

Chapter 1

Introduction

1.1 The Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011 (the bill) was introduced as a private senator's bill by Senator Larissa Waters in the Senate on 1 November 2011.¹

1.2 On 10 November 2011, the Senate adopted the Selection of Bills Committee Report No. 16 of 2011 and referred the bill to the Senate Rural Affairs and Transport committee (the committee) for inquiry and report by 27 February 2012.²

Conduct of the inquiry

1.3 Notice of the inquiry was posted on the committee's website and it was advertised in *The Australian* newspaper on 23 November 2011. The committee also wrote directly to a number of peak bodies and relevant Commonwealth and state and territory departments seeking their comments.

1.4 The committee received 12 submissions (see Appendix 1). The committee held a public hearing in Canberra on Tuesday, 7 February 2012. A list of witnesses who appeared at the hearing can be found in Appendix 2, and copies of the *Hansard* transcript are available on the committee's website.

Acknowledgements

1.5 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

Purpose of the bill

1.6 The bill amends the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) to include 'protection of water resources from mining operations' as a matter of national environmental significance (NES).

1.7 Section 24D of the bill states that an action must not be taken in the course of mining operations if that action has, will have, or is likely to have a significant impact on the quality, structural integrity or hydraulic balance of a water resource. This would, in effect, require Commonwealth assessment and approval of mining operations likely to have a significant impact on water resources.

1 Journals of the Senate, No. 61, 1 November 2011, p. 1695.

2 Journals of the Senate, No. 67, 10 November 2011, p. 1823.

1.8 Sections 24E and F of the bill provide definitions of 'mining operations', 'mineral' and 'water resource'.

1.9 Section 24G(1)-(6) of the bill creates a number of offences relating to mining operations. Section 24G(7) of the bill outlines the circumstances in which the offences listed in Section 24G(1)-(6) do not apply.

Current regulatory framework

1.10 Under the current regulatory framework, mining operations must undergo environmental and social impact assessments undertaken by state and territory governments. The Commonwealth plays a role through the EPBC Act, by providing a basis for the Minister to decide whether an action will have, or is likely to have, a significant impact on the currently listed matters of national environmental significance.³

1.11 Matters of national environmental significance protected under the EPBC Act include:

- listed threatened species and communities;
- listed migratory species;
- Ramsar wetlands of international importance;
- Commonwealth marine environment;
- world heritage properties;
- national heritage places;
- the Great Barrier Reef Marine Park; and
- nuclear actions.

1.12 If a proposed action has, will have, or is likely to have, a significant impact on any of these matters, a referral must be submitted for a decision by the federal environment minister on whether assessment and approval is required under the EPBC Act.

Similarities with the Environment Protection and Biodiversity Conservation Amendment (Mining, Petroleum and Water Resources) Bill 2011

1.13 The Environment Protection and Biodiversity Conservation Amendment (Mining, Petroleum and Water Resources) Bill 2011 was introduced to the House of Representatives on 12 September 2011 by Mr Tony Windsor, MP. This bill proposes to amend the EPBC Act to 'empower the Commonwealth to be the consent authority

3 *Environmental Protection and Biodiversity Conservation Act 1999*, Chapter 2, Part 3, Division 1.

for mining and extractive industry actions that have, or are likely to have, a significant impact on water resources'.⁴

1.14 While the two bills are similar, the principal difference is that Mr Windsor's bill allows the federal minister to delegate assessment and approval authority to states and territories. Senator Waters stated in her Second Reading Speech that the Australian Greens have grave concerns about this, and has therefore not included the parts that allow delegation to the states in the bill.⁵

Report Structure

1.15 The following chapter of the report looks at issues raised by submitters in relation to the bill, such as the date of commencement, current responsibilities and regulations, water as a matter of national environmental significance and clarification of terms and definitions within the bill.

4 Explanatory memorandum, p. 1.

5 Senator Larissa Waters, *Senate Hansard*, 1 November 2011, p. 7774.

