7 April 2013

Ms Sophie Dunstone
Committee Secretary
Senate Standing Committees on Environment and Communications
(Via email to ec.sen@aph.gov.au)

Dear Ms Dunstone

Re: Senate Inquiry into the Environment Protection and Biodiversity Amendment Bill 2013 [Provisions]

Please find attached our submission to the Senate Committee inquiry into the *Environment Protection and Biodiversity Amendment Bill 2013 [Provisions]* (the Bill). The Bill proposes to introduce 'water resources' as a new matter of national environmental significance' (MNES) for Commonwealth environmental approval for large coal mines and coal seam gas projects.

The coal seam gas industry provides a third of Eastern Australia's natural gas, and is one of the most heavily regulated industries in the country due to existing state government processes.

The Bill fails to recognise the range of processes and regulations already in place to extensively consider the possible impacts of coal seam gas on water resources. The introduction of a water trigger adds duplication and inefficiency for no benefit at a time when clarity and investor certainty are required.

The oil and gas industry supports stable, predictable, robust regulation of its activities based on sound scientific principles and assessment, as it is currently investing more than $200 billion in new Australian projects.

Yours sincerely

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CHIEF EXECUTIVE

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AUSTRALIAN PETROLEUM PRODUCTION & EXPLORATION ASSOCIATION LIMITED

SUBMISSION TO THE FEDERAL GOVERNMENT

SENATE INQUIRY INTO THE ENVIRONMENT PROTECTION AND BIODIVERSITY AMENDMENT BILL 2013 [PROVISIONS]

March 2013

The Australian Petroleum Production & Exploration Association (APPEA) is the peak national body representing Australia's oil and gas exploration and production industry. APPEA has 90 full member companies exploring for and producing Australia's oil and gas resources. The companies currently account for around 98 per cent of Australia's total oil and gas production and the vast majority of exploration. APPEA also represents over 200 service companies providing a range of goods and services to the industry. Further details about APPEA can be found at our website at www.appea.com.au.

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1. The Australian Oil and Gas Industry

The oil and gas industry is an integral part of the Australian economy. The industry's direct contribution includes:

- the supply of reliable, clean, efficient energy supplies for households and industry;
- employment of tens of thousands of Australians;
- regional investment;
- export income (and the replacement of imports); and
- the payment of significant amounts of government tax revenues (on average, more than $7 billion per annum over the last five years).

In addition, substantial indirect benefits flow from the industry, including to the national and state economies via a growing services and contractor sector. Reliable, secure and competitively priced energy is crucial to industry, our communities and households. It underpins Australia's economy and industrial structure. Within this framework, oil and gas plays a key role. At present, petroleum (oil and gas) accounts for nearly 60 per cent of Australia's primary energy needs. This is expected to increase over the next two decade. The policy framework must ensure that Australia's explorers and producers are not competitively disadvantaged with producers of other energy sources and similar activities that are undertaken in other countries. Measures that attract increased exploration in the many yet-to-be explored or under-explored areas of Australia are also important.

Australia's upstream oil and gas industry has entered a period of unprecedented growth and transformation. Almost $200 billion is currently being invested in oil and gas projects including seven major LNG projects. This will increase Australian GDP by up to 2.2 per cent a year and require a construction workforce peaking at over 100,000 full-time equivalent jobs. By 2025, the construction and operation of these projects is projected to add more than $260 billion[1] to Australian GDP and contribute between $7.9 billion and $12.1 billion a year in taxation revenue[2]. This takes account only of currently committed and "under construction" projects.

The construction activity now underway is delivering large economic benefits to the nation. Gas supply to Australian industry and households is being increased and by 2017 Australia could overtake Qatar as the world's largest exporter of liquefied natural gas (LNG).

Once operational, these projects will also help reduce the growth in Australian and global greenhouse gas emissions, improve Australia's energy security and increase the competitiveness of our energy markets. They will also provide a long-term boost to jobs and income for service industries and tax revenues for governments. The second wave of investment has the potential to increase Australia GDP by $455[3] billion by 2035. This investment will require a construction workforce peaking at over 167,000 full-time equivalent jobs, and contribute between $12.1 billion and $12.8 billion in taxation revenue.

[1] Figure is quoted in net present value [NPV] terms.

[2] Deloitte Access Economic: Harnessing our comparative advantage (June 2012)

[3] Figure is quoted in net present value [NPV] terms.

1. Coal Seam Gas in Australia

The coal seam gas industry provides a third of Eastern Australia's natural gas, and is one of the most heavily regulated industries in the country - due to existing state government processes. The introduction of a water trigger adds duplication and inefficiency at a time when clarity and investor certainty are required.

Queensland's coal seam gas industry employs more than 27,000 people, has signed 3,500 landholder agreements, and has so far contributed more than $100 million to community projects and causes. But in NSW, where arbitrary and ad hoc government regulation continues to send the signal that the state is closed for business, our industry employs only 332 people, has signed just 281 agreements with landholders, and has contributed $662,000 to community projects.

CSG also promises to underpin a valuable new export sector in Queensland – four liquefied natural gas (LNG) projects based on CSG are planned for development in Queensland. These projects will pipe the gas from the CSG fields of inland Queensland to the port city of Gladstone. Plants at Gladstone will chill CSG to -161°C, liquefying the gas so that it contracts to fill just one six-hundredth of the space occupied by its gaseous form. The LNG can then be exported to Asian markets by purpose-built tankers.

There are four major Queensland CSG-LNG projects at various stages of development. Three of these - Queensland Curtis LNG, Gladstone LNG and Australia Pacific LBG - are under construction. A final investment decision has not yet been made for the Arrow LNG project, but its proponents are actively developing gas fields and pipelines and are marketing their gas to potential buyers.

2. General Comments

APPEA does not support the proposed *Environment Protection and Biodiversity Amendment Bill 2013 [Provisions]*.

The Bill contains a number of provisions that would negatively impact the assessment process for coal seam gas operations, as well as affect the structure, intent and objectives of the EPBC Act. This includes the duplication of existing State and Territory environmental legislation and the introduction of significant inconsistencies with the objectives of the EPBC Act and reform processes.

Prior amendments to the EPBC Act have allowed for a more workable, flexible and certain business environment without sacrificing the objectives of the Act. This amendment would jeopardise this position.

Australia's oil and gas industry continues to suffer from a duplicative and inefficient regulatory system and approvals processes. Much inefficiency exists in the overlaps between federal and state government regimes and inefficiency within Federal Government departments and federal agencies. The Energy White Paper, the Productivity Commission and the Independent Review of the EPBC Act (the Hawke Review, 2009) have all identified this problem. Furthermore, explicitly exempting the amendment from agreed and established bilateral processes is contrary to good policy making and regulatory reform.

The proposed amendments to the EPBC Act will impact both industry and Government by expending effort and resources in unnecessary and duplicative referrals and processes that will lead to delays in projects for no environmental benefit.

3. Amendment is duplicative and unwarranted

There is no clear policy failure that warrants the introduction of 'water resources' as a matter of National Environmental Significance (NES) for Coal and Coal Seam Gas projects. As a result, the proposed Amendment Bill will create additional unnecessary layer of approval that significantly increase the complexity and uncertainty on industry and add a preventable burden on the resources of the federal government.

The Australian natural gas industry works within a robust regulatory framework for environmental approvals and water management. All State and Territory environmental approvals require detailed assessment of the impacts of an activity on water resources and for water use. These existing assessment processes require detailed scientific, social and economic analysis of both surface and groundwater at both a local and regional scale to ensure potential impacts are understood, mitigated and managed.

As an example of the comprehensive nature of the existing regime, it took three years and three months and a 13,500 page Environmental Impact Statement (EIS) for Commonwealth and State approval to be granted for the Santos GLNG Project. These approvals included 1,200 strict conditions over the project's operations and requirements for further, extensive scientific work to be undertaken as the project proceeded. In relation to water, the EIS process included numerous studies and reviews by companies, regulators and independent scientific authorities to understand the potential impacts of the project. There are 35 different documents covering water management, monitoring, impact assessments and studies.

In addition to the existing environmental approval processes, a number of policies and regulations further address specific issues in an approval. This includes aquifer interference policies, groundwater monitoring requirements, water resource plans, resource operations planning and others. For example, in Queensland, the relevant legislative framework concerning the management of groundwater production, its storage and disposal is provided in the following State legislation, policy and water resource plan documents:

- Environmental Protection Act, Queensland 1994
- Petroleum and Gas (Production and Safety) Act 2004
- Water Act, Queensland 2000
- Water Supply (Safety and Reliability) Act 2008
- Environmental Protection (Water) Policy, Queensland 2009
- Queensland Government's Department of Infrastructure and Planning 2009 Discussion Paper, Management of Water Produced from Coal Seam Gas Production
- Blueprint for Queensland's LNG Industry (Queensland Government 2009)
- Water Resource (Fitzroy Basin) Plan 1999
- Water Resource (Great Artesian Basin) Plan 2006
- Great Artesian Basin Resource Operations Plan 2007
- Water Resource (Condamine and Balonne) Plan 2004, and Condamine and Balonne Resource Operations Plan 2008

- Moratorium Notice Condamine Catchment Underground Water Area 2008.

In NSW, there are distinct water specific requirements which apply in addition to the State Government's environmental assessment processes for petroleum developments. These requirements are for water works approvals, water use approvals and water access licenses. The NSW *Water Management Act 2000* sets a limit on the amount of water that can be taken from any surface or groundwater source under water access licences. These licences cannot be granted unless the Minister is satisfied that "adequate arrangements are in force to ensure that no more than minimal harm will be done to any water source as a consequence of water being taken from the water source under the licence" under the Water Management Act.

Consideration of the impacts of an operation on a water resource are deeply imbedded into the existing environmental approval process. The additional impost of consideration of a 'water resource' as potentially a matter of National Environmental Significance will not provide any additional environmental benefit in an already robust regime.

Inconsistent Assessment processes (Adaptive Management)

There are fundamental differences between the State and the Commonwealth environmental assessment and approval processes. These differences reflect the nature of the differing legislation and will result in extensive regulatory burden and complexity to industry for no added environmental benefit.

Under the proposed Amendment Bill, if a Coal or Coal Seam Gas development is likely to have a significant impact on a water resource the proponent will be required to refer the details of the project to the Federal Environment Minister, who then decides whether the project requires formal assessment and approval. At the end of the process (with advice from the Independent Expert Scientific Committee), the Minister has the power to approve or stop projects and impose conditions.

In its operation, the EPBC Act provides the Commonwealth Government with a traditional decision-making approach that allows the Minister to make a Yes / No decision on a proposal. By contrast, the States and Territories have the responsibility to manage, assess, understand and mitigate the ongoing impacts of any activity on a wide scale. To do this the States have primarily adopted adaptive management processes. Adaptive management allows the conditions and management of an activity to change as new information, technologies, techniques and other factors also change. When discussing water resources, adaptive management allows the regulator to maintain an effective management of the water resource by preserving the resilience of the system while allowing new information, technologies and information to be integrated in a way that allows regulators to react when conditions change. The adaptive management framework places limits on certain activities, such as disturbance to certain areas, use of water, etc. The result of this approach is that a range of acceptable outcomes are generated and refined over time, rather than a simple yes or no approval.

Traditional decision-making approaches under the EPBC Act have been successful at addressing straightforward problems in small, easily replicated systems, such as the management of logging on a nationally significant endangered species. However, this success is harder to achieve if the approach is expanded to cover complex systems, such as those of water resources. Furthermore, the evidence required to demonstrate that there will be no 'significant' impact on a complex water resource will be almost impossible to achieve at a single given approval point. Water resources will change significantly

in time, as influences outside of the industry also change the system. Extreme flood events, changes in agriculture use, drought, climate change, improvements in technology and numerous other factors will ultimately result in an adaptive management process being required. Adaptive management is an appropriate way to manage potential impacts on water resources.

The introduction of a 'water resource' trigger in an assessment process in which an adaptive management framework is not applicable will require two different approval processes. In addition, industry are concerned about a paradox (or catch 22) occurring where activities cannot receive approval, as the information gathered from the performing of the activity is vital in understanding the water resource and its impacts (see below).

Delays to approvals

The only way that a proponent can be sure that an action is not a "controlled action" under the EPBC Act is to refer it to the Minister for decision. Without undertaking this process, operators will be exposed to a substantial risk as the penalties for non-compliance are significant and may have executive officer implications. The Commonwealth Minister can issue a statutory notice requiring the provision of extensive additional information (reports, drafts etc.) as part of the investigation process.

While there are significant administrative costs in complying with regulation, it is delays in the approval process that create the highest regulatory costs. Projects that are already in the process of undergoing an assessment, but have not received approval, will not be required to restart the environmental impact assessment but will be required to provide additional information to address the new approval requirements. This will result in delays to the assessment of these projects under the EPBC Act, particularly as the information required will be different to that in State processes (as explained above).

APPEA has identified some of the costs associated with potential project delays from duplicative environmental delays in a recent report - Cutting Green Tape: Streamlining Major Oil and Gas Approvals Processes in Australia [4]. This report analyses the impacts on project economics and government revenue that arise from altered project timing, conditions or obligations. Regulatory changes that increases costs or result in project delays can undermine the overall profitability and economics of a project. This has a clear impact on the project proponents but also on government revenue. For example, loss of government taxation revenue associated with a 10% capital expenditure (capex) increase could be up to $210 million for a CSG to LNG project (in discounted cash flow terms). The cost of a two year delay of a CSG to LNG project is even bigger in lost government revenue terms (between $360 and $730 million)

APPEA submits that the proposed Amendment Bill will negatively affect Australia's reputation as an investment destination by adding to approval timeframes for no environmental gain.

The Exploration Paradox

The proposed Amendment bill utilises the definition of coal seam gas development activity used by the existing Independent Expert Scientific Committee gateway. Coal seam gas development means any

[4] APPEA 2013 Cutting Green Tape: Streamlining Major Oil and Gas Project Environmental Approvals Processes in Australia http://www.appea.com.au/images/stories/Reports/appea_cutting%20green%20tape.pdf

activity involving coal seam gas extraction that has, or is likely to have, a significant impact on water resources (including any impacts of associated salt production and/or salinity).

This is a broad definition that is likely to extend to petroleum exploration activities, which involve small amounts of coal seam gas extraction. The inclusion of exploration activities in the scope of activities covered by the amendment will result in situations where exploration cannot proceed. This is despite the fact that it is the act of exploration that informs the assessment of a water resource. This paradox is particularly concerning in remote areas where little or no information already exists.

The Bill should expressly exclude exploration activities from the definition of coal seam gas development.

4. Distortion of the objectives of the EPBC Act

The *Environment Protection and Biodiversity Amendment Bill 2013 [Provisions]* is not consistent with the intent or objectives of the EPBC Act.

When the EPBC Act was introduced in 1999 it established, for the first time, a national approach to environmental protection that placed the Federal Environment Minister at the centre of decision making for matters of national environmental significance (NES). The Act was drafted with clear policy objectives in mind and addressed issues with an ad hoc environmental system in dire need of reform. The reforms were necessary to remove impediments to industry and to improve the effectiveness of environmental protection

The EPBC Act specifies the matters for which the Commonwealth has regulatory responsibility, and is derived from the 1992 Intergovernmental Agreement on the Environment and the 1997 Council of Australian Governments (COAG) Heads of Agreement. COAG recognised that the Commonwealth Government had a legitimate role in decisions of matters that are higher than state interests – those of National Environmental Significance (NES). The states would continue to hold primary responsibility for the management of natural resources and land use, allowing them to establish robust regulatory processes to deal with these issues effectively. The legislative intent of the EPBC Act was therefore to define the environmental impacts for which the Commonwealth is responsible for assessing and taking into account when deciding whether to give approval. In this way, Commonwealth involvement in environmental matters is focused on matters of national environmental significance.

The EPBC Act was never intended to duplicate or override state environmental law. Its objective was to facilitate an effective framework for inter-governmental relations on the environment in order to "provide greater certainty for participants in environment issues, minimise **duplication** of effort to achieve common goals and facilitate improved environmental outcomes" (*Environment Protection and Biodiversity Conservation Bill Explanatory Memorandum 1998*[5])

The introduction of a "water resource" as a matter of NES does not establish an effective framework for inter-governmental relations and corrupts the original intent of the Act. The trigger will increase duplication of effort between jurisdictions for no environmental benefit.

[5] http://www.comlaw.gov.au/Details/C2004B00223/Explanatory%20Memorandum%201/Text

5. Consistent with matters of National Environmental Significance

The proposed Amendment Bill politically targets certain industries, rather than trying to achieve protection of a specific matter. There has been no demonstrated failure in the current list of protected matters to warrant the proposed Amendment Bill.

The matters of NES were first developed in 1997 when COAG and representatives of local governments signed a Heads of agreement on Commonwealth and State roles and responsibilities for the Environment (Heads of Agreement). The Heads of Agreement[6] provided that the Commonwealth would apply its assessment and approval processes to meet its obligations on the following matters of national environmental significance (NES):

- World Heritage properties;
- Ramsar listed wetlands;
- places of national significance;
- nationally endangered or vulnerable species and communities;
- migratory species and cetaceans;
- nuclear activities; and
- management and protection of the marine and coastal environment

Currently, all activities (not just limited to Coal and Coal Seam Gas) must refer an activity where there may be an impact on any of the above matters of NES. This includes water resources if the existing matter of NES depends on those resources.

Matters of NES must be on the protected matter, rather than a specific industry or activity. By no standard are coal seam gas developments and large coal mines the largest users of water resources nor do these industries have the most significant impact on water resources. The unilateral creation of an industry specific trigger is inconsistent with the EPBC Act matters of NES that focus on impacts to protected matters. The management of a water resource is more appropriately managed through regional assessments undertaken by the relevant States with oversight and input from the Commonwealth through the National Partnership Agreement.

6. Definitions

There is significant uncertainty relating to the application of the Amendment Bill to the EPBC Act. The existing EPBC Act contains definitions of "coal seam gas development" and "large coal mining development" as any activity involving coal seam gas extraction or any coal mining activity that has, or is likely to have, a significant impact on water resources. "Water resource" is defined by reference to the *Commonwealth Water Act 2007*, being surface water or ground water, or a watercourse, lake, wetland or aquifer (whether or not it currently has water in it) and including all aspects of the water resource including water, organisms and other components and ecosystems that contribute to the physical state and environmental value of the water resource.

According to the Department of Sustainability, Environment, Water, Population and Communities guidelines a "significant impact" is an impact that is important, notable or of consequence, having regard to its context or intensity. As yet, no specific guidance has been given by the Department as to what constitutes a significant impact on a water resource.

[6] http://www.environment.gov.au/epbc/publications/coag-agreement/preamble.htm

Definition of a Water Resource

The definition of a water resource, being surface water or ground water, or a watercourse, lake, wetland or aquifer (whether or not it currently has water in it), is poorly defined and is likely to include the vast majority of development on the Australian continent. In addition, there is no clarity around important factors such as the quality of the resource; the connection to environmental value; the use of the water by other sectors (agriculture etc); and the size of the water resource. Water produced by an activity may also be broadly covered under the 'water resource' definition. The uncertainty relating to the broad definition of water resource must be resolved.

Definition of Significant Impact

Without a clear definition of 'significant impact' for a water resource the requirement for assessment under the EPBC Act is likely to include *any* impact on a water resource that is a result of a mining activity. At its broadest possible interpretation it could be reasonably argued that this impact could extend all the way to assessing the impacts of increased domestic use as a result of population increases through regional development.

Without further clarification, what constitutes a 'significant impact' will vary significantly between water resources (lakes, rivers, etc) and depend strongly on the timeframes of the activity – i.e. an activity may not be significant in the short term, but may be significant (with uncertainty) over long periods of time. The high level of uncertainty to proponents will likely result in Coal and Coal Seam Gas operators referring many small, low impact activities to the Commonwealth in order to comply with the law. In addition, without further defining 'significant' for the purposes of a water resource, the information required in order to assess the impact cannot reasonably be undertaken by the companies.

7. Consistency with existing Commonwealth commitments

In introducing this amendment the federal government has failed to identify why the range of alternative approaches available through other state and federal mechanisms have not been considered, such as through the National Harmonised Framework on Coal Seam Gas or the National Partnership Agreement.

National Harmonised Framework for Coal Seam Gas

Through the Ministerial Standing Council on Energy and Resources (SCER) process, energy and resources Ministers from across Australia agreed in December 2011 to develop a national harmonised framework for the coal seam gas industry. The work program to deliver the framework progresses work around water management and monitoring, well integrity and aquifer protection, hydraulic fracturing and chemical use.

Consistency with National Partnership Agreement

The Federal Government has not demonstrated that jurisdictions have failed in their roles and responsibilities as outlined in the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development (NPA). The NPA was established through negotiations with relevant state and territory governments in 2011 and commits the governments to take account of the advice of the

Independent Expert Scientific Committee (IESC) in their relevant regulatory decisions. The States make the decision whether to refer projects to the IESC based on consideration of whether the project application is likely to have a significant impact on water resources. This is distinct from the referrals process for matters of national environmental significance under the EPBC Act.

The signatory States agreed to publish a protocol that describes how they will decide which project applications should be referred to the IESC for advice. Victoria, Queensland and South Australia completed this process by 20 September 2012. However, the NSW and Commonwealth Governments have not agreed on NSW's draft protocol. Of the four participating States, delays have only been encountered in NSW. State and Territory governments have certainly been referring relevant projects to the IESC.

The establishment of a national partnership is a significant step in providing independent and transparent advice around water and water resources and is an appropriate mechanism to assess the impacts of an activity on a water resource. The partnership is not flawed and fulfils the intent of the proposed amendment without jeopardising the integrity of the EPBC Act or duplicating processes with the States. The proper utilisation of the partnership and the IESC means an amendment to the EPBC Act is not required.

Contribution to EPBC Act Reform

The Australian Government is currently undertaking a variety of reforms of the EPBC Act. Central to this process was the Independent Review of the EPBC Act completed by Dr Allan Hawke in October 2009. The Report deals comprehensively with two major aims of the government: first, to achieve better environmental outcomes, and secondly, to substantially deregulate and improve the efficiency of Australia's management of environmental issues.

The review investigated water use and extraction, and the potential to include it as a matter of NES. However, the review found that *"including water extraction or use as a matter of NES under the Act is not the best mechanism for effectively managing water resources"*. This was due to the fact that water resources and catchment areas, the scale of pressures on these resources, and the environmental flow requirements of these resources vary dramatically across Australia. Setting a threshold for a nationally significant impact for water extraction would be very difficult.

The independent review also notes that water extraction is already covered where that extraction or use has, will have or is likely to have a significant impact on a listed wetland, heritage place, species or ecological community. APPEA agrees that managing impacts on ecosystems as a unit, instead of managing the individual impacts from individual industries (such as proposed in this amendment) is the most appropriate mechanism for the EPBC Act.

The government response to the review agreed that strategic approaches to environmental assessment and approval were preferred and that strategic assessments in relation to water resource plans can already be accomplished under the EPBC Act. The Government response also reiterated that assessments should be designed to complement the implementation of state and territory government obligations under the National Water Initiative, and, within the Murray Darling Basin, the Murray Darling Basin Plan.

The proposed Amendment Bill undermines Government commitments to reform the EPBC Act and move the EPBC Act towards strategic approaches to assessment. The proposed Amendment does not

recognise that the EPBC Act already provides scope for regional assessments of all matters, including water resources.

Bilateral Agreements and EPBC Act Reform

There is no policy failure to suggest that amendments to remove bilateral agreements from the EPBC Act are warranted. As stated above, the EPBC Act was first drafted in order to facilitate increase cooperation between the Commonwealth and States. The proposed exclusion of bilaterally agreed and accredited environmental approval processes is contrary to good environmental, economic and social policy. It will not allow flexibility for streamlining approval processes, will increase duplication and bureaucracy and will raise compliance costs on projects and businesses across the economy.

8. Additional Amendments

Comments in this submission have been confined to the Bill currently before the Committee. It is noted that additional amendments to this Bill have been proposed to be moved through the Senate (e.g., by the Greens). APPEA strongly opposes additional amendments as they have been reported in the media and reserves the right to make additional submissions on those matters should these be considered in the form of amendments to the Bill.