

12 April 2012

Ms Sophie Dunstone
Committee Secretary
Senate Standing Committee on Environment and Communications
PO Box 1600
Parliament House
Canberra ACT 2600

via ec.sen@aph.gov.au

Dear Ms Dunstone

Arrow Energy Pty Ltd (Arrow) welcomes the opportunity to provide this submission as part of the Senate Standing Committee on Environment and Communications inquiry into the *Environment Protection and Biodiversity Conservation Amendment Bill 2013* (the Bill).

Arrow provides the following in addition to the submission provided by the Australian Petroleum Production and Exploration Association (APPEA).

Arrow is concerned that the proposed amendments may work to stifle project development rather than facilitate a process which allows projects to proceed with appropriate safeguards. The concern is this will occur without any greater protection being afforded to the environment.

If the intent of this legislation is to regulate the protection of the Great Artesian Basin as a resource, then it is imperative that every industry which uses the resource is captured within a comprehensive framework. The Office of Groundwater Impact Assessment *Surat Underground Water Impact Report* of July 2012 predicts extraction of approximately 95 gigalitres of water per year prior to mitigation measures, over the life of the CSG industry – a small proportion in comparison to other water uses. In this context, increasing regulatory changes to CSG water management will have relatively little benefit to Queensland if other (major) water users are not managed in the same way.

In addition, Arrow respectfully makes the following submissions:

1. **COMPREHENSIVE AND COMPLEX EXISTING STATE LEGISLATIVE REGIME**
 - 1.1 There is a comprehensive and complex legislative regime relating to water at the State level, including without limitation, the *Water Act 2000* (Qld), the *Environmental Protection Act 1994* (Qld), the *Petroleum and Gas (Production and Safety) Act 2004* (Qld), the *Water and Supply (Safety and Reliability) Act 2008* (Qld) and the *Waste Reduction and Recycling Act 2011* (Qld).

- 1.2 It is submitted that additional regulation is not required at the Commonwealth level and will lead to a greater level of complexity in this area.

2. BROAD DEFINITIONS IN THE EPBC ACT AND THE BILL

- 2.1 The definition of the term "*coal seam gas development*" under the *Environment Protection and Biodiversity Act 1999* (the Act) is broad.
- 2.2 The definition refers to an activity that has, or is likely to have, a significant impact on water resources. The term "*significant impact*" is very broad. The Significant Impact Guidelines – Matters of National Environmental Significance have not been amended or updated to provide guidance on what is likely to constitute a significant impact on water resources.
- 2.3 Further, the definition of "water resources" is very broad, particularly having regard to the scope of assessment which will be required.
- 2.4 It is submitted that further clarification and guidance is required on the meaning of these terms.

3. DUPLICATION / CONFLICT WITH THE STATE LEGISLATIVE REGIME

- 3.1 The Bill will lead to duplication and conflicts and / or inconsistencies with the existing State legislative regime. Two examples of these difficulties are identified below.
- 3.2 First, the definition of the term "*coal seam gas development*" under the the Act includes the cumulative impacts of the activity. However, under Chapter 3 of the *Water Act 2000* (Qld) ("*Water Act*"), the "responsible tenure holders" for underground water obligations are defined as the persons identified in the Surat Underground Water Impact Report.
- 3.3 As such, a conflict may arise where the Minister either refuses to approve an action, or imposes a condition, due to the cumulative water impacts of the proponent's proposed action under the Act, when the *Water Act* assigns the responsibility for such cumulative impacts to another proponent.
- 3.4 Second, the definition of the term "*coal seam gas development*" under the Act refers to an activity that has, or is likely to have a significant impact on water resources. However, the *Water Act* sets water level thresholds (based on the water level declines) which trigger obligations by petroleum tenure holders, including to implement make good obligations, baseline assessments, the water monitoring strategy and the spring mitigation strategy. These thresholds include bore trigger thresholds (s362 *Water Act*), spring trigger thresholds (s379 *Water Act*) and thresholds to determine immediately affected areas and long term affected areas for groundwater impacts (s387 *Water Act*).
- 3.5 It is not clear how or if the Commonwealth will take into account such thresholds in determining whether an activity has a significant impact on a water resource under the Bill.
- 3.6 The Queensland Government has an adaptive environmental management system in place for the regulation of petroleum activities. However, the EPBC Act provides a traditional decision making approach, by which the Minister decides whether or not to approve the taking of an action. As such, the Bill will result in two different approval processes, with no additional environmental benefit.
- 3.7 It is submitted that an adaptive environmental management system is an appropriate way to manage potential impacts on water resources, as it allows new research, modelling and monitoring to be taken into account.

4. INCONSISTENT WITH THE OBJECTIVES OF THE EPBC ACT

- 4.1 Through the Council of Australian Governments (COAG), the Commonwealth Government instigated the Review of Commonwealth/State Roles and Responsibilities for the Environment, the objective of which was to *“provide greater certainty for participants in environmental issues, minimise duplication of effort to achieve common goals and facilitate improved outcomes”*.
- 4.2 As stated in the Explanatory Memorandum to the EPBC Act, the major outcomes of this review were to be reflected in the EPBC Act. One of the objects of the Act is *“to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples”* (s3(1)(d)). In order to achieve its objects, the Act provides that it *“strengthens intergovernmental co-operation, and minimises duplication, through bilateral agreements”* (s3(2)(b)).
- 4.3 It is submitted, by reason of the duplication referred to in paragraph 3 above, the Bill is inconsistent with this review and the objects of the Act.
- 4.4 The EPBC Act is designed to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance (s3(1)(a)), rather than to regulate specific industries or activities. However, this Bill applies to the coal and coal seam gas industries exclusively.

5. DEPARTURE FROM COMMONWEALTH COMMITMENTS

- 5.1 The Bill would appear to be a significant departure from the policy of “cutting the red tape” promised in the COAG communiqué and the work towards developing approval bilateral agreements under the Act.
- 5.2 Further, amongst other recommendations, the Commonwealth accepted the recommendation of the review of the EPBC Act by Dr Allan Hawke that assessment and approval processes needed to be streamlined at the Commonwealth level and between the Commonwealth, States and Territories. The review found that including water extraction or use as a matter of national environmental significance under the Act is not the best mechanism for effectively managing water resources and that setting a threshold for a nationally significant level of extraction would be very difficult. Even if this threshold were determined, the review concluded that it would be almost impossible to accurately predict whether a particular water extraction would have a significant impact on the water resource over the long term (clause 4.71). It is submitted the Bill is not consistent with the Hawke review, particularly given the issues of duplication and conflict / inconsistencies referred to above.
- 5.3 In addition, one of the objectives of the National Water Initiative (NWI) is improved environmental management practices, with integrated management of water for environmental and other public benefit outcomes. This Bill is inconsistent with the NWI, particularly due to the duplication referred to above and the agreement that the States are responsible for implementing the NWI in their jurisdictions.
- 5.4 In February 2012, Queensland signed the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development (NPA). The NPA provides that the States agree to be accountable for seeking advice from the Independent Expert Scientific Committee (IESC) at appropriate stages of the approvals process for CSG and large coal mining developments that are likely to have a significant impact on water resources and for amending relevant laws as necessary (clause 15). It is submitted that the establishment and operation of the NPA and the IESC mean that this amendment to the Act is not required.

6. SIGNIFICANT DELAY WILL BE CAUSED

6.1 There is a period of 60 business days for the Minister to determine if the new water resource approval trigger is a controlling provision for the controlled action (item 23(2) of the Bill). Further, under item 23(6) of the Bill, this period can take longer if the Minister does not have sufficient information to make a determination. This is of particular concern given the lack of guidance on what would constitute a significant impact on water resources as mentioned above.

6.2 In addition, anything done by the Minister under item 26 of the Bill is not invalid merely because it was not done within the Bill's prescribed timeframe (item 23(1)). Where the Minister determines that the new water resource approval trigger is a controlling provision, additional time will be required for the Minister to assess the impacts on water resources.

6.3 It is submitted that these provisions will result in significant delay to projects undergoing assessment.

7. VALUE EROSION

7.1 Considerable resources have been expended to date to comply with the existing legislative regime. It is expected that significant additional costs and time would be incurred in complying with the proposed amendments to the legislation without any demonstrated benefit to the environment, particularly having regard to the existing legislative regime, the duplication and the delay referred to above.

8. TRANSITIONAL PROVISIONS: NO GUIDANCE / RECOGNITION OF THE WORK UNDERTAKEN

8.1 Arrow, the Office of Groundwater Impact Assessment, and the other proponents have undertaken extensive assessments, modelling and research to determine the impacts of coal seam gas development on water levels. The Office of Groundwater Impact Assessment has assessed the cumulative impacts and established management arrangements through the Underground Water Impact Assessment Report under the *Water Act*. Arrow has undertaken extensive work through the Environmental Impact Assessment process for its four projects and this work is ongoing.

8.2 However, the transitional provisions contained in the Bill do not provide any guidance as to how the significant work conducted by Arrow and others in compliance with the State legislative regime will be taken into account by the Minister.

9. TRANSITIONAL PROVISIONS: SPECIFIC ENVIRONMENTAL AUTHORISATIONS

9.1 There is an exemption contained in the transitional provisions of the Bill if the action had prior specific environmental authorisation under Commonwealth, State or Territory laws. However, this exemption does not apply to a renewal or extension of a prior authorisation in certain circumstances.

9.2 Therefore, minor or benign amendments to and renewals of existing environmental authorisations could potentially trigger the requirement under the Act. This could significantly impact on Arrow's existing operations. Arrow has a number of existing environmental authorisations in respect of individual petroleum leases. This requirement would appear to be unnecessarily onerous and importantly put at risk of disruption to our current domestic gas supply arrangements which are primarily used for electricity generation.

10. ARROW'S PROJECTS

- 10.1 For its LNG Project, Arrow has four Environmental Impact Statements undergoing rigorous assessment at both State and Commonwealth level. Arrow has undertaken extensive analysis and committed significant resources in complying with the comprehensive existing legislative regime.
- 10.2 For the reasons set out above, it is expected that the Bill will have significant implications for Arrow's LNG Project, without any demonstrated benefit to the environment.

Arrow appreciates the opportunity to comment and would be pleased to engage with the Commonwealth Government on the concerns raised.

Yours sincerely

**TONY KNIGHT
VICE PRESIDENT EXPLORATION**