



LOCK THE GATE ALLIANCE INC

Senator Doug Cameron,
Chair,
Senate Standing Committees on Environment and Communications,
Parliament House,
Canberra,
ACT 2600

20th April 2012

Dear Sir,

Submission to Senate inquiry into the Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large coal Mining Development) Bill 2012

The Lock The Gate Alliance (LTGA) welcomes the opportunity to respond to the proposed *Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012 (the Bill)*.

LTGA is a national alliance of over 130 community, industry and environmental groups, more than 1000 individual members and several thousand supporters concerned with the impact that certain fossil fuel extraction industries are having on our short and long term physical, social, environmental and economic wellbeing. We are particularly concerned with the risks to water resources, agriculture, rural settlements, human health and ecological systems associated with coal and coal seam gas (CSG) mining industries.

Our submission focuses on the following pertinent issues:

- The obligation of the Minister to obtain the advice of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (**the Expert Committee**);
- The appointment of members to the Expert Committee;
- The time within which the Expert Committee is to provide a response to the Minister;
- Limitations on the functions of the Expert Committee.

Ministers Obligation to Obtain Advice

Our primary concern in regard to the draft Bill is the operation of the key provisions and definitions, which effectively confine the functions of the Expert Committee to the provision of advice on actions involving CSG and large coal mining (**LCM**) developments, which the Minister must first decide are **likely** to have a **significant impact** on water resources and may have an adverse impact

on matters of national environmental significance (as defined in Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)).

The Expert Committee was established to provide greater certainty, both to decision makers and the community, in relation to the impact of CSG and LCM developments on water resources. LTGA believes that the developments referred for expert investigation ought not to be confined by a pre-emptive decision of the Minister that a development is not likely to have a significant impact on water resources. In light of the well recognised uncertainty about the material and cumulative impacts on water resources of CSG and LCM development, actions referred to the Expert Committee need to be as broad as possible.

The Commonwealth government has acknowledged the potential impacts of the large number of applications for CSG and LCM exploration and developments and also the need for more detailed investigation to determine the impact on water resources¹. The National Water Commission reported that *CSG development represents a substantial risk to sustainable water management given the combination of material uncertainty about water impacts, the significance of potential impacts, and the long time period over which they may emerge and continue to have effect. Therefore, an adaptive and precautionary management approach will be essential²* .

In the absence of further scientific research and evidence, the State and Federal Environment Ministers are not in a position to determine if any CSG or LCM development is **likely** to have a significant impact on water resources. However, the scientific evidence and information available to the proponent should be sufficient for the Minister to decide if the proposed development, either alone or cumulatively with other developments, **may** have a significant impact on water resources. The precautionary principle dictates that if such potential exists, the proposal should be referred for scientific investigation and reporting by the Expert Committee.

As presently drafted, clause 131AB, allows the Minister the discretion to obtain advice from the Committee based on the Minister's belief that the taking of the action:

- (i) is likely to have a significant impact on water resources; *and*
- (ii) may have an adverse impact on a matter protected by a provision of Part 3.

I.e. section 131AB, pre-empts the issue of whether a CSG or LCM development is likely to have a significant impact on water resources, by requiring a decision from the Minister to this effect, before an action is required to be referred to the Expert Committee. This issue further arises from the drafting of section 528, which defines CSG and LCM developments, as **only** those developments which **have or are likely to have a significant impact** on water resources.

LTGA contends that to provide certainty discretionary powers should not be afforded to the Minister. LTGA has studied enough EISs and Environmental Authorities (EA) to know that all proposed CSG and large coal mining activities or developments are likely to have a significant impact on water resources and therefore may have an adverse impact on matters provided for under Part 3. CSG and coal companies have openly acknowledged this in their documentation supporting EISs and EA applications. LTGA therefore strongly advocates that the discretionary powers afforded to the Minister to involve the Committee to be removed.

¹ Burke T. 2010, *Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012 (the Bill)* Second Reading Speech, House of Representatives 2 March 2012

² Australian Government Dec 2010, *NATIONAL WATER COMMISSION — Coal Seam Gas and Water Position Statement*

Recommendations:

1. That clause 131AB be amended to read:

Minister must obtain advice from Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development

(1) This section applies if:

- (a) the taking of an action, for the purposes of a controlling provision, involves:
 - (i) coal seam gas development; or
 - (ii) large coal mining development; and
- (b) that the taking of the action:
 - (i) may have a significant impact on water resources; and
 - (ii) may have an adverse impact on a matter protected by a provision of Part 3.

(2) Before the Minister decides whether or not to approve, for the purposes of the controlling provision, the taking of the action, the Minister must obtain the advice of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development.

2. In section 6 of Schedule 2 of the Bill the proposed definition in section 528 of *coal seam gas development*, be amended to substitute the word “may” for the words “is likely to”.

3. In section 10 of Schedule 2 of the Bill the proposed definition in section 528 of *large coal mining development*, be amended to substitute the word “may” for the words “is likely to”.

Appointment of Members of the Committee

The Interim Expert Committee comprises three members with a background in hydrogeology and water resource management and three members with a background in geology and mining. None of the members have expertise to investigate the ecological, sociological and health issues which arise in regard to the impact of CSG and LCM developments on water resources. The Ministers Explanatory Memorandum indicates that the Expert Committee should be comprised of members with a broader range of qualifications and expertise.

The Interim Expert committee is required to address the health, ecological and social issues in providing scientific advice on the impacts of CSG and LCM developments on water resources and matters of national environmental significance and also to undertake bioregional assessments. Unless these broader issues are addressed, the investigation, research and reporting of the Expert Committee will do little to alleviate community concern and ensure that decision makers have all of the information necessary to properly assess the impact of any one or a number of proposed developments.

Recommendation:

That the Expert Committee appoint two additional members with expertise in biodiversity and ecology and also human health, with particular reference to the linkages between mining, chemical use, water resources and rural communities. Further, when the tenure of the existing members of the Interim Expert Committee expires, the members be replaced with two members in each of the respective areas of expertise, namely hydrogeology and water resource management, geology and mining, biodiversity and ecology, and human health.

The Time Allowed for the Expert Committee to Report.

The Bill provides in Section 505 D (1) that the Expert Committee must provide advice to the Minister in response to a request within 2 months. The role of the Expert Committee is to commission and co-ordinate scientific research on the impacts of individual and multiple CSG and LSM developments on water resources, to address the high level of uncertainty in this area. At present there is very little information in relation to the above and below ground water resources in many of the areas in which the developments are proposed³. The monitoring and modelling required to adequately investigate these issues, particularly the cumulative impacts of multiple developments, would be expected to take more than the 2 months presently allowed.

A well structured observation and modelling program for each area under CSG development would identify regional trends in groundwater resources over time. A comprehensive, co-ordinated program including engagement with the CSG industry, *is the only means by which the significant uncertainties in current understanding of the groundwater system(s) can be reduced in order to assess whether water extraction accompanying coal seam gas production will have deleterious impacts*⁴.

Further, almost no assessment has been done in Australia by the National Industrial Chemical Notification and Assessment Scheme (NICNAS) on the health and safety of the fracking fluids used in the hydraulic fracturing process in CSG extraction, notwithstanding the known health risks of many of the chemicals commonly found in fracking fluids⁵.

The present time restrictions imposed on the Expert Committee will inevitably compromise the advice which it is able to provide (see for example the interim Expert Committee's Advice to decision maker on referred coal seam gas and/or coal mining project proposed action: Centennial Coal Mine Expansion – Springvale and Angus Place (NSW)). For the community and decision makers to have confidence in the scientific investigation and reporting, sufficient time must be afforded to the Expert Committee to properly address all of the issues and to reduce the uncertainties in regard to the impact on water resources which are currently causing considerable community concern.

Recommendation:

That Section 505D of the Bill be amended to provide that the Expert Committee provide advice to the Minister in response to a request within 4 months, and further, that a provision be inserted to allow the Expert Committee to seek further time from the Minister to provide its response if the Expert Committee deems this necessary.

Functions of the Expert Committee

The reporting function of the Expert Committee is also confined by the definitions of CSG and LMD developments in section 528 and also the specification of its functions in section 505D of the Bill, to developments which are likely to have a significant impact on water resources. As the primary function of the Expert Committee is to investigate the impact on water resources of such developments, both individually and cumulatively, the scope of its investigation should not be restricted by an uninformed decision in regard to the likely impact of such developments.

It is our view that if the evidence and data included in the development proposal indicates that the

³ Centre for Water in the Minerals Industry Sustainable Minerals Institute University of Queensland 2008, *Scoping Study: Groundwater Impacts of Coal Seam Gas Development– Assessment and Monitoring*

⁴ Ibid., p. 46

⁵ Dr Mariann Lloyd-Smith and Dr Rye Senjen, 2011 *Hydraulic Fracturing in Coal Seam Gas Mining: The Risks to Our Health, Communities, Environment and Climate*

development **may** have a significant impact on water resources, the precautionary principle dictates that such risk ought to be the subject of further scientific investigation.

Recommendations:

1. The definitions in section 528 be amended as set out above.
2. Section 505 D (1) (a) and (b) be amended to substitute the word “may” for the words “is likely to”.

Thank you for the opportunity to comment on the Bill.

Yours sincerely,

Sarah Moles,
Secretary.