

Policy developments and history

- 2.1 This chapter firstly discusses recent policy developments relating to the Bill, including other relevant inquiries. The chapter then briefly focuses on some of the policy history relevant to CSG regulation and public debate in particular.

Policy developments

- 2.2 Significant policy developments have occurred since the Bill was introduced into the House of Representatives in September 2011. There are two major areas of development:
1. the agreement to develop a national harmonised regulatory framework for the CSG industry; and
 2. undertakings made by the Prime Minister in relation to the Minerals Resource Rent Tax.

National harmonised regulatory framework

- 2.3 The Standing Council on Energy and Resources – a council of Australian, state and territory energy and resources ministers – had its inaugural meeting in December 2011. At that meeting, it agreed to ‘the development of a national harmonised regulatory framework for the coal seam gas industry.’
- 2.4 According to the work program attached to the meeting communiqué, the framework will cover:

- the management and monitoring of water used and produced in coal seam gas production;
- well integrity for coal seam gas;
- hydraulic fracturing practices and procedures for coal seam gas; and
- chemical use and management in coal seam gas activities.¹

2.5 The harmonised framework:

...is designed to be flexible to accommodate the range of geographical, geological, resource, social, regulatory and institutional arrangements that exist in each jurisdiction. Successful implementation of the harmonised framework will support public confidence in the effective regulation of the industry while promoting the commercial extraction of coal seam gas.

The national harmonised framework will incorporate a combination of leading practice guidelines, protocols, standards, regulations and legislation and it is expected that there will be variations between jurisdictions on how each element is treated. The harmonised framework will not lower existing jurisdictional standards and practices, but will build on and enhance work already underway by state and territory governments.²

- 2.6 The drafting of a harmonised framework is to be completed by June 2012. The next stage – evaluation and consultation – would be completed by September 2012. This would include the identification of ‘possible dates for the introduction of initiatives to address gaps in existing arrangements by individual jurisdictions.’ It would also entail a final paper and ‘recommendations to the Council for the publication of a national harmonised framework.’³

Undertakings made by the Prime Minister in relation to the Minerals Resource Rent Tax

- 2.7 On 21 November 2011, Mr Tony Windsor MP (the sponsor of the Bill) published a media release detailing undertakings made by the Prime Minister relating to ‘the oversight of mining and coal seam gas exploration

1 Meeting Communique, Standing Council on Energy and Resources, 9 December 2011, p.7.

2 Meeting Communique, Standing Council on Energy and Resources, 9 December 2011, p.7.

3 Meeting Communique, Standing Council on Energy and Resources, 9 December 2011, p.8-9.

and extraction'⁴ in the context of parliamentary consideration of legislation for the MRRT. Attached to the media release is a letter to Mr Windsor from the Prime Minister, outlining the undertakings made regarding the above issues.

2.8 The Prime Minister detailed two major undertakings, including:

- the establishment of an Independent Expert Scientific Committee, which will 'build scientific evidence and understanding of the impacts on water resources of extractive industry activities to underpin bioregional assessments and improve the standards of regulation of these industries'; and
- making the Committee's capabilities and advice available to state governments, as well as 'working with the states to drive best-practice, evidence-based assessments and approvals through a National Partnership Agreement', centred around the work of the Committee.⁵

2.9 Each of these undertakings is discussed below.

Independent Expert Scientific Committee

2.10 The letter states that the Government will 'aim to legislate in the 2012 Autumn Sittings a statutory role for an advisory Independent Expert Scientific Committee under the *Environmental Protection and Biodiversity Conservation Act 1999*'.⁶

2.11 The Committee's 'fundamental role' would be to:

- commission and fund assessments for priority areas;
- advise on research priorities and commission and coordinate research to inform assessment and management of extractive industry impacts, particularly CSG and major coal mining developments, including through engagement with relevant natural resource management/catchment management authorities; and
- provide scientific advice to federal and state ministers so that regulatory decisions take into account the best available scientific advice and to support development of relevant best-practice national standards.⁷

2.12 The letter continues that the Committee 'would comprise leading members of a wide range of scientific disciplines including geology,

4 Media Release, Mr Tony Windsor MP, 21 November 2011.

5 Attachment to Media Release, Mr Tony Windsor MP, 21 November 2011, p.1-3.

6 Attachment to Media Release, Mr Tony Windsor MP, 21 November 2011, p.2.

7 Attachment to Media Release, Mr Tony Windsor MP, 21 November 2011, p.2.

hydro-geology, hydrology and ecology and would include participation from key scientific institutions.’⁸

National Partnership Agreement

2.13 According to the letter, the ‘key elements’ of an Agreement would be:

- agreement that all Commonwealth and relevant state extractive industry assessments must take into account advice from the Independent Expert Scientific Committee (which must be made publicly available) relating to the impacts of extractive industries. The Committee will be able to take into account existing bioregional assessments, which will incorporate expert analysis of the spatial characteristics of a region, its ecology, geology and hydrology and related risks, or commission additional work.
 - ⇒ states to agree to amend state planning or relevant other legislation to give legal effect to this requirement in their jurisdictions;
- agreement that all Commonwealth and state extractive industry approval decisions that involve significant potential impacts must take into account advice from the Independent Expert Scientific Committee:
 - ⇒ states to agree to amend state planning or relevant other legislation to give legal effect to this requirement in their jurisdictions;
- agreement to a public review process of the operation of the arrangements set out in the National Partnership Agreement after a specified period.

2.14 The letter provides that the ‘National Partnership Agreement will be agreed by COAG at its first meeting in 2012, with implementing legislation to be passed as soon as possible thereafter.’⁹ If such an agreement is not reached at that meeting, the Prime Minister undertakes to:

introduce into the Parliament legislation under the EPBC Act to create an appropriate trigger for the Commonwealth to assess cumulative impacts of extractive activity on water resources, following a regulatory impact assessment and consultation with relevant stakeholders.¹⁰

8 Attachment to Media Release, Mr Tony Windsor MP, 21 November 2011, p.2.

9 Attachment to Media Release, Mr Tony Windsor MP, 21 November 2011, p.4

10 Attachment to Media Release, Mr Tony Windsor MP, 21 November 2011, p.4

Other inquiries

- 2.15 The Committee is aware of a number of other inquiries that are investigating or have investigated many of the issues relating to coal seam gas exploration and extraction. These include two inquiries being conducted by the Senate Rural Affairs and Transport Committee, and an inquiry being conducted by the New South Wales Legislative Council General Purpose Standing Committee No. 5.

Senate Rural Affairs and Transport Committee

- 2.16 As part of its broader inquiry into the management of the Murray Darling Basin, the Senate Rural Affairs and Transport References Committee tabled an interim report into *the impact of mining coal seam gas on the management of the Murray Darling Basin* on 30 November 2011. The Committee notes that this report makes a number of recommendations, many of which would involve considerable changes to current regulatory arrangements. Without examining the report in detail, the Committee believes that these recommendations deserve careful consideration in any future comprehensive inquiry into the Bill and its aims.
- 2.17 The Senate's Rural Affairs and Transport Legislation Committee is also currently conducting an inquiry into the Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011, which was introduced into the Senate by Senator Waters on 1 November 2011. Senator Water's Bill contains many similar clauses to the Bill under consideration in this report. However there are some significant differences: most notably the removal of the mechanism to accredit state and territory approvals processes. The inquiry into the former Bill is expected to report in early 2012, and the Committee looks forward to reviewing its report. This report would also likely need to be considered in any future comprehensive inquiry into the Bill and its aims.

New South Wales Legislative Council General Purpose Standing Committee No. 5

- 2.18 The above Committee is currently conducting an inquiry into *the environmental, economic and social impacts of coal seam gas (CSG) activities, including exploration and commercial extraction activities, allowable under the NSW Petroleum (Onshore) Act 1991*. This inquiry is due to report in mid-2012, and the Committee looks forward to reviewing its report. This report

would also likely need to be considered in any future comprehensive inquiry into the Bill and its aims.

Policy history of CSG

- 2.19 Whilst the Bill, as drafted, would affect all ‘mining operations’, a clear focus is on the exploration for, and extraction of, ‘coal-seam gas’ (CSG):

This [Bill] is not about being anti mining or pro mining or anti coal seam gas or pro coal seam gas; it is about the integrity of a process that will lead to better decisions by the mining and extractive industry companies, the agricultural endeavours that are currently on some of these landscapes, the state and Commonwealth governments and the relationship that all of those players have in relation to our very valuable water resources.¹¹

- 2.20 As noted by the submission from the Department of Resources, Energy and Tourism (RET), ‘Coal seam gas extraction has been in operation in Queensland for more than 15 years’.¹² However, as noted by the Standing Council on Energy and Resources’ 9 December Meeting Communiqué, there has been a ‘relatively rapid rise of the coal seam gas industry, particularly in New South Wales and Queensland.’¹³

- 2.21 The Communiqué also outlines the importance of CSG as a source of energy, as well as the community concerns about exploration and extraction activities:

Coal seam gas is strategically important as it supplies 32 per cent of the eastern states’ domestic gas production, it assists in containing power prices in a carbon constrained economy and is a substantial source of export income and employment.

Despite the extensive regulation of the sector and the community’s growing dependence on gas within Australia’s energy mix, there is mounting public concern about the safety and environmental impacts of coal seam gas.¹⁴

- 2.22 The regulation of exploration and extraction of CSG are, in many cases, matters for relevant state or territory governments. As noted by RET:

11 Mr Tony Windsor, *House of Representatives Hansard*, 12 September 2011, p. 9547.

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

13 Meeting Communiqué, Standing Council on Energy and Resources, 9 December 2011, p.6.

14 Meeting Communiqué, Standing Council on Energy and Resources, 9 December 2011, p.6.

While the Australian Government has powers that allow it to regulate certain aspects of mining activities, state and territory governments have primary responsibility for regulating onshore mining and exploration in Australia – including coal seam gas.¹⁵

- 2.23 However, some CSG projects have been referred to the Australian Government for approval under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Australian Government provides the example of three ‘coal seam gas to liquefied natural gas projects’ in Queensland that have been approved by the Australian Government, as well as five other CSG projects that have been referred and are awaiting a decision.¹⁶
- 2.24 As noted in the Communiqué above, there has been growing public discussion and disquiet about the regulation of coal seam gas exploration and extraction in Australia, particularly in Queensland and New South Wales. The Bill seeks to address some of the concerns raised relating to coal seam gas exploration and extraction.

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

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