Environment Protection and Biodiversity Conservation Amendment Bill 2013

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Environment Protection and Biodiversity Conservation Amendment
Bill 2013

Date introduced: 13 March 2013

House: House of Representatives

Portfolio: Sustainability, Environment, Water, Population and Communities

Commencement: Sections 1 to 3 commence on the day the Act receives Royal Assent. Schedule 1 commences the day after the Act receives Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose of the Bill

The purpose of the Bill is to amend the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)1 to provide for the establishment of a new matter of national environmental significance (NES), the protection of water resources from ‘coal seam gas (CSG) development’ and ‘large coal mining development’. CSG and large coal mining developments that have, will have or are likely to have a significant impact on water resources will then require the approval of the Minister for Sustainability, Environment, Water, Population and Communities (the Environment Minister) under the EPBC Act. The practical effect of this amendment would be that the Minister would have the power to impose water specific conditions on large coal mining and coal seam gas projects, whereas at present this power is limited to conditioning water impacts only to the extent that any such impacts relate to an existing matter of national environmental significance protected by the EPBC Act.

Background

The EPBC Act is the principal environmental legislation of the Commonwealth Government and it provides arrangements for environmental impact assessment and other mechanisms to conserve biodiversity and heritage.

Under the EPBC Act a controlled action (that is, an action which is controlled under the EPBC Act) will normally trigger a requirement for assessment and approval from the Environment Minister.2

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However, the Environment Minister may also decide that an approval is not needed for a particular action.\textsuperscript{3} It is an offence to carry out a controlled action without approval.

Under the EPBC Act, a \textbf{controlled action} is an action that will have or is likely\textsuperscript{4} to have a \textbf{significant impact}\textsuperscript{5} on:

- a ‘matter of national environmental significance’ (NES)\textsuperscript{6}
- the environment on Commonwealth land even if the action is taken outside Commonwealth land and on the environment in general if the action is taken on Commonwealth land or
- the environment inside or outside Australian jurisdiction, where the actions are undertaken by the Australian Government or its agencies.\textsuperscript{7}

Under section 523 of the EPBC Act, an \textbf{action} is defined to include ‘projects, developments, undertakings, activities or a series of activities, or an alteration to any of these’.

There are presently eight matters of NES/‘triggers’ protected under the EPBC Act:

- \textbf{world heritage properties}
- \textbf{national heritage places}
- \textbf{wetlands of international importance} (listed under the Ramsar Convention\textsuperscript{8})
- \textbf{listed threatened species and ecological communities}
- \textbf{listed migratory species} protected under international agreements
- \textbf{Commonwealth marine areas}
- \textbf{the Great Barrier Reef Marine Park} and
- \textbf{nuclear actions (including uranium mines)}.\textsuperscript{9}

\footnotesize
\textsuperscript{3} EPB C Act, sections 33-36, and sections 75-77A.
\textsuperscript{4} The EPBC Act does not provide guidance on the term ‘likely’. However, page 3 of the Significant Impact Guidelines 1.1 - Matters of National Environmental Significance (October 2009) states that: ‘To be ‘likely’, it is not necessary for a significant impact to have a greater than 50 per cent chance of happening; it is sufficient if a significant impact on the environment is a real or not remote chance or possibility’.
\textsuperscript{5} The term ‘\textit{significant impact}’ is not defined in the EPBC Act or its regulations. The Department of SEWPaC has produced two ‘Significant Impact Guidelines’. The first is Matters of National Environmental Significance (EPBC Act Policy Statement 1.1) and the second is Actions on, or Impacting Upon, Commonwealth Land, and actions by Commonwealth Agencies (EPBC Act Policy Statement 1.2). The current guidelines provide information for stakeholders seeking to determine whether a specific action is an ‘action’ for the purposes of the Act, and set out criteria for judging whether the impact is likely to be significant.
\textsuperscript{6} Matters of NES are listed in Chapter 2, Part 3, Division 1, sections 12-24A, EPBC Act.
\textsuperscript{7} EPB C Act, sections 26-28.
\textsuperscript{8} The Convention on W e tlands of International Importance Especially as Waterfowl Habitat (the Ramsar Convention), opened for signature 2 February 1971, 996 UNTS 245 (entered into force 21 December 1975).
\textsuperscript{9} Ibid.
The Environment Minister may add additional matters to this list by regulations (or by an amendment to the EPBC Act) without the agreement of the states. However, prior to doing so, the Minister must consult with the states and territories.

A person is prohibited from taking an action that has, will have or is likely to have a significant impact on a matter of national environmental significance except:

- in accordance with an approval from the Commonwealth Environment Minister
- in accordance with an approval from another Commonwealth decision-maker under a management plan accredited by the Commonwealth Environment Minister for the purposes of a Ministerial declaration or
- in accordance with an approval from a state in accordance with a management plan accredited by the Commonwealth Environment Minister for the purposes of a bilateral agreement.

The unlawful taking of an action that has a significant impact on a matter of national environmental significance may attract a civil or criminal penalty.

Section 68 of the EPBC Act requires a person(s) proposing to take an action that they think is, or may be, covered by the Act to refer the proposal to the Environment Minister for a decision on whether the action is a ‘controlled action’ under the Act.

The Environment Protection and Biodiversity Conservation Regulations 2000 (the EPBC regulations) require people submitting referrals to describe the proposed action, the nature and extent of its likely impacts, and state whether they consider the action to be a controlled action under the Act.

On the basis of the referral, the Environment Minister decides whether the proposal is a controlled action under the Act, and which of the controlling provisions apply.

In deciding whether an action is a controlled action, the Environment Minister must invite comment from other Ministers with administrative responsibilities relating to the proposal. The Minister must also publish the referral on the internet and invite public comment.

Assessment

For controlled actions, the Environment Minister must choose how the impacts of the proposed action will be assessed. The following assessment options are available under section 87 of the EPBC Act:

- an accredited assessment process — a bilateral agreement or Ministerial declaration
- assessment on the basis of preliminary documentation

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10. Section 69 of the EPBC Act provides that a state or territory agency with administrative responsibilities relating to a proposed action may also refer the action, and under section 70 of the EPBC Act, the Environment Minister may request a person or a state or territory agency to refer a proposal.


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• a public environment report
• an environmental impact statement or
• a public inquiry.

The Environment Minister must invite comment from the state or territory where the proposed action will occur before determining which assessment approach to apply. Each assessment method includes public consultation.

Usually the only impacts that are considered relevant for assessment are the impacts that the proposed action has, will have, or is likely to have on the ‘controlling provision’ (that is, the matter of national environmental significance that has triggered the approval process).\(^{12}\)

### Assessment under Bilateral agreements

Bilateral agreements enable the Commonwealth to accredit the environmental assessment and approval processes in a state or territory. Bilateral agreements are aimed at minimising duplication in assessment and approval processes and promoting efficiency, timeliness and effectiveness of processes.\(^{13}\)

This effectively enables the Commonwealth to delegate its assessment and/or approval role to the state or territory, rather than having those actions assessed by the Commonwealth Government under the EPBC.

Via a comparable process **Ministerial declarations** accredit other assessment processes of a Commonwealth agency (other than the Department of Sustainability, Environment, Water, Population and Communities (SEWPac)), allowing actions to be assessed under those processes, rather than under the EPBC Act.

### Approval

Following a completed assessment, the Environment Minister has 30 business days (or 40 business days after a public inquiry) to decide whether or not to approve the action, and what conditions, if any, to place on the approval.

The Environment Minister may attach **conditions** to an approval to protect, or to mitigate, or repair damage to a matter covered by the Act, whether the damage is caused by the action or not.

### Coal Seam Gas

The development of CSG resources has proved to be a contentious issue in Queensland and New South Wales. Proponents of CSG argue that the exploitation of CSG is necessary for the energy

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\(^{12}\) Section 82, EPBC Act.
\(^{13}\) Section 44, EPBC Act.

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security and economic prosperity of Australia.\textsuperscript{14} Opponents of CSG point to land-use conflicts, water use concerns and fears of lasting environmental damage as reasons for rejecting CSG development.\textsuperscript{15} Regulating the development of CSG has been a difficult policy exercise for state governments, which have tried to balance environmental and landholder concerns with their desire to encourage CSG development.

CSG is composed mostly of methane (CH\textsubscript{4}) which adheres to natural pores and cracks in the coal seam and is kept in place by underground water pressure. To recover the gas, a well is drilled into the coal seam and water is pumped out, which lowers the underground water pressure. This allows the gas to come away from the coal and it then flows into the gas well, where it is collected. The CSG is processed to remove other unwanted, naturally-occurring gases (like water vapour, nitrogen, carbon dioxide and sulphur-containing gases) and is then compressed and piped away from the collection site. The final product is identical to natural gas.

The key differences between CSG and conventional gas developments include:

- the low gas and water permeability of coal compared to conventional gas reservoirs means that a much greater number of wells must be drilled to exploit a CSG resource compared to a conventional reservoir resource. This has impacts for the amount of land required for a CSG development
- CSG wells also have a shorter productive lifespan than a conventional well – typically 10-15 years for a CSG well, compared to up to 50 years for a conventional gas well.\textsuperscript{16}
- the need to pump water out of the coal seam also means that CSG wells typically produce far more water than conventional gas wells. This water tends to contain dissolved compounds naturally present in the coal seam, including large amounts of salt.\textsuperscript{17} Management of this produced water and salt is a challenging aspect of coal seam gas production and
- coal’s low permeability means that in some (but not all) wells, it is necessary to stimulate the well using hydraulic fracturing. This process involves pumping a fracturing fluid, which is composed of water, sand and a number of chemical additives, into the well at high pressure to create artificial fractures in the coal seam, allowing the gas to flow more easily into the well. Hydraulic fracturing has proved to be particularly controversial where it is carried out in close proximity to productive aquifers, especially in agricultural areas.\textsuperscript{18}

\begin{itemize}
  \item \textsuperscript{14} Australian Petroleum Production and Exploration Association (APPEA), \textit{We Want CSG – Facts on CSG}, ‘We want CSG’ website, APPEA, viewed 19 March 2013, AGL (Australian Gas Light Company), \textit{Coal Seam Gas Fact Sheet}, AGL website, AGL, viewed 19 March 2013.
  \item \textsuperscript{15} Lock the Gate Alliance, \textit{Campaigns}, Lock the Gate Alliance website, viewed 19 March 2013.
  \item \textsuperscript{17} CSIRO, \textit{Coal seam gas - produced water and site management} (fact sheet), CSIRO, Melbourne, April 2012, viewed 19 March 2013.
  \item \textsuperscript{18} GE Batley and RS Kookana, ‘\textit{Environmental issues associated with coal seam gas recovery: managing the fracking boom}’, \textit{Environmental Chemistry}, vol. 9, 2012, pp. 425-428; N Swayne, ‘\textit{Regulating coal seam gas in Queensland}’.
\end{itemize}
The development of CSG resources has become an important industry in Queensland. Since 1995 production of CSG has risen from zero to approximately 10 per cent of the nation’s natural gas production. This will further increase as conventional gas reserves accessible to the gas market in the eastern states begin to decline. Several projects for the export of CSG as liquefied natural gas (LNG) will also increase the demand for CSG.\(^\text{19}\) In 2010–11 Queensland produced 97.5 per cent of Australia’s CSG with NSW producing the rest.\(^\text{20}\)

Environmental issues associated with CSG

Water use and aquifer drawdown

An inherent part of CSG activity is the need to reduce subterranean water pressure to allow CSG to come away from the coal seam. This means that every CSG well pumps out water from underground, similar to agricultural or domestic bores. An average CSG well in Queensland withdraws about 20 000 litres of water per day from the coal seam.\(^\text{21}\) A typical CSG field contains between several dozen and several hundred wells, which means that a single CSG field can withdraw millions of litres of water every day. In 2011, CSG production in the Surat basin in Queensland withdrew 18 gigalitres per annum\(^\text{22}\); this is could increase to 125 gigalitres per annum when full CSG production in the basin is achieved.\(^\text{24}\) As a comparison, homes and businesses in Melbourne consumed 365 gigalitres in 2011–12.\(^\text{25}\) Current non-petroleum (agricultural and domestic) extraction of groundwater in the Surat basin (one of several CSG-producing areas in Queensland) amounts to 589 megalitres per day.\(^\text{26}\)

Agricultural and environmental groups are concerned that the extraction of relatively large amounts of groundwater by CSG activities will cause agricultural and domestic bores in the same basin to become less productive. There seems to be a lack of consensus as to the severity and timeframe of effects on aquifers from CSG. Some industry experts have argued that the coal seams are well

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\(^{19}\) Bureau of Resources and Energy Economics (BREE) and Geoscience Australia (GA), *Australian Gas Resource Assessment*, BREE and GA, Canberra, 2012, pp. 2-4, viewed 19 March 2013.


\(^{21}\) CSIRO, Coal seam gas – produced water and site management, op cit.

\(^{22}\) 1 gigalitre = 1000 megalitres = 1 000 000 000 litres.


\(^{24}\) Ibid., p. 59.


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isolated from surrounding groundwater systems, minimising impacts of CSG water extraction.\textsuperscript{27} Other experts have suggested that the impacts of CSG water extraction on aquifers will take decades to manifest themselves.\textsuperscript{28}

A Queensland Water Commission report on the cumulative effects of CSG activity in the Surat basin predicted that up to 85 bores in the Surat basin would be immediately affected by CSG production, with up to 528 bores (out of a total of 21,200 bores) being affected in the longer term. It predicted that water levels in bores in the Walloon Coal Measures (a geological formation from which CSG is sourced) could drop by up to 150 metres, although the majority of private bores in the area would experience a drop of less than 21 metres. The report also suggests that the peak water impacts will occur between 2030-2050 in some areas and as late as 2075 in others.\textsuperscript{29}

The National Water Commission’s (NWC) \textit{position statement on Coal Seam Gas} estimates that total water withdrawal associated with CSG activities could reach up to 821 megalitres per day, compared to the current total of 1,500 megalitres per day that is extracted from the Great Artesian Basin. However, the Commission notes that these figures are early estimates. One of the NWC’s recommendations is that CSG operators continue to publish actual water use over time so that accurate estimates of aquifer drawdown might be achieved.\textsuperscript{30}

\textbf{Produced water}

As a result of the dewatering of the coal seam (and hydraulic fracturing, if used), CSG operations produce a large amount of water of variable quality. This water often contains a number of naturally-occurring contaminants from the coal seam and a large amount of dissolved salts. This water is managed in a number of ways – it could be re-injected into a suitable aquifer, used for irrigation or industrial use with or without treatment (depending on water quality) or discharged to the environment.

Uncontrolled release, or even controlled release of large volumes of CSG water, could have significant effects on the surrounding environment, as outlined in a review commissioned by the Australian Council of Environmental Deans and Directors:

\begin{quote}
Large volumes of treated wastewater, if released to surface-water systems, could alter natural flow patterns in streams and have significant impacts on water quality, and consequently damage the ecological health of affected rivers and wetlands. Aspects of stream water-quality which could be at risk include its turbidity (water that is too ‘clean’ could unnaturally dilute naturally turbid systems), its temperature and its content of dissolved oxygen and nutrients such as phosphorus and nitrogen. Timing the release of large
\end{quote}


volumes of water into streams that in many cases are ephemeral is yet another issue that needs careful consideration.\textsuperscript{31}

Queensland’s policy on water produced from CSG activities now prefers re-injection of CSG water back into the ground where it is unlikely to cause detrimental effect, or treated or untreated use where no detrimental effects are likely.\textsuperscript{32} The re-use of CSG water for agricultural purposes (after treatment, if necessary) can provide a valuable source of additional water for farmers. However, as the production of water from CSG wells declines over time, CSG water does not substitute for a permanent water resource (like a sustainably managed aquifer).\textsuperscript{33}

**Hydraulic fracturing**

One of the most controversial aspects of coal seam gas extraction is hydraulic fracturing. This is the process of injecting a fracturing fluid into a gas well at relatively high pressure. It is designed to create cracks, or fractures, in rocks that hold natural gas (and/or oil), allowing the gas to flow more easily through the rock and into the gas well for collection. The fracturing fluid normally consists of water and sand (97 to 99 per cent) and chemical additives.\textsuperscript{34}

Fracturing is typically used where the permeability of the rock (which contains the gas) is too low to allow the gas to flow into the well at a satisfactory rate. It is not necessary to fracture all CSG wells. There is one estimate that between 10 to 40 per cent of CSG wells in Queensland will need to be fractured.\textsuperscript{35} However if gas prices rise, it could become lucrative to fracture more wells to increase production. It should be noted that CSG in Australia differs from the extraction of \textit{shale gas} as practiced in the United States, where almost all wells are fractured.

Opponents of fracturing have been concerned that fracturing in coal seams could exacerbate any impacts that CSG may have on underground water resources. In contrast to conventional and shale gas production, the target strata of CSG wells are inside, or close to, aquifers. Opponents argue that hydraulic fracturing has the potential to create new connections between aquifers, which could have serious impacts on underground water sources.

The NWC was concerned that hydraulic fracturing activities, if they inadvertently breached an adjacent aquifer, could lead to:

- draining of the breached aquifer into the coal seam

\textsuperscript{31} J Williams, T Stubbs and A Milligan, \textit{An analysis of coal seam gas production and natural resource management in Australia: issues and ways forward}, a report prepared for the Australian Council of Environmental Deans and Directors (John Williams Scientific Services), Canberra, October 2012, p. 49, viewed 13 May 2013.


\textsuperscript{33} N Swayne, ‘Regulating coal seam gas in Queensland’, op. cit.


contamination of the breached aquifer with salty water from the coal seam
contamination of the breached aquifer with gas and
contamination of the breached aquifer with chemicals used in the fracturing process.\(^{36}\)

The CSG industry maintains that hydraulic fracturing is a tried and tested method, which has been used for decades in oil and gas operations. Fracturing is designed to be practiced in a targeted fashion, that is, carried out such that fractures are only introduced into the rock layer containing gas (coal in this case). This is achieved through the construction of a well casing, which lines the well along its entire depth, except for the section in the rock layer where the fracturing will take place. The well casing is usually constructed of cement and/or steel and should protect rock layers and aquifers between the coal seam and surface.

A properly constructed casing should protect intermediate strata (layers of rock, some of which will contain water) from the activity of the CSG well. However, if the casing is poorly constructed or fails over time, it is possible that the poor quality water (and/or gas) from the well could leak into other layers. Whether these problems have eventuated is unclear at this stage, but the failure of casings in oil and gas wells has previously occurred both in Australia and overseas. The Montara blowout and associated oil spill off the coast of Western Australia in 2009 was thought to be the result of a poorly constructed well casing which failed.\(^{37}\) Similarly, there have been reports of CSG well casing failings, such as the older Argyle 2 exploration well in Queensland.\(^{38}\) The petroleum industry argues that advances in well construction mean that a repeat of this well failure would be unlikely in wells constructed under today’s standards.\(^{39}\)

**Aquifer contamination**

The water in a coal seam is frequently of poor quality (with high levels of dissolved salts and other contaminants) and opponents worry that accidental connection of aquifers (either through fracturing, or through a poorly constructed well casing) could lead to contamination of a previously clean aquifer. CSIRO suggests that in this event, it is most likely that (clean) water would flow from the aquifer into the coal seam, rather than salty water flowing into the aquifer. However, this may still lead to depletion of water from the clean aquifer.\(^{40}\)

Opponents also are concerned about the possibility of aquifers becoming contaminated with methane. Methane is naturally present in many underground water sources, but opponents claim


\(^{39}\) Anonymous, ‘QGC’s LNG Project Dependant on Water’, op. cit.

that CSG is responsible for phenomena such as methane bubbling up through the Condamine River. Due to a lack of baseline scientific evidence it is often difficult to determine whether CSG is responsible or not for observed methane in the environment.

Faulty well casings could also give rise to the possibility of domestic aquifers being contaminated with methane. The 2010 movie *Gaslands*, which examined the shale gas extraction boom in the United States, depicted apparently methane-contaminated water in homes being set on fire. Although the same possibility of such dramatic impacts also exists with CSG, it does not seem to be a widely reported problem in Australia.

**Large coal mining development**

Although it has received less attention than CSG development, large scale mines can also have significant impacts on water resources. Modern open-cut coal mines can reach 200 metres below the surface, often taking them through water-bearing strata. As the mine cuts through these aquifers, water from the aquifers can seep into the mine pit. Similarly, the target coal seam itself is likely to contain substantial amounts of water. If the local geology is rich in sulphur-containing minerals, the presence of excess water in the mine can lead to acid mine drainage. This water then must be managed in an appropriate way (especially if it is saline or otherwise of poor quality).

Coal mines require water for processing and dust suppression and other mining activities. Rio Tinto’s own water use data shows that up to 400 litres of water can be used per tonne of coal produced, although the normal range seems to be between 100-200 litres of water per tonne. To satisfy their water needs, a number of coal mines around Moranbah in Queensland are serviced by a pipeline system which gathers 21 gigalitres (GL) of water per year from the area between Emerald and Mackay from surface and sub-surface sources. Although relatively small, this is an appreciable amount of water compared to the total annual agricultural and domestic extraction from the Great Artesian Basin of around 550 GL.

Underground coal mining, particularly by the longwall method, can also have impacts on water resources. The creation of large underground voids and induced collapses associated with underground mining has been linked to surface subsidence. These effects can interrupt normal flows of groundwater and represent another challenge in management of water resources.


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**COAG partnership**

Like all on-shore mineral and petroleum deposits, both CSG and coal resources are the property of the states and territories. Respective state governments are responsible for licensing mineral and petroleum development, through mining and petroleum leases, and charge royalties on the mineral and petroleum production. They also have responsibility for development approval and environmental impact assessment and for regulating the conduct of such mining. Previously, the Commonwealth has tried to implement reform to coal seam gas and coal mining activities through the Council of Australian Governments (COAG). In March 2012, the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development was concluded between the Commonwealth and New South Wales, Queensland, Victoria, South Australia and the Northern Territory, which sought to:

‘...strengthen the regulation of CSG and large coal mining development by ensuring that future decisions are informed by substantially improved science and independent expert advice.’

The major achievement of the partnership was the establishment of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC). The committee was established by the Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Act 2012. The committee is charged with providing advice to state governments to assist their environmental assessment of these projects. In addition, the committee is to provide advice on a programme of research into various aspects of CSG and coal mining development, including aquifer contamination and integrity, aquatic health (including produced water), the human and environmental effects of chemicals used in these activities and groundwater and surface water ecosystems. The committee is also to provide advice on so-called bioregional assessments, which will consider the impacts of these developments on a regional basis, rather than an individual basis.

The agreement commits the party states to seek advice from the IESC for the assessment of these projects. Each state is responsible for legislating the requirement to refer appropriate applications to the IESC for advice and establishing a protocol for transparently taking account of that advice. However, there is no obligation on the states to accept that advice, or implement any recommendations that might be provided by the IESC. The IESC has no capacity other than advisory, leading to criticism in the press that it is a ‘toothless tiger’.

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48. COAG, National partnership agreement, op. cit. p. 4
As the law currently stands, the Commonwealth has no power to assess the water impacts of CSG or coal mining operations. The Environment Minister has approved CSG activities in the past, however the assessments have related to other matters of national environmental significance, such as impacts on migratory or threatened species. This Bill would extend those approval powers to CSG and coal mining operations which have, or are likely to have, a significant impact on water resources.

**Water trigger**

Since the EPBC Act was passed in 1999 two new triggers have been added, national heritage places in 2003\textsuperscript{50} and the Great Barrier Reef Marine Park in 2008.\textsuperscript{51} On 16 November 2000 the Minister for Environment and Heritage, Senator Robert Hill, issued a draft greenhouse trigger regulation and a related discussion paper.\textsuperscript{52} The greenhouse trigger would be for major new developments if they are likely to result in greenhouse gas emissions of more than 0.5 million tonnes of carbon dioxide equivalent in any 12 month period. The proposal to develop this new trigger was part of the deal with the Australian Democrats for their support in the passage of the EPBC Act.\textsuperscript{53} The Coalition included a commitment to complete consultations on the inclusion of a greenhouse trigger in the EPBC Act in their 2001 election policy.\textsuperscript{54} The Howard Government never proceeded with adding this greenhouse trigger.\textsuperscript{55}

In 2011 Independent Tony Windsor and Greens Senator Larissa Waters both introduced Private Members Bills\textsuperscript{56,57} into Parliament that would add a broader matter of NES of the protection of water resources from all mining operations to the EPBC Act. While neither of these Bills has been debated there was no indication that the Government would have supported either Bill. In an answer to a question without notice by Senator Waters asking the Government to ‘reconsider its refusal to add a water trigger to our environmental laws’, the Environment Minister replied:

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\textsuperscript{50} Environment and Heritage Legislation Amendment Act (No. 1) 2003.

\textsuperscript{51} Great Barrier Reef Marine Park and Other Legislation Amendment Act 2008.

\textsuperscript{52} R Hill (Minister for the Environment and Heritage), Greenhouse trigger, media release, 16 November 2000, viewed 27 March 2013.

\textsuperscript{53} J Howard (Prime Minister), Environment policy, media release, 1 November 2001, p. 49, viewed 27 March 2013, \url{http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FTA856%22}.


\textsuperscript{55} Environment Protection and Biodiversity Conservation Amendment (Mining, Petroleum and Water Resources) Bill 2011, Bill Homepage, viewed 20 March 2013, \url{http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fb4640%22}.

\textsuperscript{56} Environment protection and Biodiversity Conservation (Protecting Australia’s Water Resources) Bill 2011, Bill Homepage, viewed 13 May 2013, \url{http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs856%22}.

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The independent review of the EPBC Act, led by Dr Allan Hawke AC, considered but did not recommend a water trigger. Dr Hawke concluded that including water extraction or use as a matter of National Environmental Significance was not the best mechanism for managing water resources.\(^58\)

However this position was to change. In announcing that the current Bill would be introduced amending the EPBC Act to add a new matter of NES, the protection of water resources from CSG development and large coal mining development, the Environment Minister, Tony Burke, said there was a need for such a trigger after the EPBC Act was amended in 2012 to establish the Independent Scientific Committee on Coal Seam Gas and Large Coal Development.\(^59\) Minister Burke said that after receiving scientific advice from the Committee he was ‘only allowed to take that information into account to the extent that there’s an endangered species or a Ramsar wetland or something that’s currently listed’.\(^60\)

With this in mind, the Government believes that environmental law should be amended in a way that matches community expectations of what our decisions involve. And for that reason the amendments will work this way. It will not be a broad trigger that affects everything relating to water. We have neither the desire, nor the capacity, as a commonwealth government to suddenly become the approval authority over every farm dam in the nation.

But, given that we have already established the Independent Expert Scientific Committee that deals with coal seam gas projects and large coal mines, that is the appropriate gateway to federal approval. So, for those projects which already have a legal definition in the Act because of the Independent Expert Scientific Committee, for those projects there would a new matter of national environmental significance which would call in the full impact on water resources.\(^61\)

The Environment Minister stood by the changes and said there was no point delegating any of the CSG water safeguards to the states given the point of the legislation was to act on problems in state safeguards. Mr Burke said the Federal Government was funding work to check the impact of CSG projects on water supplies and should have the power to make that a factor in approvals under federal environmental law.\(^62\)

60. Ibid.
61. Ibid.

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Committee consideration

Senate Environment and Communications Legislation Committee


The Bill has also been referred to the House of Representatives Standing Committee on Climate Change, Environment and the Arts. The Committee reported to the House that an inquiry was not warranted because an inquiry would duplicate the comprehensive inquiry that is proposed by the Senate Environment and Communications Legislation Committee.63

Parliamentary Joint Committee on Human Rights

The Parliamentary Joint Committee on Human Rights issued a preliminary assessment of the Bill in its report tabled on the 20 March 2013. The committee was concerned that the penalty provisions in the Bill for non-compliance may amount to criminal penalties, even though they are described as civil penalties. The committee was also concerned that should these penalties amount to criminal penalties, the proposed Bill may place an unacceptable evidential burden on the defendant. The committee has sought clarification from the Government on these issues.64

Policy position of non-government parties/independents

The Coalition

Coalition environment spokesman Greg Hunt said the Coalition would examine the legislation because there were real concerns over whether it was allowable under the Constitution.65 He said that ‘the Government has blindsided the energy and resources sector and imposed retrospective rules which will have a direct impact on investments’.66

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During the second reading debate, Mr Hunt said that the Coalition would not oppose the Bill but the Government will wear the consequences:

Our approach in government is to offer a genuinely simpler way forward—a one-stop-shop approach so that water issues and other issues can be considered together in a single assessment process, to recognise that we can have not just the same standards but better standards if we have more rapid, simpler assessments, because at the moment a 12,000 page document is unlikely to be effectively read by anyone in government. A simpler approach allows a real way forward. 67

Later, Mr Hunt is reported to have said that the amendments should not prevent a future Coalition government from coming to an agreement with a state government to allow it to decide whether to approve CSG projects under the water trigger of the EPBC Act. 68

Coalition resources spokesman, Ian Macfarlane said he would not say whether he would look to repeal the new laws in government. 69

We fast-forward to today and here we are passing a piece of legislation that does nothing. It does not provide any extra science, because the minister for the environment and I set that up last year. We put in place an expert panel to cover the gaps in the science. There is a process already in place through the EPBC Act and the state environmental permitting which sees coal seam projects approved on the basis of 1,500 state conditions and 300 federal conditions, the majority of which revolve around water. 70

Senator Barnaby Joyce, ‘front-runner’ to be National Party candidate for the House of Representatives seat of New England, said that CSG would be a significant issue in the electorate and that ‘prime farm land, aquifers and residential areas should be spared from development and landholders must get a fair return, but added states held most of the regulatory powers.’ 71

Commenting on the Bill he questioned what it will achieve other than creating more bureaucracy. 72

Greens

The Greens have indicated that that they will support the Bill but would move amendments to strengthen the legislation. Greens Leader, Senator Christine Milne, said the Government should have}

72. Ibid.
supported Greens legislation eighteen months ago that would have accomplished the same thing.\textsuperscript{73} Senator Milne said that since that time the Environment Minister had approved all CSG projects that required his decision.\textsuperscript{74}

Greens mining spokesperson, Senator Larissa Waters, said the Minister should apply these new rules to all previously approved coal seam gas projects and not approve new projects where there is insufficient information about the long-term impacts on our land, water and communities.\textsuperscript{75} She indicated that the Green would move amendments to:

- retrospectively apply these new standards to previously approved coal seam gas and coal projects
- include shale and tight gas mining to protect water resources from being damaged by these types of mining and
- ensure the power to assess water impacts of coal seam gas stays in federal hands, rather than being handed back to state governments.\textsuperscript{76}

After the 2 March 2013 ‘Four Corners’ program claimed that CSG project approvals in Queensland were deficient, the Greens called for a moratorium on CSG.\textsuperscript{77}

**Independents**

It was reported that the Bill was welcomed by the independent MPs Tony Windsor, Rob Oakeshott and Bob Katter, all of whom have campaigned on this issue.\textsuperscript{78}

Tony Windsor said:

> This amendment to the EPBC Act has been on the drawing board for a long time and at times many thought we were fighting a losing battle against a flawed State Planning system, particularly in NSW.

> The decisions and policies of the former NSW State Government and the now NSW Coalition Government empty promises in the National Partnership Agreement dressed up as the ‘Gateway Process’ will now come under the jurisdiction of the EPBC Act at the Federal level which now means that the impact on a water resource can trigger a halt to CSG development and large coal mining.

> This is a win for water and for the farming sector reliant on water.

\textsuperscript{73} S Milne (Leader of the Australian Greens) and L Waters (Australian Greens Spokesperson on Mining), *Too little, too late on coal seam gas*, media release, 13 March 2013, viewed 18 March 2013, \url{http://greens.org.au/content/too-little-too-late-coal-seam-gas}
\textsuperscript{74} Ibid.
\textsuperscript{75} Ibid.
\textsuperscript{76} L Waters, *Greens to take out loopholes for coal seam gas industry*, media release, 14 March 2013, viewed 18 March 2013, \url{http://greens.org.au/content/greens-take-out-loopholes-coal-seam-gas-industry}
\textsuperscript{77} S Morris and A Macdonald-Smith, ‘Gas seeps into election agenda’, op. cit., p. 13
\textsuperscript{78} G Lloyd, ‘Burke’s water safeguards to stifle investment: business’, *The Australian*, 13 March 2013, p. 1, viewed 18 March 2013, \url{http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F2294244%22}
It is important to have a process in place to give all involved confidence that any decision made would be based on science and not on short term economic return to the State Governments.

My push has always been about getting a process that the community can have confidence in. 79

Rob Oakeshott hoped that the federal oversight would replace ‘immature’ planning laws in NSW with a ‘transparent and defendable planning process’. 80

Bob Katter supported the Federal Government’s move to extend its environmental powers to halt the drilling of new CSG wells and coal mines that pose significant health and environmental risks to our water supplies. He had re-introduced legislation in February 2013 to implement a two-year moratorium on coal seam gas aquifer drilling. 81

Position of major interest groups

Support

NSW Farmers welcomed the Federal Government’s decision to require federal assessment and approval for coal seam gas and large coal mining developments that could have a significant impact on water resources:

Fiona Simson, President NSW Farmers, said: ‘We have consistently stated strong regulatory frameworks are required to place sensible limits on mining and coal seam gas activities. Farmers right across NSW have been calling on the NSW Government to deliver a more rigorous assessment process for mining and coal seam gas proposals.’

While hopeful the NSW Government will make the necessary policy improvements to avoid the need for this federal intervention, NSW Farmers called for enforceable thresholds on water impacts and for the state’s best agricultural land to be ruled off-limits to mining and gas developments. 82

The Australian Conservation Foundation (ACF) said that the proposed water trigger is an important step, ‘because state governments have made a mess of regulating coal seam gas mining and other water-polluting activities’. It was critical of the push to hand EPBC Act approval powers to the states. 83

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Unless the government removes from federal law, once and for all, the possibility of environmental approval powers being handed to states, there is a risk we will see coal seam gas mines and shale oil projects approved by state governments in future.\(^{84}\)

The Lock the Gate Alliance said that the Bill was a ‘step forward on a long road to genuine law reform to control inappropriate coal and gas mining across Australia’.\(^{85}\)

A water trigger is a useful addition to the federal laws - but it means nothing unless it is backed up by the political courage to reject damaging coal and gas mining projects.

The current Federal Government has approved every coal mine and gasfield that has ever been referred to it - there have been many environmental triggers, just not the courage to act on them.

The real test of this change will be in whether the Federal Government rejects the coal mines planned for the Liverpool Plains, and the Arrow coal seam gas project in Queensland which was slammed in a review by the Expert Scientific Committee yesterday.\(^{86}\)

**Opposition**

The Victorian Farmers Federation (VFF) asked why the Federal Government is proposing amendments to the EPBC Act when the state governments are already working with the Commonwealth on developing a National Harmonised Regulatory Framework which aims to ensure there is a consistent approach to these developments. The VFF supports such a framework as it would involve the whole community and not just the Federal Minister in finding solutions to the risks posed by CSG drilling.\(^{87}\)

The Minerals Council of Australia strongly opposes the proposed water trigger, which it regards as a direct duplication of the role of the Independent Expert Scientific Advisory Committee which will lead to greater uncertainty and delays for large coal projects for no environmental gain. It claims that the power to add environmental safeguards in relation to projects’ impact on water resources currently exists. It noted that this Bill is similar to Bills proposed by The Greens and Tony Windsor, which were rejected by government members of the Rural and Regional Affairs and Transport Legislation Committee and the House of Representatives Standing Committee on Agriculture, Resources, Fisheries and Forestry.\(^{88}\)

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84. Ibid.
86. Ibid.
The Australian Coal Association (ACA) said that adding a water trigger in the EPBC Act is unnecessary and is regressive policy making that adds another layer of green tape without delivering any environmental benefit:\(^\text{89}\):

\[\text{The independent Hawke Review specifically considered the use of a water trigger under the EPBC Act and ruled it out. The Review concluded that 'including water extraction or use as a matter of national environmental significance under the Act is not the best mechanism for effectively managing water resources'.}^{\text{90}}\]

ACA’s deputy chief executive, Greg Sullivan said it was ‘at odds with the government’s commitment to eliminate duplication and streamline environmental regulation.’\(^\text{91}\)

Dr Nikki Williams, ACA CEO, stated that the Bill was introduced without either consultation or a regulatory impact statement\(^\text{92}\):

\[\text{The Government seems blind to the fact that increasing the regulatory burden creates extra costs for companies which deters investment and puts jobs growth at risk.}^{\text{93}}\]

Australian Petroleum Production and Exploration Association (APPEA) CEO, David Beyers, said that the proposed industry-specific water trigger ‘is a textbook example of how regulation can increase costs to industry while delivering absolutely no environmental benefit’\(^\text{94}\):

\[\text{Policies that undermine the development of energy projects and curtail energy production impose real costs on Australia through lost jobs, forgone economic growth, and higher energy bills.}^{\text{95}}\]

Business Council of Australia CEO Jennifer Westacott said the proposed legislation would ‘duplicate state and territory processes and in the process add new layers of unnecessary uncertainty, complexity and cost.’\(^\text{96}\)

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\(^{90}\). Ibid.

\(^{91}\). G Lloyd, ‘Burke’s water safeguards to stifle investment: business’, \textit{The Australian}, 13 March 2013, p. 1, viewed 18 March 2013, \url{http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2F2294244%22}


\(^{93}\). Ibid.


\(^{95}\). Ibid.

Santos is reported to be looking at the proposed changes to determine their impact on the company's development projects. A spokesperson for Santos said:

> It remains imperative that regulatory approvals and processes ensure safe and sustainable operations while avoiding unnecessary increases to costs and delays in securing gas supplies.

Dart Energy has recently suspended its field operations on CSG in NSW, including its Fullerton Cove project, claiming that changes in NSW and Federal Government regulations had damaged its prospects. The NSW changes include a two kilometre exclusion zone around residential areas. However Dart is not thinking of relinquishing its NSW CSG assets.

**State governments**

The two states where CSG developments are occurring are NSW and Queensland.

Queensland Deputy Premier, Jeff Seeney, said that in introducing this Bill the Federal Government had ‘sought to trade off the economic future of Queensland for cheap political gain’:

> Minister Burke has always sought to make it difficult for our government to boost Queensland’s economy and this is yet another one of his attempts to override the sovereign state for his political agenda.

> Mr Seeney said since coming to government, the LNP had established the Gasfields Commission to allow communities and industry to better coexist.

> ‘The government has also released the DNRM Coal Seam Gas Engagement and Compliance Plan 2013, a key part of our overall strategy for the responsible oversight and regulation of the CSG industry,’ he said.

> The CSG industry in Queensland has rapidly been getting runs on the board and there are enough facts and data to make it difficult for the doomsayers and scaremongers’ claims to have any credibility.

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98. Ibid.


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However, NSW Planning Minister Brad Hazzard said that in the past two years NSW had produced the toughest CSG water protection measures in Australia but was prepared to work with the Commonwealth on the new amendments.103

‘The NSW Liberals and Nationals government has also been intent on filling Labor’s void with strict protections for our aquifers, ground water and high value strategic land.’104

NSW Minister for Resources and Energy Chris Hartcher said,

Growing the CSG industry is important for the economy and for gas supply but we would never grow the industry unless the protections are in place for water and our high value agricultural land.

Hopefully whatever is being suggested by Minister Burke will not delay the achievement of ensuring business confidence in fast decision making in NSW.105

Financial implications

The financial implications of the Bill will depend on the impact of the volume of regulatory work resulting from projects that are referred for assessment and approval under the new matter of NES of the EPBC Act.106

Regulatory Impact Statement

According to the Explanatory Memorandum:

The Prime Minister has granted an exemption from the regulatory impact statement requirements. However, a post-implementation review will commence within two years from the date the Bill is implemented.107

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights can be found at page 3 of the Explanatory Memorandum to the Bill. As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

As set out above, the Parliamentary Joint Committee on Human Rights has sought further information from the Minister to allow it to finalise its assessment of the Bill’s compatibility with human rights.

**Key issues and provisions**

Schedule 1—Protection of water resources from coal seam gas development and large coal development

**Part 1-Amendments**

**Item 1 – Establishing a new matter of National Environmental Significance (NES) – a ‘water trigger’**

Proposed subsection 24D(1) establishes a new NES in relation to protection of water resources from CSG or large coal mining development. Thus, a proponent for a CSG or large mining project that is likely to have a significant impact on a water resource, will need to refer their project to the Federal Environment Minister for him or her to decide whether it is a controlled action or not (or the Minister can request referral, section 70). If it is deemed a controlled action by the Minister, then it will need assessment in terms of its impact on the water resource. The Minister will then have the power to approve or refuse approval. Where the Minister approves the controlled action, this would mean that the Minister would have the power to impose water specific conditions on large coal mining and coal seam gas projects, whereas currently under the EPBC Act, the Minister’s power is limited to dealing with water impacts only to the extent that such impacts relate to an existing matter of national environmental significance protected by the EPBC Act.

Currently under the EPBC Act, large coal mining development refers to and captures any coal mining activity that has, or is likely to have, a significant impact on water resources (including any impacts of associated salt production and/or salinity) either in its own right or as a result of the cumulative impacts of multiple projects.\(^{108}\) Coal seam gas development refers to and captures any 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) either in its own right or as a result of the cumulative impacts of multiple projects.\(^{109}\) These definitions are rather circular.

Water resource is defined by reference to the Water Act 2007 (Cth), to mean: 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).\(^{110}\)

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108. See the definition of large coal mining development in section 528 of the EPBC Act.
109. Ibid.
The Bill is silent on the issue of what constitutes a significant impact as is the EPBC Act and its Regulations. The Department of SEWPaC has produced two ‘Significant Impact Guidelines’. The first is Matters of National Environmental Significance (EPBC Act Policy Statement 1.1) and the second is Actions on, or Impacting Upon, Commonwealth Land, and actions by Commonwealth Agencies (EPBC Act Policy Statement 1.2). These guidelines provide information for stakeholders seeking to determine whether a specific action is an ‘action’ for the purposes of the Act, and set out criteria for judging whether the impact is likely to be significant. However, the guidelines do not have any legal standing and the New South Wales Irrigators’ Council has expressed concern that ‘the issue of significant impact has been one causing angst in many contexts of the Act’ and those same concerns and uncertainty remain in relation to the proposal to include water as a matter of NES.\(^{111}\) The Deputy Secretary of the Department of SEWPaC has stated that ‘one of the more fundamental pieces of work that has already been started and needs to be completed is the development of ‘significant impact’ guidelines for this water trigger’.\(^{112}\)

The issue has been raised that if water is to be added as a matter of NES then this ‘water trigger’ should be logically extended to include other forms of mining that are likely to have a significant impact on Australia’s water resources. In particular, in light of scientific evidence documenting the impacts of large mines excavated below the water table on water resources, consideration should be given to extending the application of the ‘water trigger’ to ‘all large mines that excavate beneath the water table and to unconventional gas exploration and production activities’.\(^{113}\)

### Penalty and offences provisions

**Proposed subsections 24D and 24E** create civil penalty and offence provisions which prohibit a person, a constitutional corporation or the Commonwealth (or agency) taking an action involving coal seam gas development or large coal mining development that has, will have, or is likely to have a significant impact on a water resource, unless done with an approval issued under Part 9 of the EPBC Act or unless otherwise exempted. These penalties and offences are consistent with penalties and offences for other matters of NES in Division 1 of Part 3 of the EPBC Act.

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112. Senate Standing Committee on Environment and Communications Legislation Committee, Inquiry into the Environment, Protection and Biodiversity Conservation Amendment Bill 2013 [Provisions], reply by Dr Kimberely Dripps, Deputy Secretary, Department of SEWPaC, Public Hearing, Canberra, 18 April 2013, viewed 13 May 2013, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2FCommssen%2F54f3283-dc71-49be-b764-4a203186c82d%2F0009%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2FCommssen%2F54f3283-dc71-49be-b764-4a203186c82d%2F0009%22)


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Items 2-3 – Consequential changes to section 25AA - defence/exception to the offence and civil penalty provisions of Division 1, Part 3 of the EPBC Act

These amendments provide that a person cannot be tried for impacts to a water resource caused by the actions of a third party which are consequential to the actions of the first person, but which are not directed or requested by the first person. This does not preclude enforcement measures being taken against the third party for an action done without an approval which has significant impacts on a water resource. This is consistent with defence/exception which apply to action taken by a third party in the same circumstances in relation to other matters of NES.

Item 4 – Consequential changes to section 34

Part 4, Division 2 of the EPBC Act provides for the accreditation of authorisation processes or management arrangements, and the making of declarations that an action in a class of actions does not require approval under Part 9 for the purposes of a specified provision of Part 3 if the action is taken in accordance with an accredited management arrangement.\textsuperscript{114} Item 4 amends the table in section 34 to provide that, for the purposes of declarations relating to the new matter of NES, the matter protected is ‘a water resource’.

Items 5-6 – Consequential changes to sections 75 and 82

The amendments proposed by these items mandate that in accrediting a management arrangement, the Minister must be satisfied that the only impacts that are considered relevant for assessment are those that the proposed action has, will have, or is likely to have on the ‘controlling provision’ (that is, the matter of national environmental significance that has triggered the approval process – a water resource).\textsuperscript{115} This is consistent with the assessment of proposed action for other matters of NES under the Act.

Part 2-Application and transitional provisions

These amendments deal with how the proposed water trigger applies to actions that have already been assessed or are currently undergoing assessment. Thus, they clarify the application of provisions under Schedule 1.

Item 22— Application to a decision relating to action approved or undertaken before commencement

Sub item 22(1) provides that the amendments made by Schedule 1 do not apply in relation to CSG development and large coal mining development if immediately before the amendments in Schedule 1 commence, any of the following circumstances in proposed subsection 22(2) apply:

\begin{itemize}
  \item 114. Explanatory Memorandum, op. cit., p. 5.
  \item 115. Section 82, EPBC Act.
\end{itemize}

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• the Minister has approved the taking of an action in relation to a water resource under Part 9 (which deals with the approval of a controlled action)

• a decision has been made under Part 7 of the EPBC Act that the action is not a controlled action by reference to the existing approval triggers

• the Minister has both informed the persons mentioned in paragraph 131AA(1) of the old law of the decision the Minister proposes to make in relation to the action and, the Minister has, as required by section 131AB of the old law, obtained advice from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC) in relation to the action.

• none of the provisions of Part 3 of the old law were controlling provisions for the action and an appropriate Minister of a declared State or Territory has, under paragraph 505D(1)(b) of the old law, obtained advice from the IESC in relation to the action for the purposes of giving a specific environment authorisation for the action under a State or Territory law.

Proposed section 23 provides that actions that have been determined to be controlled actions by reference to the existing triggers (matters of NES) in the EPBC Act but for which an approval has not yet been given for the taking of that action, or the proponent has not been informed of a decision relating to approval, or advice from the IESC has not been obtained in relation to the action, the Minister must decide within 60 business days of the commencement of the amendments whether the new approval trigger is a controlling provision for that action.

Concluding comments

Many environmentalists have welcomed the addition of water resources as a matter of NES as having the potential to increase the number of proposed actions coming under consideration. However while this adds an important layer to environmental accountability, it does not actually guarantee that such projects will be assessed and that adverse environmental impacts will be averted. What may also be required is careful attention and commitment to uniform processes and standards so as to ensure that Commonwealth and state approval processes are not substantially and substantively inconsistent.

116. The IESC was established under an amendment to the EPBC Act in 2012, and the EPBC Act requires state governments to consider its work in a relevant state assessment process.