
The Parliament of the Commonwealth of Australia

Advisory Report on the Environment
Protection and Biodiversity Conservation
Amendment (Mining, Petroleum and Water
Resources) Bill 2011

House of Representatives

Standing Committee on Agriculture, Resources, Fisheries and Forestry

February 2012
Canberra

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Foreword

This inquiry has come at a time when Australian governments and parliaments are dealing with the implications of the growing coal seam gas (CSG) sector. As noted in this report, the exploration for and extraction of CSG has increased greatly in recent years. Accompanying this increase has been considerable community concern about the impact that CSG operations might have on land and water resources.

Whilst this Bill is not explicitly drafted to single-out CSG, it is nevertheless clearly designed to increase the regulation of CSG operations around Australia. As discussed by the report, this would be achieved by making the Australian Government the 'consent authority' for some mining operations, many CSG projects included.

CSG operations have clearly aroused some valid concerns in the community, and governments around Australia are currently working together to improve the quality and uniformity of CSG regulation between different jurisdictions. The context in which the Bill was originally drafted has changed, and the regulation of CSG is, in some ways, in a state of flux. On this basis, the Committee has not made a final judgment on the Bill.

I look forward to seeing the results of current work being undertaken by Australian governments regarding CSG regulation, and the Committee will keep a 'watching brief' on this issue, and may report back to the Parliament in future.

Hon Dick Adams MP
Chair



Membership of the Committee

Chair Hon Dick Adams MP

Deputy Chair Mr Alby Schultz MP

Members Mr Darren Cheeseman MP

Mr George Christensen MP

Mr Tony Crook MP

Mr Geoff Lyons MP

Hon Ian Macfarlane MP*

Mr Rob Mitchell MP

Mr Dan Tehan MP

* Denotes supplementary member, appointed to the Committee for this inquiry only.

Committee Secretariat

Secretary	Mr David Brunoro
Inquiry Secretary	Mr Thomas Gregory
Research Officer	Mr Nathan Fewkes
Office Manager	Mrs Dorota Cooley
Administrative Officer	Ms Louise Goss



Terms of reference

On 15 September 2011 the Selection Committee referred the following bill to the Committee for inquiry and report:

- Environment Protection and Biodiversity Conservation Amendment (Mining, Petroleum and Water Resources) Bill 2011

The Terms of Reference were the text of the Bill.

Under Standing Order 222(e), the House is taken to have adopted Selection Committee reports when they are presented



List of abbreviations

COAG	Council of Australian Governments
CSG	Coal seam gas
EPBC	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
MRRT	Mineral Resources Rent Tax
RET	Department of Resources, Energy and Tourism



List of recommendations

Recommendation 1

The Committee recommends that the Bill not be passed at this time.

The Environment Protection and Biodiversity Conservation Amendment (Mining, Petroleum and Water Resources) Bill 2011

Introduction

- 1.1 On 15 September 2011 the Selection Committee asked the Standing Committee on Agriculture, Resources, Fisheries and Forestry (the Committee) to inquire into and report on:
- the Environment Protection and Biodiversity Conservation Amendment (Mining, Petroleum and Water Resources) Bill 2011 (the Bill).
- 1.2 The Bill was introduced into the House of Representatives by Mr Tony Windsor MP on 12 September 2011. According to the accompanying Explanatory Memorandum, the purpose of the Bill is to:
- ...amend the Environment Protection and Biodiversity Conservation Act 1999 to empower the Commonwealth to be the consent authority for mining and extractive industry actions that have, or are likely to have, a significant impact on water resources.¹

1 Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Mining, Petroleum and Water Resources) Bill 2011, p. 1.

The inquiry process

- 1.3 The Committee wrote to all Australian state and territory governments, as well as the Australian Government, seeking submissions to the inquiry. Six submissions were received; a list of submissions can be found in the Appendix.
- 1.4 During the course of the inquiry, significant policy developments occurred at both national and state level, including agreements to develop harmonised regulatory arrangements through the Standing Council on Energy and Resources (under COAG), which are detailed below. The context in which the Bill was drafted has changed, even though it will take time to see the extent to which these developments are fully agreed and implemented.
- 1.5 Consequently, undertaking a comprehensive inquiry into the Bill at the present time was considered unproductive. The Committee has therefore decided to report briefly on the basis of the Bill, the explanatory memorandum, government submissions to the inquiry, and other publicly available documents, without conducting public hearings or calling for public submissions.
- 1.6 Full details of the inquiry including the Bills and explanatory memoranda, the submission and the report can be found on the Committee's webpage.²
- 1.7 This report has three further chapters. Chapter 2 considers relevant policy history and developments. Chapter 3 deals with issues and concerns with the Bill. Chapter 4 provides the Committee's conclusions.

2 <<http://www.aph.gov.au/house/committee/arff/water/index.htm>>

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.

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

Conclusion

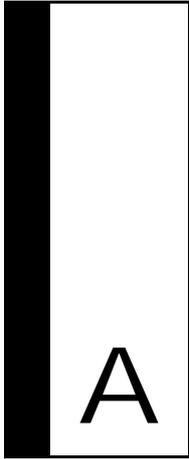
- 4.1 The Bill under inquiry seeks to increase the oversight of mining operations through making the Australian Government the default consent authority, depending on an operation's potential impact on water resources.
- 4.2 In addition, coal seam gas exploration and extraction have caused considerable concern in the community, particularly in New South Wales and Queensland. The Committee is aware of strong opinions both for and against the coal seam gas industry in the Australian Community.
- 4.3 Numerous policy developments have occurred since the Bill was introduced. These include:
- an agreement to develop a national harmonised regulatory framework for the CSG industry; and
 - the Government undertaking to create and support an independent scientific committee to provide science on which to base approvals.
- 4.4 The Committee supports both these major policy developments, and looks forward to seeing these agreements being enacted. However, the Committee also notes that there is limited detail about how the national framework would be implemented and adhered to. In particular, it is currently unclear how stringent the Framework would be, and the extent to which jurisdictions would be bound to remedy the gaps in existing arrangements.
- 4.5 If both of the above noted policy developments were to be implemented as planned over the course of the coming year, the policy context in which the Bill was drafted will be profoundly changed. In the Committee's view the Bill would therefore be unnecessary.

- 4.6 However, the Committee also notes that considerable outstanding work is still to be done in 2012 to complete this program. Therefore, the Committee will monitor the matters discussed in this report.
- 4.7 For the reasons outlined above, the Committee is of the view that the Bill should not be passed at this time.

Recommendation 1

The Committee recommends that the Bill not be passed at this time.

**Hon Dick Adams MP
Committee Chair
15 February 2012**



Appendix – Submissions

- 1 Western Australian Government
- 2 Department of Resources, Energy and Tourism
- 2.1 Department of Resources, Energy and Tourism
(supplementary to Submission No. 2)
- 3 South Australian Government
- 4 ACT Government
- 5 Tasmanian Government
- 6 Northern Territory Government

