

# **ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION AMENDMENT BILL 2013 [PROVISIONS]**

## **Submission from the Department of Sustainability, Environment, Water, Population and Communities**

### **Introduction**

The Australian Government Department of Sustainability, Environment, Water, Population and Communities (the department) welcomes the opportunity to make a submission regarding the *Environment Protection and Biodiversity Conservation (EPBC) Amendment Bill 2013* (the Bill). Should it be passed by the parliament and receive Royal Assent, the Bill will amend the EPBC Act to provide for the establishment of a new matter of national environmental significance in relation to the significant impacts or likely significant impacts of coal seam gas and large coal mining development on a water resource.

The department has portfolio responsibilities in administering regulatory provisions under the EPBC Act. The following information is provided to assist the Senate Standing Committee on Environment and Communications with their deliberations in relation to the Bill.

### **Context for the Submission**

#### *Objects of the EPBC Act*

The EPBC Act is the Australian Government's central piece of environment legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities, heritage places and Commonwealth marine areas – defined in the EPBC Act as matters of national environmental significance. The EPBC Act is also the statutory mechanism to ensure that Australia meets its obligations under key international environmental conventions. Section 3(1) of the EPBC Act outlines the objects of the EPBC Act:

- 1) *The objects of this Act are:*
  - a) *to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and*
  - b) *to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and*
  - c) *to promote the conservation of biodiversity; and*
  - ca) *to provide for the protection and conservation of heritage; and*
  - d) *to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous people; and*
  - e) *to assist in the co-operative implementation of Australia's international environmental responsibilities; and*
  - f) *to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity*

When the EPBC Act commenced on 16 July 2000, it included seven matters of national environmental significance, which were first identified in the 1997 *COAG Heads of Agreement on Commonwealth State Roles and Responsibilities for the Environment*. These matters of national environmental significance are: World Heritage; National Heritage; Wetlands of International Importance (Ramsar wetlands); Threatened Species and Communities; Migratory Species; Nuclear Actions; and the Commonwealth Marine Area.

In 2009, an eighth matter of national environmental significance was added to the EPBC Act – the Great Barrier Reef Marine Park. The addition of the Great Barrier Reef Marine Park as a matter of national environmental significance recognised the importance of the reef as the world's largest and most complex coral reef ecosystem, with high levels of biological diversity and globally unique ecosystems.

In addition, the EPBC Act confers jurisdiction over actions that have a significant impact on the environment where the actions affect, or are taken on, Commonwealth land, or are carried out by a Commonwealth agency (even if that significant impact is not on one of the matters of national environmental significance).

#### *The EPBC Act and Coal Seam Gas or Large Coal Mining*

In 2012, signatories to the *National Partnership Agreement on Coal Seam Gas and Large Coal Mining* (the National Partnership Agreement) – the Australian Government, New South Wales, Queensland, Victoria and South Australia – acknowledged public concerns about the actual and potential impacts of CSG and coal mining activities on water resources. They agreed that there was a critical need to strengthen the science that underpins the regulation of these industries.

In response to this public concern, in 2012 the Australian Government introduced amendments to the EPBC Act to provide for the establishment of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC). The Government also provided \$150 million for the establishment of the IESC, and to fund research on the potential water-related impacts of coal seam gas and large coal mining activities.

The IESC provides scientific advice to the Australian Government Environment Minister and appropriate Ministers of a declared State or Territory in relation to proposed coal seam gas and large coal mining developments that are likely to have significant impacts on water resources, including any impacts of associated salt production and/or salinity. The IESC also provides advice to the Environment Minister on research priorities relating to coal seam gas and large coal mining developments and water-related impacts which the government then determines relevant research projects. Research projects undertaken under these priorities seek to address critical gaps in the scientific understanding of the water-related impacts associated with coal seam gas and large coal mining activities which will aid regulatory assessment of such development proposals.

Under the current EPBC Act, the impacts of coal seam gas and large coal mining on a water resource can only be considered by the Australian Government Environment Minister where there is a significant impact on one of the current matters of national environmental significance or on Commonwealth land. For example, if an action is likely to have a significant impact on a water resource, and there is a consequential impact to a nationally listed threatened species or community downstream of a project, the Minister can only take account of the impacts of that project in-so-far as they relate to that threatened species or community. However, if the impact on the water resource does not have a connection to a current matter of national environmental significance, then under the current legislation the Australian Government Environment Minister cannot take into account any of the likely significant impacts of that action on the water resource.

### **Content of the EPBC Amendment Bill 2013**

The EPBC Amendment Bill 2013 would make water resources a new matter of national environmental significance, in relation to coal seam gas and large coal mining development. The proposed amendments would enable the Minister to assess projects, and impose conditions directly relating to, significant impacts on a water resource. The Bill is based on similar provisions in the EPBC Act for existing matters of national environmental significance, including for example, National Heritage places.

The transitional arrangements outlined in the Bill provide that, for a coal seam gas or large coal mining project that is currently undergoing assessment, the new water resources trigger is able to apply. Application of the new water resources trigger to a project currently undergoing assessment is subject to a decision by the Australian Government Environment Minister that it should apply. The new water resources trigger will not apply to projects where:

- there is a final approval decision in place for the proposal; or
- final advice has been provided by the IESC to the Australian Government Environment Minister and there is a proposed decision on the project; or
- IESC advice has been provided to the relevant state or territory minister before 13 March 2013, where Australian Government approval is not required.

#### *Additional amendments*

During the parliamentary debate in the House of Representatives the Member for New England, Mr Tony Windsor MP, moved an amendment to the EPBC Amendment Bill 2013. The proposed amendments would prevent the accreditation of state and territory frameworks under a bilateral agreement, so that a state or territory could not undertake approval of proposed actions that are likely to have a significant impact on the new water resource matter of national environmental significance. This item would mean that the Australian Government would have an ongoing requirement to assess, and make decisions on, coal seam gas and large coal mining proposals that are likely to have a significant impact on water resources. A change to this approach would require the Parliament's consideration of a further amendment to the EPBC Act.

## **Closing**

In closing, the Bill will amend the EPBC Act to provide for the establishment of a new matter of national environmental significance in relation to the significant impacts or likely significant impacts of coal seam gas and large coal mining development on a water resource. This will enable the Australian Government Environment Minister to assess projects, and impose conditions directly relating to, significant impacts on a water resource from these developments.