



## INDEPENDENT REVIEW OF THE WATER TRIGGER LEGISLATION

### Submission by the Department of the Environment

#### BACKGROUND

##### ***Environment Protection and Biodiversity Conservation Act***

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is the Australian Government's central piece of environmental legislation. Under the EPBC Act, the Australian Government is responsible for assessing and approving any development which will have a significant impact on a 'matter of national environmental significance'. Before the introduction of the 'water trigger'<sup>1</sup> these included World Heritage, National Heritage, Ramsar wetlands, Commonwealth marine areas, the Great Barrier Reef Marine Park, migratory species, threatened species and ecological communities and nuclear actions. The EPBC Act also regulates developments undertaken by the Commonwealth or that impact on Commonwealth land. Other environmental issues are a matter for state and territory governments.

##### ***National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development***

The *National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development* was established between the Australian Government and the Queensland, New South Wales, Victorian and South Australian governments in 2012. The aim of the National Partnership Agreement was to strengthen the regulation of coal seam gas and large coal mining development by ensuring that future decisions are informed by substantially improved science and independent expert advice.<sup>2</sup> An independent review of the National Partnership Agreement was completed in June 2015.<sup>3</sup>

In accordance with the National Partnership Agreement, the Australian Government established the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Developments (IESC) in November 2012, through the *EPBC Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Act 2012*. The IESC provides scientific advice on coal seam gas and large coal mining developments to the Australian and National Partnership Agreement-signatory state government regulators on the impact that coal seam gas and large coal mining development may have on Australia's water resources. An interim IESC operated between January 2012 and November 2012, pending establishment of the statutory IESC.

Before the introduction of the 'water trigger' in June 2013, the Australian Government could consider the advice of the IESC only in relation to impacts on the eight existing matters of national environmental significance -for example, in circumstances where the groundwater impacts of a coal seam gas development could have an impact on a groundwater-dependent threatened ecological community. The Minister for the Environment did not have the power to conduct an assessment and impose conditions directly relating to impacts on a water resource itself.

<sup>1</sup> The 'water trigger' refers to the *EPBC Amendment Act 2013*, which established the protection of water resources from coal seam gas and large coal mining developments a new 'matter of national environmental significance' under the EPBC Act.

<sup>2</sup> Available at: <http://www.environment.gov.au/water/coal-and-coal-seam-gas/office-of-water-science/npa>

<sup>3</sup> Available at: <https://www.environment.gov.au/system/files/pages/354eb042-14dd-47fb-a24f-5dbd84834302/files/npa-review-final-report.pdf>

## ***Introduction of the ‘water trigger’***

The EPBC Amendment Act 2013 was passed by the Australian Parliament on 19 June 2013 and came into effect on 22 June 2013. The amendment added the protection of water resources from coal seam gas and large coal mining developments as an additional matter of national environmental significance under the EPBC Act. This amendment is known as the ‘water trigger’. Further detail on the legislative history of the amendment can be found within the *Independent review of the ‘water trigger’ legislation - issues paper* (30 November 2015) or at the Parliament of Australia’s website.<sup>4,5</sup>

The introduction of the ‘water trigger’ as a matter of national environmental significance strengthened the focus on water resources under the EPBC Act.

The ‘water trigger’ has not changed the process for seeking and taking account of advice from the IESC which had already been established under the National Partnership Agreement and subsequently under the IESC’s enabling legislation. The legislation establishing the IESC preceded and is independent of the ‘water trigger’.

## **DEPARTMENTAL ROLES AND RESPONSIBILITIES IN RELATION TO THE WATER TRIGGER**

### ***Environment Standards Division***

The Minister for the Environment and delegated officers in the Environment Standards Division of the Department of the Environment are responsible for all regulatory decisions during the assessment of coal seam gas and large coal mining developments under the EPBC Act. Post-approval monitoring, compliance and enforcement activities are undertaken by the Compliance and Enforcement Branch within the Environment Standards Division.

### ***Office of Water Science***

The Office of Water Science was established in November 2011 within the then Department of Sustainability, Environment, Water, Population and Communities to lead the delivery of the Australian Government’s actions as set out in the National Partnership Agreement, including efforts to improve understanding of the water-related impacts of coal seam gas and large coal mining development.

The Office of Water Science provides secretariat and technical support to the IESC in its consideration of requests for advice from Environment Standards Division and National Partnership Agreement state government regulators on coal seam gas and large coal mining development (more information at [Appendix 1](#)).

Further information on the roles, responsibilities and a description of the Office of Water Science are available on the Department of the Environment’s website.<sup>6</sup>

## **IMPLEMENTATION OF THE WATER TRIGGER**

As of 15 January 2016, 74 large coal mining or coal seam gas developments have been determined to be a ‘controlled action’ under the EPBC Act, due to a likely significant impact on a water resource.<sup>7</sup> Of these, 23 developments have been approved, 43 are undergoing assessment (active) and eight have been withdrawn. To date, the IESC has provided advice on 51 of these developments.<sup>8</sup>

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<sup>4</sup> Available at: <https://www.environment.gov.au/epbc/what-is-protected/water-resources/review>

<sup>5</sup> Available at: [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1213a/13bd108#\\_Toc356225418](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1213a/13bd108#_Toc356225418)

<sup>6</sup> Available at: <http://www.environment.gov.au/water/coal-and-coal-seam-gas/office-of-water-science>

<sup>7</sup> All statistics as of 15 January 2016

<sup>8</sup> More information at Appendix 1

## **Significant Impact Guidelines**

To assist regulators and proponents, the Department of the Environment released *Significant Impact Guidelines 1.3: Coal Seam Gas and Large Coal Mining Developments – Impacts on Water Resources* in December 2013.<sup>9</sup>

The guidelines outline a ‘self-assessment’ process, including detailed criteria, to assist in deciding whether or not a referral to the Australian Government may be required under the EPBC Act. The guidelines may also help those who wish to comment on coal seam gas and large coal mining developments which have been referred under the EPBC Act.

## **Information Guidelines**

The IESC published the *Information Guidelines for Proposals Relating to the Development of Coal Seam Gas and Large Coal Mining Developments where there is a Significant Impact on Water Resources* in February 2013 to support proponents in preparing their assessment documentation, prior to it being considered by the IESC.<sup>10</sup>

To improve the focus of assessment documentation provided to the IESC for its consideration the guidelines have been updated and streamlined (most recently in October 2015) as *Information Guidelines for Independent Expert Scientific Committee Advice for Coal Seam Gas and Large Coal Mining Developments*, following consultation with state governments and a range of other stakeholders.

The guidelines outline the information considered necessary to enable the IESC to provide robust scientific advice to government regulators on the water-related impacts of coal seam gas and large coal mining development proposals.

## **Process for seeking IESC advice**

While the introduction of the ‘water trigger’ did not change the process for requesting advice from the IESC, the Department has sought to streamline the processes for seeking IESC advice.

Efficiency has been achieved by integrating the process of seeking IESC advice into the Department’s standard business practices. This has been done in a way that minimises the impact on the timeline for assessment of developments. Generally, the Australian or state government regulator will seek IESC advice based on a company’s initial or ‘draft’ Environmental Impact Statement. This allows the proponent to consider and respond to IESC advice during the existing mandatory public consultation period, based on the same documentation available to the public, avoiding any additional delays.

In circumstances where both the Australian Government and a state regulator require advice from the IESC, the two jurisdictions will submit joint requests for advice wherever possible. The use of joint requests is the most efficient and preferred standard business process. Generally, the state takes the lead and the requests are signed jointly by the relevant delegates from each agency.

## **Assessment bilateral agreements**

‘Assessment bilateral agreements’ exist between the Commonwealth and every state and territory under the EPBC Act. Under an assessment bilateral agreement, the relevant state or territory is responsible for undertaking the statutory assessment process for proposed developments on behalf

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<sup>9</sup> Available at: <https://www.environment.gov.au/resource/significant-impact-guidelines-13-coal-seam-gas-and-large-coal-mining-developments-impacts>

<sup>10</sup> Available at: <http://www.iesc.environment.gov.au/publications/information-guidelines-independent-expert-scientific-committee-advice-coal-seam-gas>

of the Australian Government, avoiding unnecessary duplication and red tape. The Australian and state governments then make separate approval decisions.

Throughout 2013 and 2014 new or revised assessment bilateral agreements were signed with all states and territories. The agreements ensure the Minister for the Environment's statutory obligation to obtain and take into account IESC advice is synchronised with state assessment and approval processes, avoiding unnecessary delays.

### ***Further streamlining measures***

A number of other initiatives are being pursued by the Department to support the effective and efficient implementation of the 'water trigger', improve collaboration between jurisdictions and avoid regulatory duplication. Initiatives include:

- Holding periodic Senior Officers' Committee meetings between the Commonwealth and each jurisdiction to share information on significant assessments, policy development and streamlining initiatives.
- Officers from the Department of the Environment have been out-posted to work with the governments of Queensland, Australian Capital Territory, Western Australia and New South Wales to facilitate improved communication between jurisdictions.
- Greater reliance by the Australian Government on state and territory approval conditions.<sup>11</sup> This approach is applied in circumstances where the Australian Government determines that the relevant state/territory conditions are acceptable and adequately protect the relevant water resources.
- A commitment by all Australian jurisdictions to the principles of open access to environmental data and assessment information – making it discoverable, accessible and reusable to improve decision-making and accountability.

### ***Proposed legislative amendments related to the 'water trigger'***

The Australian Government is pursuing amendments to the EPBC Act to facilitate the introduction of 'approval bilateral agreements' through the *Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014*. Approval bilateral agreements would enable state and territory governments to both assess and approve developments on behalf of the Australian Government.

The Bill was introduced on 14 May 2014 and is currently before the Senate where debate commenced on 1 September 2014. The Bill originally proposed amendments that would have allowed the 'water trigger' to be included in the scope of approval bilateral agreements. In response to community concerns, the Government moved amendments to the Bill in the Senate on 14 September 2015, to remove this proposed change.

The proposed amendments also ensure that decision-makers have access to the best available science in relation to water resource related impacts from coal seam gas and large coal mining developments by:

- enabling all states and territories to seek advice from IESC regardless of whether they are a party to the National Partnership Agreement; and

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<sup>11</sup> Policy documents are available at: <http://www.environment.gov.au/epbc/publications>

- expanding the functions of the IESC to enable them to provide advice to the Minister for the Environment about the operation of any assessment bilateral agreement in relation to impacts on water resources.

## APPENDIX 1 – STATISTICS AND SUMMARY OF WATER TRIGGER DEVELOPMENTS

### Developments requiring assessment under the 'Water Trigger'

A total of 74<sup>12</sup> coal seam gas or large coal mining developments required assessment under the EPBC Act under the 'water trigger'. Of these, 23 developments have been approved, 43 are currently undergoing assessment and 8 have been withdrawn.

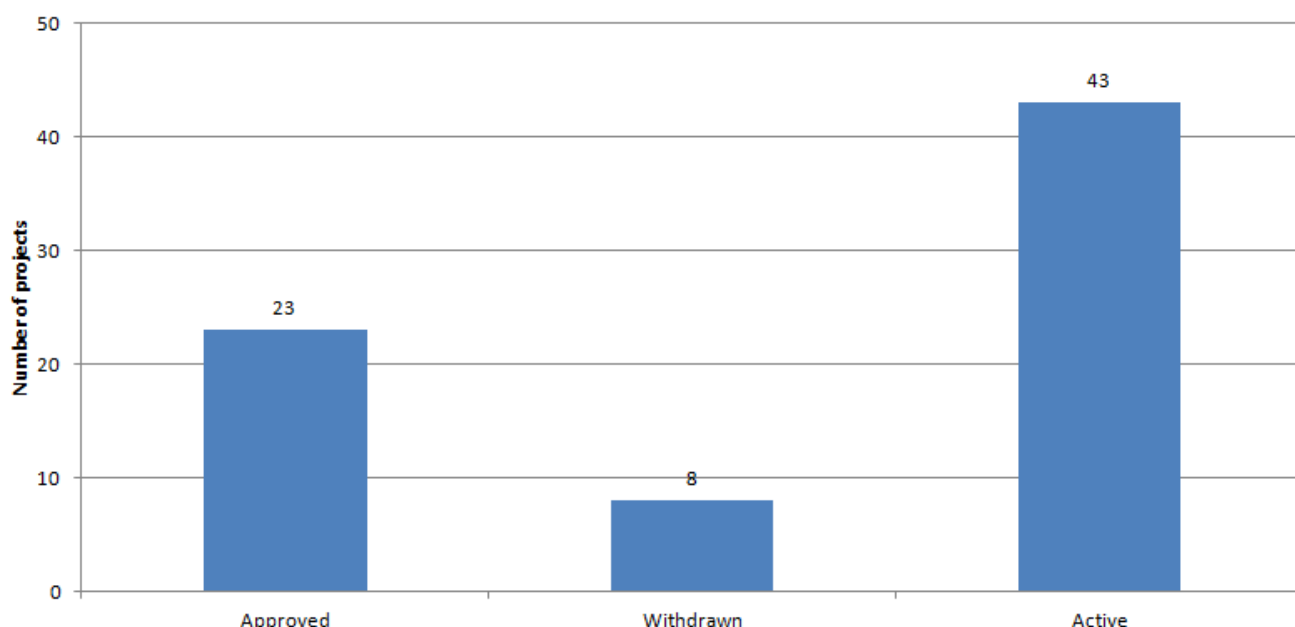


Figure 1: Status of projects with the water trigger as a controlling provision (as at 14 January 2016)

Of the 43 developments being assessed by the Department of the Environment, 30 are being assessed under assessment bilateral agreements. A further seven developments are being assessed under the EPBC Act through an accredited state assessment process. The remaining six developments are being assessed under the EPBC Act through preliminary documentation (four projects) or by environmental impact statement (two projects).

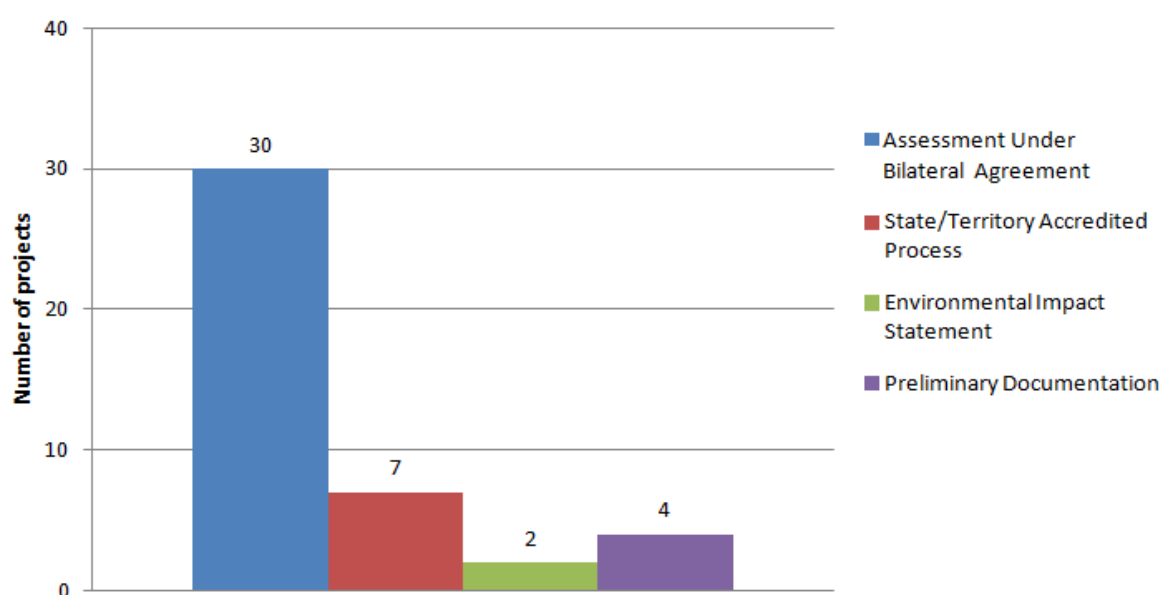


Figure 2: Assessment process of active projects with the water trigger as a controlling provision (as at 14 January 2016)

<sup>12</sup> All statistics as of 15 January 2016