



19 April 2012

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

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

Dear Secretary

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

Thank you for the opportunity to provide this submission to the Senate Standing Committees on Rural Affairs and Transport Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012.

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 360 explorers, emerging miners and the companies servicing them.

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.

It is in this context that the attached submission is made.

I would be pleased to meet with you to discuss any points raised in the submission.

Yours Sincerely

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Contents

Contents	1
Introduction.....	2
Executive Summary.....	2
Recommendation	3
Commentary on the Amendment Bill	3

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Introduction

1. 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 (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012*.
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 360 explorers, emerging miners and the companies servicing them. Our members projects include iron ore, coal, base and precious metals, rare earths, and uranium.
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 (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012 (the Amendment Bill)*.**
5. AMEC is satisfied that the current state and territory-based regulatory arrangements are adequately addressing the interaction between minerals, coal and coal seam gas exploration, mining and extraction and water resources. Commonwealth regulation in this area is unnecessary and unwarranted.
6. AMEC is cognisant of the considerable debate currently occurring around the Australian coal seam gas and coal mining industry. However, the nature of coal seam gas and coal mining makes it a regional and geological specific issue. AMEC notes the agreement between the Federal Government and Mr. Tony Windsor MP to establish the independent expert scientific committee (Expert Committee) in exchange for his support for the passage of the Minerals Resource Rent Tax (MRRT) legislation through the House of Representatives. Notwithstanding this, this Amendment Bill has significant national implications because it creates a precedent for which other industries may be included for review under the EPBC Act.
7. The Amendment Bill is also at complete odds with the outcomes of the 12 April meeting of the COAG Business Advisory Forum which agreed to reduce regulatory red and green-tape. The Amendment Bill effectively adds another regulatory layer to the environmental approvals and assessments for the coal seam gas and coal mining industries.
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 all specialising in mineral exploration, mining, environment and water issues. In addition to these committees AMEC has consulted its wider membership base.

9. Given AMEC's strategic objectives, this submission is limited to high-level comments rather than on the specifics of whether the proposed amendments will achieve any additional 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 (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012.***

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 defined or afforded the title of a matter of 'national environmental significance' (NES).
13. In order to achieve the objectives of the EPBC Act, Part 1 Section 3 2(a) *"recognises an appropriate role for the Commonwealth in relation to the environment by focusing 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) also states that the EPBC Act *"promotes a partnership approach to environmental protection and biodiversity conservation through bilateral agreements with States and Territories"*. AMEC is disappointed in the coercive process used by the Federal Government to obtain the agreements of New South Wales, Queensland and South Australia to the National Partnership Agreement. In AMEC's view the process and the Amendment Bill have not engendered a partnership or collaborative approach to the issue and it is at odds with the intent of the EPBC Act.
15. Regardless of the above, the management of water resources is predominantly a responsibility for the States and Territories and not the Commonwealth. AMEC is of the 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 arrangements between the states and territories and commonwealth governments.
16. The Amendment Bill is also at odds with the outcomes of the April 12 2012 meeting of the COAG Business Advisory Forum. At this meeting the Prime Minister, Premiers and Chief

Ministers agreed that “*environmental protection is an ongoing priority for all governments. However, environmental regulation is often **duplicative** (emphasis added) and cumbersome, resulting in unnecessary delays and uncertainty, slowing broad economic growth.* They committed to:

- *develop bilateral arrangements for accreditation of state assessment and approval processes;*
- *deliver improved bilateral arrangements with states and territories to fast-track accreditation including through the development of standards; and*
- *work with jurisdictions to establish inter-jurisdictional taskforces to examine and facilitate removal of unnecessary duplication and reduce business costs for significant projects.*

17. The Amendment Bill effectively adds another duplicative regulatory layer to environmental approvals and assessments for the coal seam gas and coal mining industries.
18. Notwithstanding the above, AMEC does not consider the EPBC Act is the most appropriate legislative framework for the Government to deliver its policy. Unlike the existing requirements (including offence provisions) under the EPBC Act, the proposed amendments are targeted specifically at two industries – coal seam gas and coal mining. The EPBC Act explicitly protects matters which are considered to be of 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.
19. The extension of the EPBC to industry sectors rather than to the protection of NES matters will add unnecessary extra regulatory layers to those affected industries. The increased regulatory burden will increase the costs and be felt by both industry and government.
20. AMEC is cognisant of the considerable debate currently occurring around the Australian coal seam gas and coal mining industry. However, the nature of coal seam gas and coal mining makes it a regional and geological specific issue. AMEC notes the agreement between the Federal Government and Mr. Tony Windsor MP to establish the independent expert scientific committee (Expert Committee) in exchange for his support for the Minerals Resource Rent Tax (MRRT).
21. The creation of the Expert Committee is of extreme concern to AMEC. The amendment would set a precedent for the establishment of other committees which do not address EPBC Act NES matters. AMEC considers the door will be opened for other politically motivated committees to be established at the Governments discretion. This would be an inappropriate use of the legislative framework.
22. AMEC has some concerns on the operation and scope of the Expert Committee’s advice to the Minister and requests that the Committee seeks clarification on how they will be resolved.
 - 22.1 The term ‘significant impact’ relating to water resources is not defined. AMEC has long advocated for a clearer definition of significant impact in order to provide increased clarity and certainty to proponents on their environmental responsibilities.
 - 22.2 AMEC has had a long standing policy position that regulatory agencies should utilise parallel processing wherever possible. With respect to the Expert Committees

deliberations, AMEC notes the inclusion of a 'stop the clock' mechanism for up to two months while the Expert Committee considers the development application. However, the stop the clock mechanism should not preclude other approvals processes from occurring while the Committee prepares its advice.

- 22.3 AMEC is unclear on the role the Committee will have with regard to other mining and exploration activities in the vicinity of CSG or coal mining developments. For example, will it have the scope to provide advice on activities, such as minerals exploration and mining, where CSG and coal mining occur?
- 22.4 AMEC is unclear whether 'any activity' as stated in the definition of '*coal seam gas development*' also includes exploration activities.
- 22.5 AMEC considers the term 'reasonably foreseeable' to be ambiguous and as a consequence does not provide clarity or certainty to proponents.