes for such developments. Rather, it is intended to ensure that State and Territory Governments, as well as the Commonwealth, have access to adequate scientific advice.

While NELA commends the aim of facilitating access to appropriate scientific information for decision makers, this must be balanced with the need to ensure the efficiency and timeliness of decision making processes of the Commonwealth and the States and Territories and not duplicating those processes.

NELA's specific comments on the Amendment Bill are set out below.

- (a) The proposed definitions of 'coal seam gas development' and 'large coal mining development' are very broad and are capable of different interpretations resulting in potential uncertainty of application. If a proposed coal seam gas or coal mine development does affect a matter of national environmental significance, it will likely be caught by these new provisions. Further, the use of the word "large" in relation to coal mines is misleading as the definition includes no qualifiers on the size of the proposed coal mine.
- (b) We note that the definitions refer to an impact on water resources 'when considered with other developments'. It is not clear is how the Minister will determine what are 'reasonably foreseeable' developments and what degree of certainty that a proposed development will actually proceed is required for that proposal to be 'reasonably foreseeable'.
- (c) The IESC has two months to provide advice to a Commonwealth or State Minister if requested to do so. There are no sanctions if this period is not adhered to but the Commonwealth Environment Minister is prevented from making a decision without considering the advice of the IESC. Thus if the IESC is burdened with a significant number of requests, particularly early on in the IESC's operation, this could lead to delays in receiving decisions from the Commonwealth Environment Minister (or a State Minister).
- (d) The broad advisory functions of the IESC extend the reach of the IESC beyond coal seam gas and coal mining projects. In theory, the IESC could provide advice on the impact of proposed development on a Ramsar wetland or an ecological community supporting a listed species or a nuclear activity. Further a State or Territory government could seek the advice of the IESC on any matter in which the IESC has "sufficient expertise". It is not clear who must form the opinion whether the IESC has sufficient expertise on a particular issue. If only the IESC must form that opinion, we query what recourse that State or Territory would have should the advice subsequently prove to be inappropriate or inadequate.

Yours sincerely

Kathryn Barras
President