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Submission

The Parliament of the Commonwealth of Australia

Environmental Protection and Biodiversity Conservation
Amendment (Independent Expert Scientific Committee on
Coal Seam Gas and Large Coal Mining Development) Bills
2012

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Introduction

NSW Irrigators' Council (NSWIC) represents more than 12,000 irrigation farmers across NSW. These irrigators access regulated, unregulated and groundwater systems. Our members include valley water user associations, food and fibre groups, irrigation corporations and community groups from the rice, cotton, dairy and horticulture industries.

This submission represents the views of the Members of NSWIC to the *Environmental Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012*. However each Member reserves the right to independent policy on issues that directly relate to their areas of operation, or expertise, or any other issues that they may deem relevant.

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General Comments

NSW Irrigators' Council (NSWIC) welcomes the proposed amendments to the *Environment Protection and Biodiversity Conservation Act 1999* to establish an Independent Expert Scientific Committee (Committee) that assists the Commonwealth Environment Minister in evaluating the impacts of mining and coal seam gas activities. We support the Committee's selection process based on knowledge and experience in matters related to mining and coal seam gas and likewise advocate for the Committee's independence to fully comply with its advisory role.

Additionally, NSWIC concurs with the proposed publishing of information on research related to the impact of coal seam gas and large coal mining developments. Such information will allow stakeholders to be fully informed about the potential impacts on water resources and will provide for a more clear and transparent approval process of mining and coal seam gas activities.

Whilst the establishment of an Independent Expert Scientific Committee is supported, NSWIC disagrees with several aspects of the proposed amendments;

- **Appointment of Committee Members**

NSWIC proposes that each member of the Committee is appointed from one relevant field related to mining and coal seam gas; ecology, hydrology, natural resource management, health, engineering and economics.

Furthermore NSWIC requests that the amendments must insure that the Committee members and the Chair are not leaders of any particular body or group

- **Scope of responsibility**

NSWIC does not support the limiting capacity of the Committee to only advise on large coal and coal seam gas operations. As the protection of all water resources is of vital importance there should be no differences in classification between mining and coal seam gas activities.

- **Functions of the Committee**

NSWIC is disappointed that many of the Committee's functions are retrospective, i.e. providing information on development of standards for protecting water resources from the impacts of coal seam gas and large coal mining development. Those standards should have been uniformly set prior to the commencement of the Committee's operation.

Furthermore, research on the potential impacts of mining and coal seam gas activities on water resources should have been conducted prior to the set up of the Committee, or in the alternative, should have been included in the state based regulation on mining and coal seam gas activities; i.e. NSW Draft Aquifer Interference Policy.

- **Implementation of Committee Advice**

NSWIC does not find sufficient evidence to assess whether the advice provided by the Committee will be necessarily binding for the Commonwealth Minister for Environment. NSWIC would like to highlight that seeking advice is not equivalent to acting on this advice and the current amendments to the *Environment Protection and Biodiversity Conservation Act 1999* do not provide clarity on this matter.

Specific Comments

Appointment of Committee Members

NSWIC is concerned about the appointment of the Committee members, including its Chair, at the sole discretion of the Commonwealth Minister for Environment. As section 505C(3) and 505C(4) state;

(3) A member of the Committee is to be appointed by the Minister by written instrument, on a part-time basis.

NSWIC proposes that stakeholders should be given the opportunity to make recommendations for members to be selected to the Committee. The in-depth knowledge of stakeholders will be of vital importance to select the most appropriate members of the Committee that are best able to provide advice to the Minister.

NSWIC proposes that Section 505C(5)(a) be amended to include;

*When appointing member of the Committee, the Minister must ensure that;
(a) each member (other than the Chair) possesses appropriate scientific qualifications that the Minister considers relevant for the performance of the Committee, and that each member is appointed from one relevant scientific field. (emphasis added)*

This addition to Section 505C(5)(a) will ensure that the Committee's expertise and knowledge is balanced across a wide spectrum of disciplines relevant to mining, including coal seam gas activities. NSWIC further suggests that the relevant fields should incorporate the following;

Ecology, hydrology, natural resource management, health, engineering and economics

Additionally, NSWIC would like to see Section 505C(5)(b) be strengthened to insure that not only the Committee members but also the Chair is independent of any particular body, group or community. We therefore propose that the Section 505C(5)(b) be amended to include;

(b) each member's appointment and the Committee's Chair is not being made to represent any particular body, group or community.

Scope of Responsibility

NSWIC does not support the limiting capacity of the Committee to provide advice on Coal Seam Gas and Large Coal mining developments alone. As Section 131AB states;

The Minister must obtain advice from Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development.

NSWIC strongly advocates for the protection of all water resources and hence proposes that the scope of responsibilities for the Committee is extended to include all Coal Seam Gas and Mining activities.

NSWIC is furthermore concerned that the Committee's advice is only sought if;

*(b) The Minister believes that the taking of the action:
(i) is likely to have a significant impact on water resources .. (Section 131AB(1)(b))*

This section clearly highlights that while the Minister must obtain advice on Coal Seam Gas and Large Coal Mining Development this advice is only sought if the Minister believes it to be

appropriate. This provision appears to be counterproductive to the purpose of the Independent Expert Scientific Committee which should be consulted on any matters related to the impact of mining and coal seam gas activities and not only those who the Minister deem as relevant.

NSWIC would like to further highlight that Section 131AB(1) does not specify who determines the classification for 'large' coal and coal seam gas operations. NSWIC proposes that the function of the Committee is extended to allow for the set-up of an assessment criteria that evaluates all coal seam gas activities based on their significance and their degree of impact on water resources.

Functions of the Committee

NSWIC would like to reiterate its disapproval with its limiting functions;

coal seam gas or large coal mining developments that are likely to have significant impact on water resources (505D)

As outlined in other parts of this submission, the provision of scientific advice to the Commonwealth Minister for Environment should include all coal seam gas and mining activities and should incorporate an thorough assessment of the individual and cumulative impacts on water resources. NSWIC would like to stress that the damage to a water resource - both ground and surface - is potentially irreversible and might have severe third party impact on other consumptive water users. Given the importance of protecting water resources, any impacts should be assessed and reported to the Minister.

In conjunction with the previous comment, NSWIC is furthermore concerned about Section 528;

Bioregional assessment, in relation to an area, means the scientific analysis of the ecology, hydrology, and geology of the area for the purpose of assessing the potential direct and indirect impacts of coal seam gas development or large coal mining development on water resources in the area.

NSWIC believes it is not sufficient to only assess the direct and indirect impacts of coal seam gas and large coal mining developments but that additionally cumulative impacts have to be also thoroughly assessed. We believe the following section does not sufficiently incorporate cumulative impacts of mining and coal seam gas activities;

Coal seam gas development, means any activity involving coal seam gas extraction that has, or is likely to have, a significant impact on water resources:

- (a) in its own right; or
- (b) when considered with other developments, whether past, present or reasonably foreseeable developments.

NSWIC is of the opinion that clarity should be provided as to what other developments is referred to in this instance.

NSWIC further emphasis that many of the Committee's functions are retrospective and hence clearly show that, at this current stage, water resources are severely threatened by mining and coal seam gas activities. As Section 505D(1)(c)(i) and 505D(1)(d)(i) outline;

(1) *The Committee has the following functions:*

(c) *at the request of the Environmental Minister - to provide advice to the Environment Minister about:*

- (i) *how bioregional assessment should be conducted in areas where coal seam gas development or large coal mining development is being carried out or is proposed; (underlining added)*

and

(d) at the request of the Environmental Minister - to provide advice to the Environment Minister about:

(i) priorities for research projects to improve scientific understanding of the impacts of coal seam gas developments and large coal mining developments on water resources. (underlining added)

NSWIC holds the opinion that bioregional assessment should have been conducted prior to any mining or coal seam gas activity commencing - this includes the granting of exploration licences. Furthermore, NSWIC would like to reiterate its strong advocacy for a 'no regrets' approach to the exploration and operations phases of mining, including coal seam gas. As Section 505D(1)(d)(i) highlights, there is currently insufficient knowledge on the full scale - individual and cumulative - impacts of mining and coal seam gas activities. This improvement of scientific understanding on the impacts of coal seam gas and large coal mining developments should be undertaken with urgency in order to protect and preserve water resources.

NSWIC also does not understand why the Committee's function include the provision of information relating to;

the development of standards for protecting water resources from the impact of coal seam gas development and large scale mining developments. (505D(1)(f))

NSWIC demands that those standards are set prior to the commencement of the Committee's operation and that the Committee should be given the task to improve those standards should new information become available.

Additionally, NSWIC suggests that Section 505D(1)(h) be extended to allow for the independent assessment undertaken by the Committee on the size and potential impact of any mining and coal seam gas activities independent from the request of the Minister.

Implementation of Committee Advice

NSWIC is concerned in how far the advice provided by the Committee will be transferred into actions taken by the Minister. As Section 131AB outlines;

Minister must obtain advice from Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development

The additional information provided under 131AB(1) and 131AB(2) do not indicate whether the Minister has to act on the advice given by the Committee. NSWIC would like to highlight that seeking advice is not equivalent to acting on this advice and the current amendments to the *Environment Protection and Biodiversity Conservation Act 1999* should clearly outline under which circumstances the Minister is required to not only seek advice but also apply the advice in the approval process.

Other Matters

NSWIC would like to see clarification regarding the amendments to subsection 131(4);

Time does not run while awaiting advice from Independent Expert Scientific Committee.

This statement does not clarify what process will be put in place for current coal and coal seam gas activities which have commenced. Should advice on ecology, hydrology and geology (among others) be sought by the Minister, NSWIC questions what will happen with current mining and coal seam gas operations - i.e. will the activity be ceased in the interim and how will potential damages be dealt with and/or mediated.

END OF SUBMISSION.