

10 April 2013

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

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

Dear Sir/Madam

**Senate Committee inquiry into the Environment Protection & Biodiversity
Conservation Act Amendment Bill 2013**

AGL Energy (**AGL**) welcomes the opportunity to make a submission to the Senate Standing Committee on Environment and Communications (**Committee**) in relation to its inquiry into *the Environment Protection and Biodiversity Conservation Amendment Bill 2013 (Bill)*. This Bill proposes amendments to the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* under which actions involving coal seam gas (**CSG**) developments or large coal mining developments that have or are likely to have a significant impact on a water resource must obtain Ministerial approval under the EPBC Act (**Proposed Amendments**).

AGL is Australia's leading renewable energy company with the largest privately owned and operated renewable portfolio in the country. AGL operates across the supply chain with investments in energy retailing, coal-fired electricity generation, gas-fired electricity generation, renewable generation, and upstream gas exploration and production projects. AGL is also one of Australia's largest retailers of gas and electricity, with more than three million customers in Victoria, New South Wales, South Australia and Queensland. AGL is an experienced developer and operator of a number of CSG exploration and development projects. Accordingly, AGL is well placed to provide feedback on the issues raised in the Bill.

Overview

AGL has significant concerns with the impact of the Proposed Amendments on CSG exploration and development projects. We set out our main concerns below, and address each of them in more detail in the following section.

1. There is no scientific evidence or economic rationale to support the need for the Proposed Amendments.
2. The Proposed Amendments duplicate State Government processes which assess the impact of CSG developments on water resources. This regulatory duplication unnecessarily increases costs of CSG projects and reduces business efficiency.
3. There is no need for the Proposed Amendments, given that the Federal Government already has the power to regulate the impact of CSG projects on water resources under the existing regime of the EPBC Act.

4. There is considerable uncertainty in the drafting of the provisions of the Bill such that CSG activities that have minimal environmental impact may need to be referred to the Minister.
5. The Proposed Amendments will have serious, long-term ramifications on the supply of gas on the east coast of Australia.

Grounds for AGL's concern with Proposed Amendments

1. No scientific or economic rationale to support the need for the Proposed Amendments

AGL recognises that the Proposed Amendments have been designed to address community concerns about the environmental impacts of CSG development and exploration sites.

AGL appreciates the importance of rigorous environmental considerations as part of project approvals processes. In particular, the management of water resources is a critical environmental issue facing Australia and the CSG industry. AGL strives for recognition as a prudent and responsible user of water, and is committed to ensuring that its CSG projects have a minimal impact on the environment and that water resources are protected.

Further, AGL supports community consultation and engagement on issues which have the potential to impact upon local community issues, health, services or amenities. AGL ensures that appropriate community consultation occurs as a standard part of its development processes, and community concerns addressed to the greatest extent possible.

However, a response to community concern should not be the basis upon which significant policy changes are made in the absence of robust, verifiable evidence to support the community sentiment. By way of example, AGL is not aware of any scientific evidence or economic rationale which supports the need for the Proposed Amendments. In particular, the government has not provided any identification or assessment of the risk that it is seeking to address through the Bill, nor any reason that existing, rigorous, environmental approvals processes are insufficient to minimise these perceived risks.

This is particularly problematic where such policy changes have significant repercussions upon the costs and feasibility of projects impacted by the changes. Furthermore, the repercussions on the broader community of such policies need to be considered. Discouraging CSG exploration and development through increasing costs and reducing efficiencies will be likely to have long term implications for Australia's energy security.

2. Duplication of State Government environmental approvals processes

The Proposed Amendments represent an unnecessary expansion of the Commonwealth's jurisdiction because it is additional to rigorous State Government environmental approvals processes that project proponents must adhere to. AGL owns or has significant interests in CSG exploration or development sites in New South Wales and Queensland, so can comment with good authority on the environmental approvals processes in both States.

Mandatory environmental approvals processes in both States require CSG project proponents to undertake full assessments of the likely impact of projects on surface and ground water. Significant CSG projects in Queensland are governed by the *State Development and Public Works Organisation Act 1971* and the *Environmental Protection Act 1994*. Similarly, CSG project proponents in New South Wales must comply with rigorous environmental approvals processes legislated under the *Environmental Planning and Assessment Act 1979*.

The Government has not demonstrated any deficiencies or weaknesses in current environmental approvals regimes which need to be addressed through the Proposed Amendments. Nor has it demonstrated any way in which the Proposed Amendments strengthen (as opposed to merely duplicate) existing processes in such a way as to lead to superior environmental outcomes that outweigh the increased regulatory compliance costs faced by project proponents, and the long term impact on the economy and community.

Existing State environmental processes in fact result in extensive conditions being placed upon CSG projects which relate entirely to the impact of the projects on surrounding water

resources. For example, conditions have been placed upon AGL's Gloucester Gas Project, located in New South Wales, under which AGL is required to undertake such activities as:

- preparing and keeping updated detailed hydro geological models throughout the life of the project;
- preparing detailed water management plans;
- undertaking a detailed ground water monitoring program; and
- strictly adhering to restrictions upon the rate of ground water extraction able to be undertaken by the project.

The Proposed Amendments would also appear to be unnecessary in the light of the National Partnership Agreement between State and Federal Governments to strengthen the regulation of CSG development through greater reliance on improved science and independent expert advice as a basis for informing decisions. It also appears to undermine the work of the Independent Expert Scientific Committee (**IESC**), which not only provides advice to State and Federal Governments on CSG development issues, but also oversees research into the management of impacts of CSG projects on water resources.

The duplication of processes across state and federal legislative regimes is a very important consideration for the Committee at this time. Not only does it increase the costs of regulatory compliance for project proponents who have to comply with an additional layer of environmental approvals, but more importantly, it leads to delays in the progress and completion of projects. This has the potential to substantially undermine infrastructure and investor confidence.

There has been considerable concern amongst the business community on the impact of state and federal regulatory duplication, more generally, on projects in Australia. The Australian Petroleum Production and Exploration Association recently released a report indicating that many overlapping state and federal regulations are applied to specific projects without any environmental benefit. The report warns that duplicate regulation may be holding back projects worth around \$200 billion.

The Business Council of Australia has reiterated these concerns, indicating the inefficiency caused by duplicated rules. It released a study in 2012 which found that resources projects cost 40% more to deliver in Australia than in the US.

3. Current terms of the EPBC Act enable Federal Government to regulate the impact of CSG developments on water resources

The Commonwealth does not require the additional powers encapsulated within the Proposed Amendments in order to regulate the impact of CSG projects on water resources. It already has such powers under the current operation of the EPBC Act in situations where water resources are relevant to an existing matter of national environmental significance.

The Commonwealth has in fact relied upon this power in the past to place rigorous conditions upon AGL's CSG projects so as to control and monitor their impact upon surrounding water resources.

Once again, the Federal Government has not demonstrated why existing legislative provisions are insufficient to achieve the purpose it is seeking to achieve through the Proposed Amendments.

4. Considerable uncertainty in the drafting of the Bill

The lack of appropriate identification of the risk that the proposed legislation is designed to address has led to it being drafted with anomalies and uncertainties in its interpretation. This will result in CSG activities that have minimal environmental impact needing to go through unnecessary environmental approvals processes simply for the sake of strict regulatory compliance.

Coal seam gas exploration

For example, the proposed Bill requires that any CSG development which is likely to have a significant impact on water resources will need to be referred to the Minister for a determination as to whether or not it is a "controlled action" which requires approval under the EPBC Act.

"Coal seam gas development" is defined broadly to mean any activity involving coal seam gas extraction.

"Water resources" is also defined broadly to include surface water and groundwater. As drafted, "water resources" would also include deep groundwater from coal seams (also referred to as produced water or associated water when it reaches the surface). However, the definition does not draw any distinction between water resources which are used for beneficial purposes including environmental purposes, and water not used for any beneficial purpose, such as the water located within a coal seam.

CSG exploration activities are generally temporary, localised, low impact activities for the purpose of determining the presence of gas. Some exploration activities require drilling into coal seams and the temporary extraction of CSG and deep groundwater. For example, pilot exploration wells involve flowing gas and produced water from one or a small number of wells, sometimes for up to 12-18 months. While such activities usually have a negligible impact on local surface water and beneficial aquifers, there is a necessary drawdown of some groundwater from the coal seam itself to enable the depressurisation of the coal seam, and for gas to flow and therefore be tested.

Generally, produced water from temporary pilot exploration wells:

- a) is extracted from coal seams deep below the surface;
- b) is not beneficially used by people or the environment;
- c) is not relied upon by groundwater dependent ecosystems; and
- d) its extraction for exploration purposes does not have any significant impact on surface water or beneficial aquifers.

However, as currently drafted, it is likely that the Bill will require each individual, temporary pilot exploration well to be referred to the Minister on the basis of the impact of the well on produced water from the coal seam.

Accordingly, in the event that the EPBC Act is amended in such a way as envisaged by the Bill, it is essential that some modifications are made to the drafting of the Bill:

- a) the definition of "coal seam gas development" should be amended:
 - a. to exclude exploration activities; or
 - b. to only include coal seam gas extraction for *commercial production purposes*; or
- b) the definition of "water resources" should be amended to exclude groundwater from coal seams.

Uncertainty in the meaning of "significant impact"

The Bill does not clearly define what a 'significant impact' on a water resource is. This leads to a great deal of uncertainty in the interpretation of this term, particularly given that what does constitute a 'significant impact' will differ depending upon the particular water resource that the activity is impacting.

In the absence of a definition for this term, CSG project proponents may feel obligated to refer relatively minor CSG activities which have *any* impact on a water resource to the Minister, in order to avoid penalties associated with non-compliance with the law. Accordingly, it is essential that this term be defined, so as to avoid legislative uncertainty leading to unnecessary Ministerial referrals and the inefficiencies and potential bottlenecks that this would cause.

5. *The Proposed Amendments will have serious, long-term ramifications on the supply of gas on the east coast of Australia.*

It is imperative, and in the interests of good regulatory practice, that the Committee weighs up the likely impact of the Proposed Amendments on project proponents and the broader economy and society in determining whether such the changes are justified. The Committee must also consider the long term impact of the Proposed Amendments on the likely number of CSG projects being established and obtaining approval.

Such assessment and analysis would be likely to have been done through the preparation of a regulatory impact statement prior to a final policy position being determined, and through the course of stakeholder consultation. However, the Bill was introduced into parliament without consultation with business, and was exempted from the preparation of a regulatory impact statement. This has denied the government a valuable source of insight on likely long term ramifications of the Proposed Amendments, and means that the Bill has not been subjected to a cost benefit analysis. Accordingly, it is very important the Committee takes these issues into consideration during its current inquiry.

Analysis has shown that there is likely to be a tight supply/demand balance for natural gas in Australia in the absence of any new gas reserves being developed and proven, and new gas production established. This has implications for the 3.8 million households and businesses that use natural gas to heat their homes and make the goods and services that our economy requires¹. It is imperative, in this context, that public policy settings create a regulatory environment that supports gas exploration and new production.

By contrast, increasing the costs, scope for delay, and potential for inefficiencies associated with CSG project approvals processes, as the Bill is likely to do, will serve as a significant disincentive for investment in new development and exploration projects. This will lead to a corresponding reduction in CSG exploration on the east coast of Australia. This in turn will have a dramatic impact on Australia's energy security, as gas shortages may occur as current gas production facilities start exporting gas upon the expiry of their long term domestic contracts.

The economic consequences of restricting gas exploration and production are not limited to gas users. In assessing the impact of a freeze scenario on New South Wales exploration and production, ACIL Tasman (2011)² found that:

1. the New South Wales gross domestic product would be \$22.9 billion lower during the period to 2035;
2. New South Wales employment would fall by 1,350 full-time equivalent (**FTE**) each year to 2035, with Australian employment falling by 623 FTE every year for the same period; and
3. electricity prices would be higher in all regions of the National Electricity Market.

Recommended course of action

For the reasons set out above, AGL's strong recommendation is for the Bill to be withdrawn. The Proposed Amendments risk undermining existing State Government environmental approvals processes, which are rigorous and robust, and enable the consideration and protection of water resources in the course of CSG project approvals processes. There have been no weaknesses demonstrated in these processes that require rectification through measures such as the Proposed Amendments.

Changes to the EPBC Act should only be made on the basis of robust, verifiable, scientific or other evidence-based information emerging that justifies the change. To the greatest extent possible, there should be public consultation about such changes prior to their implementation. In addition, the impact of the change on project proponents and the broader economy and society needs to be considered in determining whether the change is justified, as well as the long term impact of the change on the likely number of CSG projects being established and obtaining approval.

There is a scheduled review of the operation of the IESC in 2014. This will be a good opportunity for an assessment of its effectiveness, and the effectiveness of the National Partnership Agreement, at strengthening the regulation of CSG developments on the basis of robust scientific evidence and independent expert advice. In the absence of other robust evidence emerging in the interim that necessitates a change to the legislation, AGL sees no reason to amend the EPBC Act prior to this time in the way envisaged by the Bill.

In the event that amendments of the type proposed in the Bill do proceed, it is essential that modifications be made to the drafting so as to clarify the areas of uncertainty and

¹ Nelson, T. (2013), "Ensuring domestic supplies of natural gas for Australian businesses and households", *APPEA Journal*, Vol.52.

² ACIL Tasman, 2011 – Economic significance of coal seam gas in New South Wales. ACIL Tasman Publication. Melbourne: ACIL Tasman

remove the anomalies outlined in this submission. A failure to do so will further exacerbate the inefficiencies likely to be caused by the Proposed Amendments.

Concluding remarks

The effect of the Proposed Amendments is that any CSG development, irrespective of size, may require federal government assessment and approval. This will substantially increase regulatory compliance costs for CSG projects for very uncertain environmental benefit. Further, they are unnecessary and duplicative given that the same environmental considerations form part of mandatory State Government approvals processes.

AGL understands the need for rigorous environmental approvals processes to be associated with such projects as CSG and coal mining developments which have the potential to have serious, long term impacts on the environment. However, it is essential to provide business certainty and regulatory efficiency in order to drive the benefits that gas exploration and development, and high levels of investment and project activity in Australia, will deliver. Accordingly it is of great importance to the health of the Australian economy and the future of Australia's energy security needs, that the Committee takes a sensible, evidence-based approach to considering amendments to the EPBC Act.

AGL would be happy to provide further information to the Committee should this be helpful.

Yours sincerely,

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