

Australian Greens — Additional Comments

1.1 The Australian Greens have long raised the serious concerns of the Australian community about the rapid and destructive expansion of the coal and coal seam gas industries. For far too long governments have privileged resource corporations over the well-being of local communities, and Australia's long term future. The unbridled acceleration of these fossil fuel industries is worsening climate change, risking valuable farmland, damaging our precious water resources, and putting pressure on regional towns.

1.2 We welcome this bill, however note it is too late to save the many Queensland communities now finding themselves surrounded by coal seam gas developments. The current Environment Minister, on announcing this bill recognised that "Australia's water resources are among our most vital natural resources and it is important that we ensure they are protected". Yet within the month prior to that statement, the Minister had approved three coal mines (Boggabri, Maules Creek and Tarrawonga) and the large coal seam gas mining project at Gloucester. Within only two months of becoming national Environment Minister, Minister Burke approved the first two huge coal seam gas mining projects in Queensland, despite significant scientific uncertainties about the impacts of coal seam gas on our groundwater.

1.3 In 2011 the Australian Greens introduced a bill that would protect our national water resources. Our bill, *the Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011*, would require that mining operations require Commonwealth approval if they will have, or are likely to have, significant impact on the quality, structural integrity or hydraulic balance of a water resource; and impose penalties. The Government refused to support this bill, and now 18 months of additional assessments and approvals have been allowed to pass without national protection for our water.

1.4 The Government had a clear opportunity to act to nationally protect water when they introduced the bill to establish the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development in 2012. During consideration of that bill the Greens called on the Government to step up and put in place proper national protection for our water resources. They did not.

1.5 Clearly this national protection for our nation's water resources is long overdue.

1.6 The Greens particularly welcome the amendment adopted by the House of Representatives that will ensure that this new national protection for water must remain the responsibility of the national Environment Minister. This will ensure that this new federal protection for Australia's water resources cannot be handed straight back to the states, who have mismanaged these fossil fuel industries and ignored the potentially devastating water impacts for years. The states cannot be trusted to act in the national interest - which is why this amendment needs to be extended to all nationally protected places and species, to ensure the Commonwealth continues to have the final say on Australia's most environmentally damaging developments.

1.7 The huge, potentially irreversible risks of handing responsibility for protecting our most precious species and wild places to the states (under arrangements called 'approvals bilateral agreements') to state governments were extensively explored in the Senate's recent inquiry into a private members bill proposed by the Greens: the *Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012*. The inquiry into this bill heard from the community, environment experts, economists and lawyers alike - all called for federal environment responsibilities to remain with the federal Environment Minister.

1.8 The committee inquiring into that bill found that:

- Most submitters expressed grave concern about the risks to the environment associated with granting approval powers to the states and territories. [para 2.1]
- The committee was presented with no compelling evidence to show how an approval agreement would improve business efficiency [para 2.12]
- The committee is concerned that if the Commonwealth were to lose its oversight and approval power in relation to matters for national environmental significance, this may encourage competitive federalism [para 2.28]

1.9 And most importantly:

- The committee's view is that it is not appropriate for the states and territories to exercise decision making powers for approvals in relation to matters of national environmental significance. [para 2.47]

1.10 In supporting the House of Representatives amendment to ensure this new national protection for Australia's water resources cannot be handed straight back to the states, the Government confirmed the crucial importance of ongoing national responsibility for protecting our most precious environmental resources.

1.11 Protection of our most precious species and wild places is no different to protection of Australia's water resources - these responsibilities must remain with the federal Environment Minister.

1.12 The Coalition, however, has a stated commitment, that should it win government among the first order of business will be handing this crucial responsibility of assessing and approving Australia's most environmentally damaging projects to state governments. This policy commitment, reiterated regularly, is set out clearly in the Coalition's recently released *Our Plan: Real solutions for all Australians*.¹

1.13 In light of the Coalition's clear commitment to abandon our environment to the states, failing to act now makes the Labor Government complicit in any such handover should Mr Abbott win government later this year.

1 See p. 22.

1.14 The Australian Greens have circulated an amendment that, if adopted, would ensure that responsibility for all nationally protected species and wild places remains with our national Environment Minister.

1.15 For consistent treatment of all nationally protected environment matters, and critically, for the protection of these species and wild places for generations to come, the Greens implore all Senators to support this amendment.

1.16 The Australian Greens have a number of other concerns which we will be seeking to address through amendments.

1.17 We are proposing an amendment which makes aspects of this bill apply retrospectively to a number of major coal seam gas projects and coal mines that Minister Burke has already approved. This is important as only one month before introducing this bill the Minister approved four big potentially very risky projects in New South Wales-the Gloucester coal seam gas mine, and the Maules Creek, Boggabri and Tarrawonga coal mines. Work has not yet commenced on these projects, so it is not too late for the water impacts of these massive projects to be properly assessed under our national environment laws. For the three big Queensland coal seam gas projects approved by the minister more than two years ago, work has already commenced. However what is needed is for the water impacts of those projects to be properly assessed and publicly reported. The Government and decision makers can then use that information about water impacts to inform future decisions about any further coal seam gas developments.

1.18 We are also proposing an amendment which would give landowners and occupiers across Australia the right to say no to coal seam gas and large coal mines on their land.

1.19 Using the corporations power under the Constitution, this amendment would stop the federal Environment Minister from approving a coal or coal seam gas project being assessed under our national environment laws unless the Minister was satisfied that the landowner and any occupier of the land had:

- obtained independent advice in relation to the likely impacts of the taking of the action;
- had obtained independent legal advice; and
- had freely given informed consent in relation to the coal or coal seam gas project.

1.20 Importantly, this amendment would not change the principle that ownership of minerals rest with the crown. The state will continue to own minerals, however this amendment would give landholders the right to protect their land from the uncertainty of long term impacts on water resources should they decide the risks are simply too great. If governments want to extract the resource, they can still use their acquisition powers to buy out the landholder, so the amendment would not prevent development of these resources at all costs - but it does lift the bar to better protect our agricultural communities.

1.21 As stated above, as all coal and coal seam gas projects can be expected to be developed by constitutional corporations there is no Constitutional obstacle to the Commonwealth using that head of power to put in place nationally consistent protection for Australia landholders. We are sadly very confident that if left to state governments our landholders will be without this basic protection for decades to come.

1.22 It is also important to note that this landholder rights requirement is additional to, rather a substitute for, the thorough impact assessments that are needed to ensure that both on-farm and off farm impacts of coal seam gas and coal projects (on our agricultural communities and the natural environment) are properly considered by decision makers.

1.23 In addition to allowing landholders the right to deem the risk of coal and coal seam gas as too high, this bill would also greatly strengthen the negotiating position of Australian landholders who chose to negotiate with multinational resource companies about resource development on their land. Far too many of Queensland's farmers have been forced to negotiate without having the choice to walk away.

1.24 There is community outrage across Australia about the grossly inequitable situation far too many Australian farmers currently face when multinational companies come knocking, seeking to develop coal and coal seam gas projects on their land.

1.25 Amending this bill is a clear opportunity to deal with this issue, and ensure farmers across Australia have the right to say no.

1.26 The bill currently limits the extent of this water protection to significant impacts from coal and coal seam gas activities. The Greens are proposing that this new water protection should extend to impacts from shale and tight gas mining, and underground coal gasification. We are concerned that these nascent fossil fuel industries also pose significant risks to our water resources requiring proper national scrutiny. Western Australia for example, is estimated to hold 288 trillion cubic feet of shale gas - approximately twice the gas that is held in Western Australia's extensive offshore areas.

1.27 Rather than being on the back foot yet again, scrambling to patch together protections after significant projects have already been waved through without adequate scrutiny, the Government should act now to protect our water from these industries. This amendment would see us take a precautionary approach to new, potentially high risk industries. However the Gillard Government's proclivity to embracing high risk approaches to regulating high risk industries (such as the questionable use of 'adaptive management' and their love of 'conditional approvals') suggests that national leadership on this issue is sadly very unlikely.

Recommendations

1.28 The Australian Greens support this bill, however recommend that the Senate adopt amendments proposed by the Greens which:

1. Ensure consistent treatment of all nationally protected species and wild places, and ensure that responsibility for assessing and approving Australia's most environmentally damaging projects must remain with the federal Environment Minister.
2. Give landholders the right to say no to coal and coal seam gas developments proceeding on their land.
3. Require that the water impacts of recently approved coal and coal seam gas projects which will significantly impact our water resources are subjected to proper scrutiny under our national environment laws.
4. Extend this protection for our national water resources to include significant impacts from shale and tight gas mining, and underground coal gasification.

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