



Australian Government
Department of the Environment and Energy



SUBMISSION TO THE SENATE ENVIRONMENT AND COMMUNICATIONS REFERENCES COMMITTEE INQUIRY ON WATER USE BY THE EXTRACTIVE INDUSTRY (DECEMBER 2017)

In responding to this inquiry, the Department of the Environment and Energy (the Department) has primarily addressed the operation of the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act), particularly the 'water trigger'.

The EPBC Act and division of responsibility between the Commonwealth, states and territories

The EPBC Act is the Australian Government's central piece of environmental legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places, defined in the EPBC Act as matters of national environmental significance (MNES).

Under the EPBC Act, any action that has, will have, or is likely to have, a significant impact on a MNES must be referred to the Australian Government Minister for the Environment and Energy (the Environment Minister) for assessment before proceeding.

States and territories have responsibility for environmental matters of state and local significance, and environmental impacts beyond MNES like air and water quality, noise, odour, visual and other general amenities. If an action is not likely to impact a MNES, the EPBC Act does not apply.

Economic and social impacts of projects or actions are considered by state and territory governments. Similarly, the Australian Government Environment Minister must consider economic and social matters in deciding whether or not to approve the taking of an action, and what conditions to attach to an approval.

The 'water trigger'

The *Environment Protection and Biodiversity Conservation Amendment Act 2013* was passed by the Australian Parliament on 19 June 2013 and came into effect on 22 June 2013. The amendment added the protection of water resources from coal seam gas and large coal mining developments as an additional matter of national environmental significance under the EPBC Act. This amendment is known as the 'water trigger'.

Under the amended EPBC Act, an action that involves a coal seam gas development or a large coal mining development requires approval from the Environment Minister if the action has, will have, or is likely to have a significant impact on a water resource. Water resources relating to other extractive industries come under the jurisdiction of state and territory governments.

The Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC) provides scientific advice to the Environment Minister on the impact that coal seam gas and large coal mining development may have on Australia's water resources.

Where a development has been referred to the Environment Minister and it relates to the water trigger, the Minister must seek the advice of the [IESC](#).

The Environment Minister's power to attach conditions to approved actions under the EPBC Act

Under s134(1) of the EPBC Act, the Environment Minister has the power to attach conditions to an approved action to protect, repair or mitigate damage to the MNES for which the approval has effect.

Under bilateral agreements between the Australian Government and each of the states and territories, actions that are required to be assessed under the EPBC Act can be assessed by an accredited state or territory process. The role of the Environment Minister is then to approve the action based upon the assessment undertaken and apply approval conditions not otherwise applied by the state or territory, as needed, to provide adequate protection for MNES.

After the introduction of the water trigger, approval conditions to manage risks to water resources were able to directly address issues raised in the IESC's advice. Approval conditions may be applied to any approved action for the protection and biodiversity conservation of the water resource and MNES dependent on the water resource, respectively.

The approval conditions applied have included requirements for additional baseline data, additional monitoring of water levels and water quality, assessments of aquifer connectivity, improvements to modelling, peer review, limits to the type and extent of actions such as hydraulic fracturing, disposal of co-produced water and management of the final void at large coal mines.

Strengthening evidence-based decision making

The Australian Government has undertaken a number of initiatives to strengthen the uptake of science and evidence in decision making in relation to coal seam gas and large coal mining developments – not just for decisions under the EPBC Act, but also making the evidence and advice available to state and territory regulators.

The initiatives include the Australian Government providing:

- \$49.25 million to support signatory states to implement the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development. This included implementing the requirement to seek the IESC's advice on coal seam gas and large coal mining developments
- \$94 million to deliver the [Bioregional Assessment Program](#) – which analyses the impacts of coal seam gas and coal mining developments on water and the environment
- \$30.4 million to extend the current program of bioregional assessments to assess the potential impacts of shale and tight gas projects on the environment and consider appropriate mitigation and management approaches

- \$19 million to commission research to better understand the impact of coal seam gas and large coal mining development on water resources.

Effectiveness of the water trigger

The effectiveness of the water trigger legislation was reviewed in 2017 ([Independent Review of the Water Trigger Legislation](#) (April 2017)) (the Review). The Review concluded that the water trigger is an appropriate public policy response to the potential risks associated with coal seam gas and large coal mining, and did not recommend any legislative changes.

Coupled with the independent review, the Department conducted a [post implementation review of the water trigger legislation](#) to address the requirements of the Office of Best Practice Regulation. The Department concluded that an adaptive strategy for the ongoing implementation of the water trigger to be the most prudent approach to manage the risks associated with the inter-connectedness of ecosystem services and coal seam gas and large coal mining developments as they relate to water resources.

Shale and tight gas

While shale and tight gas projects are not covered by the operation of the water trigger, these projects must still be referred for assessment under the EPBC Act, if they are likely to have a significant impact on any other MNES, for example, a threatened species or ecological community.

The Department, in its post implementation review of the water trigger, noted that coverage of shale and tight gas may need to be further considered as the investment in these processes moves from exploration to production.

The Department of Environment and Energy's response to the Senate Inquiry has set out how the Australian Government, together with the states and territories, has enabled a national framework for the protection of biodiversity and of water resources, and made efforts to strengthen the evidence base for improved decision making.