

Chapter 2

Background

2.1 The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), which is the primary Commonwealth Government legislation regulating environmental matters, has among its objects:

- to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and
- to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources.¹

2.2 Matters of national significance currently covered by the EPBC Act are:

- world heritage properties;
- national heritage places;
- wetlands of international importance;
- threatened species and ecological communities
- migratory species;
- Commonwealth marine areas;
- the Great Barrier Reef Marine Park; and
- nuclear actions (including uranium mines).²

2.3 This bill would add another matter of national environmental significance to the Act, namely:

- protection of water resources from coal seam gas development and large scale coal mining development.³

2.4 A document published by the Department of Sustainability, Environment, Water, Population and Communities (SEWPAC), states that the amendment to the EPBC Act is needed because:

- currently there is no direct protection for water resources under our national environment law;
- under existing legislation, projects with water related risks can only be regulated if they have flow on impacts to existing matters of national

1 *Environment Protection and Biodiversity Conservation Act 1999*, s. 3.

2 EPBC Act, Part 3.

3 Environment Protection and Biodiversity Conservation Amendment Bill p. 3.

environmental significance, such as nationally endangered plants and animals;

- this proposed new matter of national environmental significance will allow the impacts of proposed coal seam gas and large coal mining developments on water resources to be comprehensively assessed at a national level;
- the Government is responding to community concern to ensure the long term health and viability of Australia's water resources and the sustainable development of the coal seam gas and coal mining industries; and
- our nation's water resources are among our most vital natural resources and it is important that we take reasonable steps to ensure they are protected.⁴

2.5 The minister, when introducing the bill, referred to three matters 'that people quite reasonably expect the minister for the environment and water to take into account, by law, when considering the impacts of coal seam gas and large coal mining on water resources', namely:

- if there is an irreversible depletion and contamination of our surface and groundwater resources;
- the impacts on the way critical water systems operate; and
- the related effects on our ecosystems.⁵

Current regulatory arrangements

2.6 The approval for coal seam gas (CSG) and large coal mining are matters primarily for the state governments, but the Commonwealth Government also has a role in the approval process. The Commonwealth, Queensland, New South Wales, South Australia and Victoria entered into a National Partnership Agreement (NPA) in 2012 to 'strengthen the regulation of coal seam gas and large coal mining development'. The Commonwealth has also established an Independent Expert Scientific Committee (IESC) to provide advice to the minister and to the states on CSG and large coal mining. (The legislation to establish that Committee was the subject of the Senate Committee's report which is discussed below.)

2.7 The IESC was established so that future decisions about CSG and large coal mining developments would be informed by substantially improved science and independent expert advice. IESC's advice is published on its website once a decision

4 *EPBC Act: 2013 Proposed EPBC Act amendment – Water trigger – Q and As*, pp 1-2 of 5, <http://www.environment.gov.au/epbc/about/2013-amendments-q-and-a.html>, (Accessed 15 March 2013).

5 The Hon. A Burke, Minister for Sustainability, Environment, Water, Population and Communities, *House of Representatives Hansard*, 13 March 2013, p. 8.

is made. Advices provided to the decision makers, but on which decisions have not yet been made, are listed on the website.

2.8 In the NPA, Queensland, New South Wales, South Australia and Victoria have committed to:

seek the committee's advice at appropriate stages of the approvals process for a coal seam gas or large coal mining development that is likely to have a significant impact on water resources;

ensure that decision-makers take account of the committee's advice in a transparent manner; and

provide input into the committee's research agenda, including in relation to the committee's advice on priority areas for bioregional assessment.⁶

2.9 The Commonwealth agreed, among other things, to provide funds to the states to support the implementation of the NPA and to monitor and assess delivery of actions to ensure that outputs are delivered and outcomes are achieved within agreed timeframes.⁷

2.10 The parties jointly agreed to meet milestones for matters such as passing relevant legislation, regulations and guidelines.⁸ The parties also agreed to commission an independent review of the operation and achievements of the NPA by 1 July 2014 with the report of the review being published by 31 December 2014.⁹

Previous Senate committee reports

2.11 In this inquiry the committee has taken into consideration three recent Senate committee reports relevant to the current inquiry, as follows:

- the Environment and Communications Legislation Committee's report on the Environment Protection and Biodiversity Conservation Amendment

6 COAG Standing Council on Federal Financial Relations, *National Partnership Agreement on Coal Seam as and Large Coal Mining Development*, p. 4, http://www.federalfinancialrelations.gov.au/content/npa/environment/CSG_and_lcmd/NP.pdf, (accessed 5 April 2013).

7 COAG Standing Council on Federal Financial Relations, *National Partnership Agreement on Coal Seam as and Large Coal Mining Development*, p. 4, http://www.federalfinancialrelations.gov.au/content/npa/environment/CSG_and_lcmd/NP.pdf, (accessed 5 April 2013).

8 COAG Standing Council on Federal Financial Relations, *National Partnership Agreement on Coal Seam as and Large Coal Mining Development*, p. 5, http://www.federalfinancialrelations.gov.au/content/npa/environment/CSG_and_lcmd/NP.pdf, (accessed 5 April 2013).

9 COAG Standing Council on Federal Financial Relations, *National Partnership Agreement on Coal Seam as and Large Coal Mining Development*, p. 7, http://www.federalfinancialrelations.gov.au/content/npa/environment/CSG_and_lcmd/NP.pdf, (accessed 5 April 2013).

(Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012 [Provisions];

- the Rural and Regional Affairs and Transport Legislation Committee's report on the Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011; and
- the Rural and Regional Affairs and Transport References Committee's report on Management of the Murray Darling Basin Interim report: the impact of mining coal seam gas on the management of the Murray Darling Basin.

2.12 The committee also took into account its report of March this year on the Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012.

Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011

2.13 The Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011, a private senator's bill introduced by Senator Waters of the Australian Greens, sought to achieve much the same outcome as does the bill now before the committee. The purpose of Senator Water's bill was to include 'protection of water resources from mining operations' as a matter of national environmental significance in the EPBC Act, so that Commonwealth Government assessment and approval would be needed for mining operations that would be likely to have a significant impact on water resources.¹⁰

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

2.14 The Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012, sought to establish an expert committee to provide advice to the Commonwealth environment minister in cases where a proposed action would involve a coal seam gas development or a large coal mining development that was likely to have a significant impact on water resources or have an adverse impact on a matter of national environmental significance. The minister would be required to take into account all relevant advice provided by the IESC before deciding whether to approve or not approve an action that impacts on a matter of national environmental significance.¹¹

10 Senate Rural and Regional Affairs and Transport Legislation Committee, *Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011*, February 2012, p. 1.

11 Senate Environment and Communications Legislation Committee *Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012 [Provisions]*, June 2012, p. 2.

Management of the Murray Darling Basin

2.15 The Rural and Regional Affairs and Transport References Committee's inquiry into the management of the Murray Darling Basin included consideration of:

The economic, social and environmental impacts of mining coal seam gas on:

- the sustainability of water aquifers and future water licensing arrangements;
- the property rights and values of landholders;
- the sustainability of prime agricultural land and Australia's food task;
- the social and economic benefits or otherwise for regional towns and the effective management of relationships between mining and other interests; and
- other related matters including health impacts.¹²

2.16 That report includes good non-technical descriptions of the processes for the extraction of CSG and canvasses the possible risks for water supplies in the Great Artesian Basin.

2.17 The committee recommended:

... that the Commonwealth take the necessary steps to amend the *Environmental Protection and Biodiversity Conservation Act 1999* to include the sustainable use of the Great Artesian Basin as a 'matter of national environmental significance'.¹³

2.18 Although the Rural and Regional Affairs and Transport Committee's recommendation relates only to the Great Artesian Basin the recommendation is nevertheless relevant to the consideration of the bill before the committee.

2.19 The committee refers to these reports in the following chapter.

12 Senate Rural and Regional Affairs and Transport References Committee *Management of the Murray Darling Basin Interim report: the impact of mining coal seam gas on the management of the Murray Darling Basin*, November 2011, p. 1.

13 Senate Rural and Regional Affairs and Transport References Committee *Management of the Murray Darling Basin Interim report: the impact of mining coal seam gas on the management of the Murray Darling Basin*, November 2011, p. 31.

