

4 April 2013

Ms S Dunstone
Committee Secretary
Senate Standing Committees on
Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600
Via email: ec.sen@aph.gov.au

Dear Ms Dunstone

**Inquiry into the Environment Protection and Biodiversity Conservation
Amendment Bill 2013 [Provisions]**

The National Farmers' Federation (NFF) welcomes the opportunity to make a submission to the Senate Inquiry into the EPBC Act Amendment Bill (the Bill). The Bill seeks to introduce a new matter of national environmental significance in relation to the significant impacts or likely significant impacts of coal seam gas development and large coal mining development on a water resource (water trigger). The following outlines the NFF concerns and why the NFF choose not to support the proposed arrangements under similar Bills introduced in 2012¹ and now, the Government's Bill.

2011 CSG National Partnership Agreement has not failed

NFF notes that previously, the Federal Government has sought to deal with community concerns regarding the impact to water quantity and quality from coal seam gas (CSG) and large coal mines through measures announced by the Prime Minister in December 2011. The Council of Australian Government's (COAG) National Partnership Agreement (NPA) objective was to ensure that future decisions are informed by improved science and expert advice, through the establishment of the Independent Expert Scientific Committee (IESC). The roles and responsibilities of the jurisdictions are clearly outlined.

While it took some time for the final IESC to be appointed and commence work, there is nothing to suggest that these arrangements have failed. Moreover, these arrangements have been given very little time to commence before the drastic action was taken by the Federal Government to introduce this Bill. The Federal Government has not demonstrated that jurisdictions have failed in their roles and responsibilities as outlined in the NPA, that is:

¹ Independent Tony Windsor MP and Greens Senator Larissa Waters

- Providing input into the IESC research agenda;
- Amending relevant laws, regulations and guidelines to ensure that CSG or coal mining development likely to have a significant impact on water resources are referred to the IESC for advice and that this advice is taken into account; and
- Seek IESC advice at appropriate stages in the approvals process.

The IESC website shows that state and territory governments are referring relevant projects to the IESC, which is providing advice on the veracity of projects and proposed conditions as these relate to water impacts. As an example, the recently released advice on the Arrow Surat Gas Project Expansion project draft EIS shows that the IESC has identified a number of inadequacies and suggested additional measures that may be considered as part of final EIS conditions.

While NFF is aware that there appeared to be some difference of opinion between NSW and the Federal Government, this does not warrant the introduction of national legislation that will affect all of Australia, including increased regulation and its associated costs, confusion and duplication. These are matters which COAG has already suggested need to be addressed through regulatory reform.

The NPA was due to expire in mid 2014. The NFF recommends that the Australian Government may consider a review of the NPA arrangements in early 2014 to consider next steps. The NFF is of the view that any changes to the arrangements through the introduction of duplicating legislation before the NPA concludes are premature at best.

Risk to Agriculture

The Bill is drafted to specifically target the significant impacts to water sources from CSG and large coal mines. However, the definition in the Bill of “significant impact” has and continues to create confusion, increase duplication and costs. NFF understands project proponents may refer under the Act simply to provide assurance that they will not be subject to any compliance arising from a failure to refer. By the time the Bill passes the parliament, it is unlikely that this work area will be progressed sufficiently to allow project proponents to make judgements in order to determine the need to refer.

NFF accepts that the Bill does not specifically target agriculture and any impact agriculture might have on water resources through, for example, the extraction of groundwater for stock and domestic water supply.

However, there have been calls already to expand the proposed water trigger beyond the identified industries, for example the Greens have flagged amendments to expand to trigger to all mining activities, along with shale and tight gas.

The NFF remained concerned there is a high risk that:

- The water trigger will be extended, through the debate on the Bill or through a subsequent amendment to the Act, to include agriculture; and
- The precedent of targeting an industry rather than an environmental matter of environmental significance opens the door to application in other areas, e.g. land clearing or the use of agricultural chemicals and fertilisers;

While NFF recognises the genuine concerns of farmers within areas affected by CSG, NFF believes that using a water trigger within the EPBC act presents an unreasonable future risks to all farmers.

The management of water across the landscape is clearly a matter for state and territory governments. The Federal Government has neither the capacity nor resources to deal with such matters. COAG agreed to a process in December 2011 and this has not failed.

The NFF policy position has support from ANU Associate Professor of Environmental Law, Andrew Macintosh, who stated on an ABC Radio interview recently:

“the legislation is peculiar and contradicts an earlier Commonwealth agreement to minimise duplication... it appears to be motivated by politics” and “it could be extended and amending the EPBC Act to increase environmental oversight of mining projects is unnecessary”. Macintosh went on to state *“the Commonwealth and states should create a brand new agreement”.*

COAG Standing Council on Energy and Resources Work Programs

The Council of Australian Government’s Standing Council on Energy and Resources is close to finalising a Harmonised Regulatory Framework in relation to coal seam gas. The Framework identifies leading practice, and with respect to water management and monitoring:

1. The Commonwealth, with advice from relevant jurisdictions, should continue to develop and implement the research work program identified by the Independent Expert Scientific Committee. This will help to ensure that decisions involving CSG projects that may have a significant impact on water resources continue to be based on the best available scientific advice.
2. Jurisdictions employ a variety of processes for the management of co-produced water. In particular, there are differences in approach to the licensing and management of co-produced water. While these approaches derive from different regulatory rationales, they have the same strategic intent of achieving balanced and consistent outcomes, including protection of the environment and the rights of other water users.
3. The use of reinjection as a means of disposal of waste water and brine into suitable underground systems is a method that has not been widely considered in Australia. Governments should evaluate international leading practices for application in Australia.
4. To facilitate further moves towards a nationally consistent approach to water management, relevant COAG standing councils, including the Standing Council on Environment and Water, should consider further reforms in these areas as a matter of priority.

This intergovernmental framework does not support or suggest that the introduction of legislation is required. This is relevant considering the framework was developed during the water trigger debate over the last year.

NFF recommends that state and territory governments continue legislative reform to achieve leading practice described in the SCER framework rather than implementing misguided legislation that will result in duplication and confusion.

Conclusion

The NFF, while supporting the intent to protect the interests of farmers in terms of water quality and water quantity, does not support the use of the EPBC Act water trigger as the mechanism to resolve community and farmer concerns.

The NFF encourages all jurisdictions to continue working towards within the existing COAG process implemented in December 2011, i.e. the SCER National Harmonised Framework and the COAG National Partnership Agreement.

Yours sincerely

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