

Key Issues and Concerns

- 3.1 The Committee has identified three broad areas of concern relating to the Bill and its aims.
- Firstly, the Bill would significantly alter the regulation of mining activities in Australia;
 - Secondly, there are a number of technical matters raised by the Bill; and
 - Thirdly, future action to better protect water resources, from coal seam gas mining in particular, should rely on better scientific knowledge about those water resources.
- 3.2 As noted above, the Committee received six submissions to the inquiry. None of these submissions expressed support for the Bill.

Regulation

- 3.3 As noted by many submissions to the inquiry, the Bill would create additional regulation of mining activities in Australia.
- 3.4 According to the South Australian Government, its legislative framework is:
- at the forefront of best practice regulatory frameworks which adopt triple bottom line assessment and risk management principles, and provide processes to adequately assess the issues that this draft Bill is aiming to regulate¹

1 Submission 3, South Australian Government, p.3.

The Tasmanian Government submitted:

Tasmania already has significant and thorough assessment processes under environmental, mining and water management legislation.²

3.5 The Northern Territory Government submitted that:

there are adequate safeguards in place to identify, monitor and protect water resources from potentially unacceptable impacts from mining and petroleum activities. Current processes of regulatory review and reform being conducted by the Territory Government are expected to identify, and respond appropriately to, any areas where these safeguards can be strengthened.³

3.6 The South Australian Government also submitted that the existing EPBC Act:

provides appropriate mechanisms for determining when a mining, petroleum, geothermal energy and greenhouse gas storage activity should be assessed by the Commonwealth, and is adequate in addressing Commonwealth matters⁴

3.7 Numerous submissions raised concerns about the duplication that would result if the Bill was passed. The Western Australian Government indicated that such duplication would likely result 'in increased timeframes, uncertainty and complexity for project approvals.'⁵ As noted by the South Australian Government, this additional 'layer of regulation and assessment' would be contrary to the recently established COAG Working Group on Environmental Regulation Reform.⁶ This would create:

unnecessary burdens on minerals, petroleum, geothermal energy and gas storage exploration, development and production enterprises by unnecessarily duplicating regulatory regimes, contradictory to COAG's commitment to the streamlining of regulation processes as recommended by Australia's Productivity Commission.⁷

3.8 The Tasmanian Government's submission stated that additional assessment requirements are:

2 Submission 5, Tasmanian Government, p.1.

3 Submission 6, Northern Territory Government, p.5

4 Submission 3, South Australian Government, p.3.

5 Submission 1, Western Australian Government, p.2.

6 Submission 3, South Australian Government, p.3.

7 Submission 3, South Australian Government, p.3.

...considered unnecessary, and would be contrary to the work occurring nationally for a Seamless National Economy and our efforts to reduce regulatory burden by streamlining and harmonisation.⁸

Technical matters

3.9 Any future inquiry into the Bill and its aims would also need to consider the following technical matters as raised by the submissions. These matters include the Bill's:

- definitions;
- focus on the mining industry alone;
- retrospective operation;
- impact on the operation of the EPBC Act; and
- impact on the accreditation of state approvals processes.

3.10 According to the South Australian Government, the definition of 'water resource' is very broad, and has the potential to create complications.⁹ RET submitted that 'the definition of mining is broad and encapsulates incidental activities (infrastructure), exploration, recovery, milling, processing and waste disposal.'¹⁰ The Tasmanian Government suggested that

...the application of such a broad definition of mining may capture more activities than necessary or appropriate to address the concerns of the impact on water resources.¹¹

3.11 Submissions have raised concerns about the 'selective' nature of the Bill's focus on the impact mining operations have on water resources. The South Australian Government submitted that 'the objectives of the regulation appear to be anti-competitive due to the increased regulatory burden being targeted specifically at exploration, mining, upstream petroleum, geothermal energy and gas storage companies'¹². RET also raised concerns about this aspect of the Bill, questioning the 'merits of singling out the

8 Submission 5, Tasmanian Government, p.1.

9 Submission 3, South Australian Government, p.4.

10 Submission 2, Department of Resources, Energy and Tourism, p.2.

11 Submission 5, Tasmanian Government, p.1.

12 Submission 3, South Australian Government, p.3.

resources sector for special attention when other activities may individually or collectively also have significant impacts on water extraction and use.¹³

- 3.12 Submissions have also raised concern about the retrospective operation of the Bill, if passed. If passed, most of the Bill would be taken to have come into operation from the date it was introduced into the House of Representatives.¹⁴ According to the South Australian Government, this has the potential to cause uncertainty with 'all key stakeholders that are currently undergoing regulatory assessment' and 'could be regarded as a significant risk by mining and petroleum companies working in South Australia'.¹⁵ RET's submission stated:

...the retrospective effect of the Bill...will risk creating considerable uncertainty for projects that have not completed their approval processes with the potential for significant delays and additional costs.¹⁶

- 3.13 Submissions raised concerns about the impact the Bill would have on the operation of the EPBC Act, and existing arrangements thereunder. According to RET, the recent review of the EPBC Act led by Dr Allan Hawke AC considered whether an additional 'water' trigger was warranted. RET's submission noted that the review found the administration of such a trigger was 'impractical', and that the 'impact of water extraction and use can already be assessed under the EPBC Act.'¹⁷

- 3.14 Finally, the South Australian Government also observed:

The Bill provides for the Minister to accredit a State legislative process after the Commonwealth Parliament has been given the opportunity to oppose the accreditation...South Australia has limited state process accredited under the EPBC Act and it would be likely that accreditation would involve significant costs to the State.¹⁸

13 Submission 2, Department of Resources, Energy and Tourism, p.2.

14 Environment Protection and Biodiversity Conservation Amendment (Mining, Petroleum and Water Resources) Bill 2011, clause 2.

15 Submission 3, South Australian Government, p.4.

16 Submission 2, Department of Resources, Energy and Tourism, p.3.

17 Submission 2, Department of Resources, Energy and Tourism, p.1.

18 Submission 3, South Australian Government, p.3.

Science

3.15 As noted above, future action to better protect water resources will rely on better scientific knowledge about those water resources. Whilst this is clearly a matter of importance for environmental regulation, many submissions to the inquiry have not addressed the need for improved science.

3.16 However, as noted in the submission from RET:

In order to ensure that its decisions are evidence based, the Australian Government and its agencies are undertaking a number of studies and investigations into coal seam gas and other resource extraction activities that affect ground water.¹⁹

The submission also lists six separate government initiatives that will improve scientific knowledge about ground water in Australia.

3.17 The Committee notes that the Bill does not deal with improving the quality of scientific knowledge about ground water. The Committee looks forward to seeing the results of the recent agreements to change this situation. In the absence of such agreements, the role of science under the EPBC Act would deserve careful consideration in any future comprehensive inquiry into the Bill or the EPBC Act more generally.

¹⁹ Submission 2, Department of Resources, Energy and Tourism, p.4