



Environment Institute
of Australia and
New Zealand Inc.

Mr Steven Hunter
Independent Water Trigger Review
GPO Box 787
Canberra ACT 2601 Australia

By email: wtreview@environment.gov.au

29th January 2016

Dear Mr Hunter

Independent review of the “water trigger”

The Environment Institute of Australia and New Zealand (EIANZ) is the leading professional body for environmental practitioners in Australia and New Zealand, and promotes independent and interdisciplinary discourse on environmental issues. On all issues and all projects the Institute advocates good practice environmental management delivered by competent and ethical environmental practitioners.

The following comments on the independent review of the “water trigger” legislation within the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) have been prepared by members of the Impact Assessment Special Interest Section (IA-SIS) of EIANZ, who are themselves highly experienced impact assessment practitioners, including assessment of impacts on water resources.

Note that EIANZ will also make a submission via the “online submission form”.

Sound management of water resources is critical for Australia

EIANZ considers that protecting and managing water resources is a significant challenge for Australia due to our unpredictable and often extreme climate. These issues will be exacerbated with ongoing climate change and increasing population. The nature of both surface water and groundwater resources is such that impacts will always be cumulative in nature, requiring broad management approaches. Sustainable management of water resources underpins Australia's economy, is essential for human health and wellbeing, and is required to deliver Australia's international commitments in terms of protecting and enhancing biodiversity, wetlands and World Heritage Areas.

Environmental impact assessment and strategic environmental assessment are crucial safeguards in managing impacts of development on water resources, firstly, because these appraisal tools provide information on consequences of development that can be considered in decision making, and secondly, because these assessments provide the basis for ongoing frameworks for managing and monitoring impacts on water resources from individual projects and collective activities.

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EIANZ therefore considers that high quality assessment of potential impacts on high value water resources is critical input into decision-making, including both whether new projects should be given approval to go ahead, and the types of conditions, management, mitigation and monitoring strategies that need to be applied to these activities. Consequently, EIANZ considers that it is appropriate that water resources remain a focus of national environmental assessment and management efforts.

The water trigger and bilateral assessments

EIANZ supports regulatory efficiency, and sees no particular benefit in duplicate assessments at Commonwealth/State/Territory level, provided that States/Territories maintain high standards in relation to the quality and veracity of assessment. As noted below, a centralised approach to setting and maintaining such standards is considered consistent with good practice and warranted given the significance of water resource issues.

EIANZ does note that in some States and Territories there may be conflicts of interest where environmental assessment and approvals functions are carried out by the same Department that manages water resources, or where a single Minister is responsible for both of these functions. This is particularly of concern as allocation of water resources for consumption is source of revenue for States and Territories.

EIANZ does not see any convincing rationale for the provision in section 46 of the EPBC Act that excludes only the water trigger from the scope of an approvals bilateral agreement, provided that sufficient independence can be provided at the State/Territory level that a conflict of interest does not occur. This may require an independent assessment body where conflict of interest exists.

What activities should be included in a “water trigger”?

In relation to the water trigger, EIANZ understands that this was a policy response to specific concerns regarding impacts of certain development activities on water resources. While the impacts of these types of activities on water resources are a genuine and significant concern, EIANZ feels that the water trigger, as currently defined, is a poor solution to a much larger problem of water resource management in Australia.

EIANZ does not consider it to be good practice to restrict regulation to a specific sector and considers that regulation of actions that impact water resources should be based solely on the significance of those impacts, not on the type of action. EIANZ notes that other mining and resource activities may also have significant impacts on surface water and groundwater resources during both the operation stages, and post closure, as may non-mining activities including large dams, irrigation schemes and other large scale or intensive agricultural activities as well as impacts of urban development on water resources.

In line with the general approach to determination of significance under EPBC Act, determination of a potentially significant impact on water resources should have regard to both the nature and scale of the impact and the value of the water resource. For example, some groundwater resources in Australia have very limited environmental value and are suitable only for industrial use and impacts would not generally be regarded as significant in environmental

terms. Conversely, even quite small projects in the vicinity of important wetlands, groundwater dependent ecosystems and water supply areas may have significant impacts because of the value of the resource.

Finally, EIANZ notes that some water resources cover several State/territory jurisdictions, most notably the Murray-Darling system and the Great Artesian Basin. EIANZ also notes the importance of managing water resources in terms of discharging Australia's obligations under the Ramsar convention, which includes "wise use" of all wetlands, not just wetlands of international importance. The definition of wetland under the Ramsar convention is quite broad and includes most water resources.

What other role might the Commonwealth play in management of water resources?

EIANZ promotes rigorous and science-based assessment of impacts of proposed development activities on water resources. As such, EIANZ considers that the introduction of a committee such as the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC) was a very positive step in addressing ongoing issues with environmental assessment of impacts on water resources. As water resource issues are inherently complex and cumulative impacts are potentially very significant, ongoing involvement of a committee such as IESC is likely to yield continuous improvement in assessment and management of impacts of major developments on water resource.

A review of recent IESC advice indicates many proponents are still providing inadequate information on potential impacts on water resources, as well as unsuitable frameworks for management and monitoring of impacts. While insufficient time has passed to determine empirically whether the functions of IESC in reviewing EISs for major coal mining and coal seam gas projects have led to actual reductions in impacts and improvements in management, EIANZ considers that the IESC has played a useful role in promoting better quality assessments and consistency across jurisdictions and projects. EIANZ notes that guidance and expert review of the type provided by the IESC is commensurate with what is considered to be best practice environmental impact assessment.

EIANZ notes that IESC has other functions apart from reviewing environmental impact assessments. EIANZ suggests that the development and maintenance of a central data repository for surface water and groundwater resources would yield a number of benefits, including reduced time frames for collection of baseline data for individual impact assessments and better consideration and management of cumulative impacts within a region. This would contribute to increased regulatory efficiency and reduced timeframes for environmental assessment processes.

As a general principle, EIANZ considers an appropriate role for the Australian Government is to set high standards for assessing and protecting impacts on water resources and to ensure these are maintained. An ongoing centralised review and monitoring process also has advantages in terms of sharing information and experiences between the States and Territories, and ensuring consistent regulation and management of impacts of development on water resources.

EIANZ also suggests that DoE and/or IESC develop a robust program of review, validation and follow up on approved mining and coal seam gas projects, and any other projects that may be

brought under the ambit of the water trigger, which would enable a robust assessment of the effectiveness of conditions of approval and ongoing management approaches as well as validation of the accuracy of impact predictions. EIANZ understands that the WA EPA is bringing in an EIA follow-up program at present which may provide a model. Such an approach would need to be combined with more widespread state of the environment monitoring in relation to water resources given the wide range of other potential impacts on water resources.

On the scope and timing of this review

While EIANZ understands that the timing for this review was agreed when the water trigger was introduced, EIANZ feels that there are several issues with the terms of current review.

Firstly, the costs and benefits of the IESC should be considered through an evidence based empirical study, rather than ad hoc submissions from members of the public, some of whom will have vested interests. Such a study should use monitoring data from projects that have been through an IESC assessment to determine whether the assessment has led to more accurate predictions of impacts and better management of impacts.

It would be appropriate to review the role and function of the IESC once sufficient data is available from projects that have been reviewed by the IESC to allow a proper validation and follow-up study to be undertaken. The earliest that this might be possible is around five years after implementation of projects that have been subject to review by the IESC. Such a review would provide number of benefits in terms of both understanding the effectiveness of the IESC review process, and also more broadly in terms of determining effective ways to manage and mitigate impacts on water resources.

Relatedly, the issues paper asks for “any evidence regarding changes in environmental outcomes as a result of the legislation”. EIANZ suggests that a formal study in this regard should be initiated, rather than relying on ad hoc submissions from members of the public (it is not clear from the issues paper whether the review is to conduct such a study). However, such a study may not yield useful information at this time as EIANZ understands that many of the projects that have been assessed under the water trigger have not yet been implemented, or are in the early years of production. Nevertheless, as noted above, EIANZ recommends that a framework be established for formal collation and review of monitoring data collected by proponents of coal and CSG extraction activities as a means to track whether actual impacts on water resources remain within the acceptable limits defined in conditions of approval

The issues paper asks for “Information that can substantiate costs and other burdens on those affected by the water trigger”. EIANZ suggests that if the review is not already collecting this information from individual proponents, that it should do so directly, rather than call for submissions on a voluntary basis. It should also attempt to verify this information, perhaps in discussion with consultants who regularly carry out water resource assessments as proponents may seek to over-emphasise costs.

In closing, EIANZ thanks the Australian Government for the opportunity to provide comments on this critical aspect of environmental regulation. EIANZ would be pleased to be involved in further consultation or commentary regarding this matter. Please contact [REDACTED], [REDACTED]

[REDACTED] EIANZ's Impact Assessment Special Interest Section [REDACTED]
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Yours sincerely

[REDACTED]

President

[REDACTED]

Chair, Impact Assessment SIS

