

19 April 2012

Mr Stephen Palethorpe
Committee Secretary
Senate Standing Committee on Environment and
Communications
PO Box 6100
Parliament House
Canberra ACT 2600



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

Re: Senate Committee Review - EPBC Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012

Dear Mr Palethorpe,

The Minerals Council of Australia welcomes the opportunity to provide a submission to the Senate Committee Review of the EPBC Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012.

As you are aware, the Minerals Council of Australia (MCA) represents over 85% of minerals production in Australia. The MCA's strategic objective is to advocate public policy and operational practice for a world class industry that is safe, profitable, innovative, environmentally responsible and attuned to community needs and expectations.

MCA members have a long-standing commitment to sustainable development and the effective management of Australia's water resources. Although the minerals industry is a comparatively small user of water, currently utilising 3.6% of consumptive use water¹ nationally, the economic return provided from that use is significant at the national, regional and local level.

The MCA supports greater investment in improving the understanding of water systems and resources and the development of a scientific information base to inform planning and environmental decision processes. The MCA also supports the development of regionally based, integrated approaches to resource management.

Many of the proposed functions of the Independent Expert Scientific Committee outlined in Amendment Bill align with these approaches, including the collection, analysis and dissemination of scientific information; priority research; and the facilitation of bioregional assessments. However, careful consideration is required to ensure that the development of the Independent Scientific Advisory Committee process does not lead to unintended impacts such as unduly delaying environmental assessments and approvals or duplicating existing processes.

Accordingly, the MCA provides the following specific comments on the Amendment Bill and areas for consideration in its implementation:

Assessment Timeframes - 'Stopping the clock'

Under the proposed Amendment to Section 130(4) where the Minister requests advice from the Independent Expert Scientific Committee (the Committee), the 'clock will be stopped' on prescribed time in which the Minister is required to make a decision on approval. Under Amendment to Section 505D '*Functions of the Committee*', the proposed timeframe for the Committee to respond to the Minister's request for advice is given as 2 months. The MCA considers that there is a need for transparency and accountability on adherence to these timeframes to provide certainty for project proponents.

¹ Australian Bureau of Statistics National Water Account 2008-09

While 'stopping the clock' may be necessary for allowing the Committee appropriate time to assess a proposed development and provide advice, the MCA would expect the Department's normal assessment process to continue concurrently with the work of the Committee, nor should it preclude state-based assessment processes continuing. Accordingly, the decision to refer a development proposal to the Committee should be undertaken early in the assessment process, (from the time of lodgement of the Environmental Impact Statement), to allow for concurrent assessment activities to be undertaken.

This Committee will have a broad focus, which includes not only advice on individual projects, but on research and development initiatives and strategic bioregional assessments. The Committee's workload may be significant, with a large number of projects referred, particularly upon commencement of the National Partnership Agreement. Accordingly, if the Committee's priorities are not carefully managed in line with their capacity, there is a risk for project proponents that assessment and approval timeframes may be significantly delayed.

Duplication with State/Territory level assessments

Duplication between State or Territory and Commonwealth assessment processes is an ongoing area of concern and is a recognised priority under the current EPBC Act reform agenda. The MCA notes the Business Advisory Forum's focus on reducing environmental approvals and assessments red tape in line with recent COAG Commitments².

The MCA considers that there is significant potential risk of duplication between Commonwealth and State or Territory processes in the assessment of water resource impacts and in water planning as proposed in the Amendment Bill. Specifically, a number of jurisdictions have developed or are developing specific approaches to the assessment of water resource impacts (e.g. the recently released NSW Draft Aquifer Interference Policy³ and the Western Australian Pilbara Water in Mining Guidelines⁴, Furthermore, the MCA understands that the Queensland Water Commission is about to release detailed regional groundwater modelling). In addition, much of the work the Committee is charged to undertake is already being completed through other mechanisms, such as Water Allocation Plans in South Australia⁵.

Accordingly, recognition and rationalisation of assessment processes will be essential to ensuring efficient allocation of resources, streamlining processes and reducing the potential for conflicting assessment outcomes. The MCA notes that the potential for duplication may be particularly pertinent for projects undergoing both State and Commonwealth level assessments in jurisdictions which sit outside the National Partnership Agreement (not a *declared State or Territory*).

There also remains a risk that the Committee's advice on a specific project may be sought initially from a declared State or Territory under the National Partnership Agreement and then again by referral by the Minister during the EPBC approval phase. The MCA considers that sufficient safeguards should be put in place to avoid this occurring.

Definitions

The MCA considers that there is some uncertainty around key terms within the Amendment Bill.

It is unclear how a 'significant impact' on a water resource will be defined. Within the Amendment Bill, in cases where development proposals may impact on water resources and are linked to potential adverse impacts on matters of National Environmental Significance (mNES) as articulated in the Amendment Bill, referral to the Committee for advice is required. However in cases without a clear linkage to mNES, it is not clear how a 'significant impact' on a water resource will be determined.

² Council of Australian Governments Meeting, Canberra 13 April 2012 Communiqué

³ <http://www.water.nsw.gov.au/Water-management/Law-and-policy/Legal-reform/Legal-reform>

⁴ <http://www.water.wa.gov.au/PublicationStore/first/88526.pdf>

⁵ <http://www.waterforgood.sa.gov.au/water-planning/water-allocation-planning/water-allocation-plans/#epnrm>

In Section 528 of the Amendment Bill a 'large coal mining development' is defined as a coal mining activity that has, or is likely to have, a significant impact on a water resource'. How a large coal mine will be determined is unclear and this will need to be further clarified in supporting policy or the Committee's terms of reference.

The MCA considers it is critical that Industry is a partner with Government in defining these terms.

Bioregional assessments

The MCA supports a 'bioregional' water resource assessment and planning focus for the Committee and greater investment in improving the understanding of water systems and resources and integrated regional assessment and planning approaches pre-emptive of development. This aligns with the increased focus on strategic approaches outlined in the Australian Government's Response to the Independent Review of the EPBC Act⁶.

While the undertaking of landscape scale 'bioregional' assessments are supported, these may require significant investment and take many years to complete. In the interim period, it is important to ensure that project assessment and approvals within these regions can continue to be based on 'best available science' and are not unduly delayed by bioregional assessment processes and the inappropriate application of the precautionary principle beyond existing legislative application under the *EPBC Act*.

In addition, a significant body of research has been undertaken in many areas which should be reviewed, rather than starting with a view that new research should be commenced prior to approval. This should include an assessment of both publicly accessible data as well as data held by State/Federal Government agencies and research organisations which may not currently be in the public domain.

Multiple projects and Cumulative impact approaches

In proposed Amendment to Section 528, a coal mining activity may be referred to the Committee where it *'has or is likely to have a significant impact on water resources (a) in its own right or (b) when considered with other developments, whether past present or reasonably foreseeable developments.'*

Approaches for the assessment and understanding of cumulative impacts continue to develop. Accordingly, clear guidelines on quantifying significant impacts where a project is assessed against both latent 'impact' conditions and in particular 'foreseeable projects' will be required to ensure transparent and equitable treatment of proponents in areas of multiple developments. Similarly, boundary setting criteria for cumulative impact assessments based upon regional hydrogeological characteristics and the likely magnitude of impact should be established.

Risks of Broadening Committee Scope

The MCA considers that there is a risk the Committee's scope may broaden to encompass mNES outside its area of expertise and unrelated to water. Specifically, For example this could include ecological values and ecological factors in bioregional planning, matters in which the Committee expertise is less established. The MCA considers that this would be a detrimental outcome diverting the Committee from its core focus on water resources and exacerbate assessment process duplication and inefficiencies

⁶ Australian Government Response to the Report of the Independent Review of the EPBC Act 1999

Declared States and Territories

Under Amendment Section 505E the Minister must not declare a State or Territory where that Jurisdiction is not party to the National Partnership Agreement. It is uncertain how these State or Territories which are not party to the National Partnership Agreement will be treated.

The MCA would welcome the opportunity to discuss these issues and/or participate in further consultation on the Amendment Bill.

Yours sincerely

MELANIE STUTSEL
Director – Health, Safety, Environment and Community Policy