

**RESPONSE FROM KATHY MCKENZIE ON BEHALF OF THE PUTTY
COMMUNITY ASSOCIATION SUBCOMMITTEE ON COAL SEAM GAS
TO THE SENATE ENVIRONMENT AND COMMUNICATIONS
LEGISLATION COMMITTEE**

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Re: Environmental Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012, as described in the Explanatory Memorandum

Introduction

Australians are desperately looking to our political leaders to provide a rational approach to balancing economic imperatives of resource development with the social, economic and environmental consequences of such development.

Our leaders are failing in this critically important task.

Nowhere is this more evident than in the **Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012**.

This Bill, which promised so much, delivers little of substance.

Committee Responsibilities

Page 8, point 34, indicates ‘large coal mining development’ refers to coal mining activity that ‘has, or is likely to have, a significant impact on water resources’.

This establishes the Committee as having a highly significant role in relation to the coal and coal seam gas industries and their impacts on water resources, yet ‘water resources’ does not appear in the outline of Committee responsibilities, Page 2 of the Explanatory Memorandum, until the end of the fourth dot point.

Indeed the outline of responsibilities does little to assure the Putty community that our concerns regarding impacts on water flowing from the Putty Creek, Wollemi Creek and Colo River through the World Heritage Wollemi National Park, before joining the Hawkesbury River at Lower Portland will be within the remit of the Committee.

Under ‘Functions of the Committee’ page 5, point 17 the word ‘intended’ is of concern. Despite apparently more assertive language elsewhere, this point undermines and marginalises the Committee.

Point 24, page 6 is welcomed, however the lack of timeframes for publication of the Committee’s advice risks such promulgation occurring well after the advice is current or, indeed, useful to communities.

Probity Issues

The community is becoming increasingly wary of the complex financial and professional interactions that influence advice given regarding the coal and coal seam gas, particularly in relation to water resources.

In order to ensure the independence of the Scientific Committee is established beyond reasonable doubt, it is recommended Committee members be required to publicly disclose their professional and educational history (their qualifications for their role as a committee member) as well as a requirement that their pecuniary interests be available for scrutiny on a public register.

Financial Impact

The Explanatory Memorandum, page 2, under Financial Impact Statement indicates the Bill will have no financial impact.

Is this an entirely voluntary committee? Perhaps it is not intended to actually form the Committee? Perhaps if formed, there is no intention to actually ask the committee to do anything?

Accommodation? Meeting space? Secretariat services? On costs? Publications?

The Committee is charged, page 26, point 23, with, amongst other duties, the 'collection, analysis, interpretation, publication and dissemination of scientific information about coal seam gas and coal mining developments, particularly in relation to potential impacts on water resources.' ...a significant brief to be undertaken with apparently no resources.

If the intention is to absorb these costs into an existing budget, perhaps this could be indicated. Such information would provide the community with an opportunity to better understand the implications of the proposal. It would be nice to know what agency is so over-funded that it is able to absorb these costs... or what other services will be discontinued in order to fund the Committee.

Or does 'financial' refer to the broader, economic landscape? This is an equally worrying situation. The Bill should deliver a robust structure that puts a spotlight on the science of coal and coal seam gas mining. Whether the news is good, or bad from an industry perspective, the publication of genuine, new, authoritative information will change the political and economic landscape.

The Explanatory Memorandum fails to address any of these possibilities.

Regulatory Impact

The Australian Government website (Office of Best Practice <http://www.finance.gov.au/obpr/ris/gov-ris.html>) says that a "Regulation Impact Statement (RIS) is required, under the Australian Government's requirements, when a regulatory proposal is likely to have an impact on business or the not-for-

profit sector, unless that impact is of a minor or machinery nature and does not substantially alter existing arrangements.”

The Explanatory memorandum, page 2 indicates that there is no regulatory impact. Clearly then, the proposed Bill won’t impact on business or substantially alter existing arrangements.

This must be extremely cheering news for the coal and coal seam gas sector. It is extraordinarily disappointing for small communities looking to their elected leaders to provide a more balanced playing field in war zones dominated by multi-national organisations with very deep pockets.

At the very least the Explanatory Memorandum page 4, point 6 indicates prescribed times will be extended through a ‘stop the clock’ on Ministerial decisions to allow the Committee ‘adequate time to consider proposed actions and to prepare relevant and useful advice’... so there does appear to be at least one regulatory impact... But then, if there are no financial impacts, there will be no need to worry about regulatory impacts?

Terminology: ‘Significant Impact’

Probably what is most frustrating is the indelible impression, not only in the Explanatory Memorandum, but also in all related material published on the Australian Government website regarding the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act) that the entire suite of material is a façade, designed to lull the populace into a false sense of security.

This façade is built upon two simple words: ‘significant impact’.

A term used constantly, yet never genuinely defined.

The Glossary of terms under the Environment Protection and Biodiversity Conservation Act says:

Significant impact:

A significant impact is an impact which is important, notable, or of consequence, having regard to its context or intensity. Whether or not an action is likely to have a significant impact depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts. You should consider all of these factors when determining whether an action is likely to have a significant impact on the environment.

We are unclear as to who the ‘you’ in the quoted passage refers to, yet given that ‘significant impact’ is putatively the trigger for Ministerial activity under the EPBC Act and is again critical in the role of the Scientific Committee, the quoted parameters offer little comfort to a community facing the destruction of their only significant water sources.

We recognize that this terminology has underpinned the Act for over a decade, yet as interested readers we remain unable to determine what is deemed to be ‘significant’.

Are we speaking about 100ppm of a contaminant in a water source.... or a thousand deaths? If death is too extreme, what about illness? Is nausea and vomiting worthy of attention, or will it require some degree of permanent impairment to be characterised as 'significant'?

We understand that the EPBC Act relates to matters of national environmental significance and as such the contamination of our water would be of no relevance to the Minister for the Environment.

But what about the surrounding World Heritage listed National Parks?

Are those environments of sufficient quality to attract attention under the Act?

If we refer to the definition of 'significant impact' ...perhaps only if the intensity of impact was catastrophic, the duration extended over a decade, the magnitude (...sorry how do we differentiate between impact and magnitude?) was also catastrophic and the geographic extent total? Or is there something less than annihilation that might qualify as significant under the Act?

It would be nice to know. Such information would also make it possible to provide genuine comment on the effectiveness of the proposed Bill.

The term 'significant impact' provides no performance measure by which to evaluate the implementation of the Bill, as the definition relies entirely upon subjective assessments.

In the case of the proposed amendment, this may mean that a Minister will never call upon the scientific committee for advice because s/he determines that no action as defined under the Act has 'significant impact'.

Implications of 'national significance'

The Federal Government website on the EPBC Act, <http://www.environment.gov.au/epbc/index.html> states that "The Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act) is the Australian Government's central piece of environmental legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places — defined in the EPBC Act as matters of national environmental significance."

Matters of national environmental significance are listed as:

- listed threatened species and ecological communities
- migratory species protected under international agreements
- Ramsar wetlands of international importance
- the Commonwealth marine environment
- World Heritage properties
- National Heritage places
- Great Barrier Reef Marine Park, and
- nuclear actions.

As relative newcomers to the reading and interpretation of Federal Legislation we are at a complete loss to understand why ANY level of impact, let alone 'significant' is acceptable in relation to something that is so important as to attract international attention.

Surely the 'sensitivity, value, and quality of the environment ' was determined when the Wollemi, for example was included in the World Heritage Register?

If it requires 'significant impact' (whatever that may mean) before the Federal Government is involved where it relates to matters of national environmental significance...what hope is there for the rest of the continent, its flora and fauna...or indeed, its human population?

Conclusion

And so, in the face of obfuscation and weasel words communities such as ours end up sounding shrill and unreasonable.

It is far, far too easy for governments and large commercial operations to generate reams of what appears to be very reasonable textual reassurances regarding the management of risk.

What is also very clear is that despite those apparently reasonable assurances people's lives are destroyed ('not the responsibility of the EPBC Act' I hear you say ... and we have already acknowledged the accuracy of that position) and very real risk hovers over the Wollemi and Yengo National Parks (which ARE a Federal responsibility).

The fact is Putty is in the crosshairs of the coal seam gas industry, and the State Government has recently released a Strategic Land Use Plan that tells us we also have potential for coal mining...all in a small valley rich in springs fed by underground aquifers and completely surrounded by World Heritage Listed National Parks – internationally recognised wilderness areas, one of which contains the 'dinosaur tree': the Wollemi Pine...

On Friday 19 August 2011, Dart Energy ("The Leading Global Coal Bed Methane Company") commenced drilling a core hole to explore for coal seam gas at a property on Putty Road, in the Putty Valley area about 500 metres from the boundary of the Wollemi National Park.

Forgive us if we seem despondent about the impact the Bill will have on protecting anything...let alone the Wollemi.