



22 December 2011

Committee Secretary
Senate Standing Committees on Rural Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Committee Secretary

RE: Inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011*

Thank you for the opportunity to provide this submission to the Senate Standing Committees on Rural Affairs and Transport *Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011*.

The Association of Mining and Exploration Companies (AMEC) is the peak industry body for mineral exploration and mining companies within Australia. The membership of AMEC comprises over 350 explorers, emerging miners and the companies servicing them.

AMEC's strategic objective is to secure an environment that fosters mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

It is in this context that AMEC provides its submission to this inquiry on the Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011.

Should you require clarification on any of AMEC's comments please do not hesitate to contact me. AMEC is also available to attend public hearings should the Committee require.

Yours sincerely

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Submission to

Senate Standing Committee on Rural Affairs and Transport

Environment Protection and Biodiversity Conservation
Amendment (Protecting Australia's Water Resources) Bill 2011

December 2011

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Introduction

1. Thank you for the opportunity to provide this submission to Senate Standing Committees on Rural Affairs and Transport *Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011*.
2. The Association of Mining and Exploration Companies (AMEC) is the peak national industry body for mineral exploration and mining companies within Australia. The membership of AMEC comprises over 350 explorers, emerging miners and the companies servicing them.
3. AMEC's strategic objective is to secure an environment that provides certainty and clarity for mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

Executive Summary

4. **AMEC does not support the Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011 (the Amendment Bill).**
5. AMEC is satisfied that the current state-based regulatory arrangements are adequately addressing the interaction between minerals exploration and mining and water resources. Commonwealth regulation in this area is unwarranted.
6. AMEC is cognisant of the considerable debate currently occurring around the Australian coal seam gas industry. This issue appears to have been the driver for the Amendment Bill. However, the nature of coal seam gas makes it a regional and geological specific issue. This Amendment Bill has significant national implications.
7. AMEC notes the agreement between the Federal Government and Mr. Tony Windsor to establish an independent expert scientific committee in exchange for his support for the Minerals Resource Rent Tax (MRRT). This independent expert scientific committee will be established to provide advice to governments about CSG and coal project approvals where they have significant impacts on water. While this inquiry is not specifically dealing with the outcomes of this agreement, it is intrinsically related. Therefore AMEC has provided advice on its position for the Committee's information.
8. AMEC's submission has been prepared with assistance from its expert and industry-based Environment and Water Policy Committee (EWPC) and Mining Legislation Committee (MLC). The EWPC and MLC members include mine operators, environmental consultants to the mining industry and lawyers specialising in mineral exploration, mining, environment and water issues. In addition to these committees AMEC have consulted its wider membership base.
9. Given AMEC's strategic objectives, this submission is limited to strategic comments rather than on the specifics of whether the proposed amendments will achieve the desired outcome.

Recommendation

10. AMEC recommends the Senate Standing Committee on Rural Affairs and Transport **strongly advises** the Senate to **reject** the *Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011*.

Commentary on the Amendment Bill

11. The Amendment Bill is in full contradiction of the objectives of the *Environment Protection and Biodiversity Conservation (EPBC) Act*. The Amendment Bill would afford powers to the Commonwealth and Commonwealth Minister which will be in contravention to the way the EPBC Act aims to achieve its objectives.
12. This is illustrated by the opening objective of the EPBC Act. Part 1 Section 3 1(a) states that the objective of the Act is “to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance”. Water resources have not been afforded the title of a matter of national environmental significance (NES).
13. In order to achieve objectives of the EPBC Act, Part 1 Section 3 2(a) *recognises an appropriate role for the Commonwealth in relation to the environment by focussing Commonwealth involvement on matters of national environmental significance and on Commonwealth actions and Commonwealth areas*. The Amendment Bill is clearly in contravention of the intent of this clause as it is addressing an issue which is not a matter of NES.
14. Part 1 Section 3 2(g) (i) continues by stating that the EPBC Act *promotes a partnership approach to environmental protection and biodiversity conservation through bilateral agreements with States and Territories*. The Amendment Bill does not engender such a partnership approach.
15. Regardless of the above, the management of water resources has almost always been a matter for the States and Territories and not the Commonwealth, although there are exceptions, e.g. Murray-Darling Basin. AMEC is of the strong view that it should remain this way. Furthermore the existing regulatory frameworks, skills and experience currently reside in the states and territories regulatory agencies and therefore there is no need for Commonwealth regulatory duplication. This expertise is recognised through the current bilateral agreements.
16. AMEC has major concerns about the following poorly defined terms in the Amendment Bill and the implications and consequences these will have on mineral exploration and mining development:
- ‘mining operations’, which includes exploration,
 - ‘water resource’, and
 - what constitutes a ‘significant impact’ of a water resource.
17. Because the definition of a mining operation in the Amendment Bill is extremely broad it will capture low level impact exploration activities. In a large number of cases, an exploration program will encounter a ‘water resource’ and has a consequence will necessitate a referral under this amendment. According to a recent report by Intierra¹, Australia had 578 projects which reported

¹ <http://www.miningnewspremium.net/StoryView.asp?StoryID=2493022> accessed 16 December 2011

exploration results in the September 2011 quarter. The administrative burden that this would place on the Federal Government should each of them have been referred would be substantial and would inevitably result in approval delays, and area of long standing antagonism for AMEC.

18. The definition of a 'water resource' is also extremely broad. The extension of the definition of 'water resource' to 'unusually wet seasons' creates significant uncertainty for all proposed activities which fall within the wide definition of 'mining operations'. The definition has the potential to have unintended and widespread implications, not only in flood prone areas of Australia, but also in areas which experience almost any measurable change to their water resources, as the result of rain fall events in 'recharge zones'. The locations or sources of "recharge zones" are not always well known, can be geologically complex and hence are difficult to define. While to the lay person a recharge zone may imply a catchment, it is often the case that the 'recharge zone' can fall outside of the water catchment areas which provide obvious surface recharge.
19. Although there are exceptions, Australia's underground water resources are generally not well understood or defined. For mineral explorers and regulators this will create circular regulatory loop, where exploration will not be permitted because of the uncertainty of the 'water resource' and yet exploration, which will in part assist in defining it, will potentially be restricted because of the uncertainty. The impacts of 'mining operations' on such poorly understood water resources is unpredictable and beyond the control of proponents. It is unreasonable to restrict proposed activities on the basis of unforeseeable events which cannot be mitigated. The inclusion of this amendment is likely to have a negative impact on development in all areas of Australia which are located within the proximity of any 'water resource'.
20. AMEC's has had a long standing position on the need for government to properly define what a 'significant impact' is on a matter of NES. To date government has been unable or unwilling to do so. The Amendment Bill also has this problem in that it does not define what a 'significant impact' means to a 'water resource'. In order to avoid the 'significant impact' the full extent of the water resource needs to be defined. Furthermore if a minerals explorer inadvertently intersects an unknown aquifer, the question arises as to whether this means an automatic stop to exploration until the potential for "significant impact" is assessed and approval to continue given. Again the administrative burden of enforcing the requirements contained in the Amendment Bill will be substantial.
21. Unlike the existing requirements (including offence provisions) under the EPBC Act, the proposed amendments are targeted specifically at one industry - mining. The EPBC Act protects matters which are considered to be of national NES. The NES of a matter does not vary depending on the industry which has an impact on it. Therefore the Amendment Bill is inconsistent with the purpose of the EPBC Act.
22. AMEC is disappointed that the mining industry has been singled out by this Amendment Bill. Throughout Australia there a number of industries that have the potential to significantly impact on Australia's water resources, and yet they have been exempted from the Amendment Bill, the most obvious being irrigated agriculture and horticulture. It has been clearly shown that land clearing has been the major factor in the spread of salinisation of Australia's agricultural land. Given the goal of the Amendment Bill is to protect Australia's water resources surely such activities should be included.

23. Should the Amendment Bill be supported and passed by the Government AMEC strongly advocates that it is expanded to include all activities. And should this occur the regulatory load for the Commonwealth Government would be enormous and must be considered. In addition, all States and Territories will need to fully support the Amendment Bill for it to be fully implemented. AMEC understands that this is not the case.
24. In a related matter to the Amendment Bill is the agreement between the Federal Government and Mr. Tony Windsor MP to establish an independent expert scientific committee. This agreement was made in exchange for Mr. Windsor's support for the Minerals Resource Rent Tax (MRRT). The proposed independent expert scientific committee will be established to "provide scientific advice to governments about relevant coal seam gas and large coal mining approvals" where they have significant impacts on water.
25. AMEC is cognisant of the considerable debate the coal seam gas industry is generating and notes that Mr. Windsor's electorate is specifically affected. AMEC commends Mr. Windsor in his efforts to highlight the issues on behalf of his constituents. However, the nature of coal seam gas makes it a very regional and geological specific issue and therefore the scope of the agreement between Mr. Windsor and the Government has far reaching consequences for the States and Territories and the exploration and mining industry. In addition, all States and Territories will need to fully support the establishment of the expert committee for it to be effective in the way it is intended. AMEC understands that this is not the case.