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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION
AMENDMENT (INDEPENDENT EXPERT SCIENTIFIC COMMITTEE
ON COAL SEAM GAS AND LARGE COAL MINING DEVELOPMENT)
BILL 2012**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Sustainability, Environment, Water,
Population and Communities, the Honourable Tony Burke, MP)

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

OUTLINE

This Bill amends the *Environment Protection and Biodiversity Conservation Act 1999* (the **EPBC Act**) to establish an Independent Expert Scientific Committee (the **Committee**) on Coal Seam Gas and Large Coal Mining Development.

The Bill creates a new Division under Part 19 of the EPBC Act to establish the Committee as an independent statutory committee with responsibility to:

- advise on research priorities;
- advise on bioregional assessments in areas of high potential impact from coal seam gas and/or large coal mining developments, including providing advice to the Commonwealth Minister for the Environment on the priority areas in which these assessments should be undertaken;
- advise on research and bioregional assessments commissioned by the Commonwealth Minister for the Environment following consideration of the Committee's advice;
- publish information on options for improving the consistency and comparability of research in this area including in relation to the development of leading practice standards in relation to the protection of water resources from the impacts of coal seam gas and large coal mining developments;
- provide the Environment Minister and the appropriate Minister in declared state and territory governments with expert scientific advice relating to coal seam gas and large coal mining development proposals that may have a significant impact on water resources; and
- provide advice outside this scope in certain circumstances.

The Bill amends Part 9 of the EPBC Act to provide that Environment Minister will be required to seek the Committee's advice, and to take account of that advice under certain specified circumstances.

The Bill amends section 506 of the EPBC Act to add the Committee to the list of committees the Division applies to—which has the effect of protecting committee members' independence.

The Bill also amends section 528 of the EPBC Act by adding a number of definitions relevant to the establishment and functions of the Committee.

FINANCIAL IMPACT STATEMENT

This Bill will have no financial impact.

REGULATORY IMPACT STATEMENT

This Bill will have no regulatory impacts.

NOTES ON CLAUSES

Clause 1: Short Title

1. This clause provides that the short title by which the Act may be cited is the *Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam gas and Large Coal Mining Development) Act 2012* (the Act).

Clause 2: Commencement

2. Commencement of the relevant Schedules of the Act is provided for in the table at clause 2.
3. Item 1 of the table provides that the commencement date for sections 1 to 3 and anything else in the Act not covered by the table is the day the Act receives Royal Assent.
4. Item 2 of the table provides that Schedule 1, which relates to establishment of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development, and the requirement for the Minister for the Environment to seek and take account of the Committee's advice in specified circumstances, will commence the earlier of a day fixed by proclamation or 1 July 2012.

Clause 3: Schedule(s)

5. This clause provides that each Act specified in a Schedule to the Act is amended or repealed as set out in the Schedule and other items in the Schedule have effect according to its terms.

Schedule 1 – Amendment of the Environment Protection and Biodiversity Conservation Act 1999

Item 1: After subsection 130(4)

6. In situations where the Minister has requested advice from the Independent Expert Scientific Committee, this item ‘stops the clock’ on the prescribed time in which the Minister is required to make a decision on approval until the Minister has received the Committee’s advice. The aim of this provision is to ensure that the Committee has adequate time to consider proposed actions and to prepare relevant and useful advice.
7. This provision should be read in conjunction with section @505D (1) which provides that the Committee must provide its scientific advice within 2 months of a request by the Environment Minister or by an appropriate Minister of a state or territory that is a signatory to the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development.

Item 2: After section 131AA

8. This item inserts a new subsection 131AB, which provides that before making a decision on whether or not to approve the taking of an action, the Environment Minister must obtain advice from the Committee if the proposed action involves coal seam gas development or large coal mining development; is likely to have a significant impact on water resources and may have an adverse impact on a matter of national environmental significance as identified in Part 3 of the Act.

Item 3: After paragraph 136(2)(f)

9. This item inserts a new subsection 136(2)(f)(a) to make it clear that when deciding whether or not to approve an action, the Minister must take into account all relevant advice provided by the Independent Expert Scientific Committee in response to the Minister’s request.
10. This subsection is not intended to limit the Committee’s capacity to otherwise provide scientific advice on a broad range of issues associated with the potential impacts on water resources of a proposed action that involves coal seam gas or large coal mining development. For the purposes of the Minister’s decision on approval, relevant advice is considered to be any part of the Committee’s advice that relates to matters protected by the controlling provisions.

Item 4: After Division 2A of Part 19

11. This item inserts a new **Division 2B Establishment and functions of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development**

@505C Establishment

12. New Section 505C(1)-(6) provides that the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development is established and sets out some detailed arrangements relating to the Committee. The Committee is to consist of at least five (5) but no more than eight (8) part-time members including the Chair, who are to be appointed in writing by the Environment Minister (subsection 505C(1) and 505C(2)). The Minister must appoint one of the members as Chair (subsection 505C(4)).
13. Subsection 505(5) provides that each member of the Committee, except the Chair, is to be appointed on the basis that they possess scientific qualifications that the Minister considers relevant to the performance of the Committee's functions, including but not limited to ecology, geology, hydrology, hydro-geology, natural resource management and health. Membership is not intended to be representational of any particular body, group or community. While the Chair may also have scientific qualifications, this is not considered to be a mandatory requirement. The intention is that the person who is appointed to the position of Chair possesses the full range of skills and experience that are necessary to chair a committee that has the functions identified.
14. Division 3 of Part 19 of the Act sets out a range of matters that will also apply to the establishment and operation of the Committee, including terms and conditions of appointment of members (including duration), remuneration and termination. This ensures that the Committee will operate in a way that is consistent with the procedures in place for other statutory committees under the Act. Among other things, these arrangements constrain the grounds on which committee members may be removed by the Environment Minister, thereby protecting the Committee's independence.

@505D Functions of the Committee

15. This new section sets out the functions of the Independent Expert Scientific Committee.
16. Subsection 505D(1)(a) and (b) provides that within two months of a request from either the Environment Minister or an appropriate Minister of a declared state or territory, the Committee will provide scientific advice in relation to proposed coal seam gas or large coal mining developments that are likely to have a significant impact on water resources.
17. The Committee's role is advisory only and it has no responsibility for issuing approvals for projects or recommending whether a project should or should not be approved. It is intended that the Committee's advice is sought by relevant government decision makers and taken into account as part of their decision making process. Third parties will not be able to seek advice from the Committee.

18. Subsection 505D(1)(c) provides that the Committee will in response to a request from the Environment Minister, provide advice to the Minister about priority areas in which bioregional assessments should be undertaken; how those bioregional assessments should be conducted; and the conduct of bioregional assessments that have been commissioned by the Minister.
19. Bioregional assessments are defined as the scientific analysis of the ecology, hydrology and geology of the area for the purpose of assessing the potential direct and indirect impacts of coal seam gas development or large coal mining development on water resources in the area.
20. Subsection 505D(1)(d) provides that the Committee will in response to a request from the Environment Minister, provide advice to the Minister about research priorities that will improve scientific understanding of the impacts of coal seam gas and/or coal mining developments on water resources. The Committee's role also includes providing advice to the Minister on progress with and the outcomes of relevant research projects commissioned by the Minister.
21. Subsection 505D(e) provides that the Committee can provide the Environment Minister with advice on options for improving research outcomes in relation to coal seam gas and large coal mining developments, for example data collection models and standards.
22. Subsection 505D(1)(f) provides that one of the Committee's functions is to provide scientific input to support the development of leading practice standards in relation to the protection of water resources from the impacts of coal seam gas and large coal mining developments.
23. Subsection 505D(1)(g) provides that the Committee's functions also include the collection, analysis, interpretation, publication and dissemination of scientific information about coal seam gas and coal mining developments, particularly in relation to potential impacts on water resources.
24. To improve community confidence and ensure future decision makers have access to the latest scientific information, it is intended that all the Committee's scientific advice will be made publicly available. This includes: scientific advice provided in response to a request from the Environment Minister or an appropriate Minister of a declared state or territory in relation to proposed coal seam gas or large coal mining developments that are likely to have a significant impact on water resources; bioregional assessments; research projects and any other advice produced as a result of the Committee's functions.
25. Subsection 505D(1)(h)-(i) provide that the Committee's functions may also include any other functions prescribed by the regulations and anything that is incidental to, or conducive to the conduct of their functions as outlined in subsection 505D(1)(a)-(g).

26. Subsection 505D(2)(a) provides that the Committee's functions also include providing scientific advice to the Environment Minister on request by the Minister in relation to a matter protected by Part 3 of the Act.
27. Subsection 505D(2)(b) provides that where the Environment Minister supports a request by the appropriate Minister of a declared state or territory; the Committee's functions also include providing scientific advice on other matters (provided the Committee has sufficient scientific expertise to do so).

@505E Declared states and territories

28. This new section allows the Minister to declare by legislative instrument a state or self-governing territory to be a declared state or territory. The only states and territories that are eligible to be a declared state or territory are signatory parties to the National Partnership Agreement on Coal Seam Gas Mining and Large Coal Mine Development between the Commonwealth and one or more states or self-governing territories that commenced on 14 February 2012.

Item 5: At the end of section 506

29. This item provides that Division 3 of Part 19 of the Act, which sets out arrangements in relation to members and procedures of committees, will apply to the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development. This ensures that the Committee will operate in a way that is consistent with the procedures in place for other statutory committees under the Act such as the Threatened Species Scientific Committee.

Item 6: Section 528

30. This item inserts a definition into section 528 of the Act to clarify that a reference to a 'bioregional assessment' means in relation to an area, the scientific analysis of the ecology, hydrology and geology of the area for the purpose of assessing the potential direct and indirect impacts of coal seam gas development or large coal mining development on water resources in the area.

Item 7: Section 528

31. This item inserts a definition into section 528 of the Act to clarify that a reference to 'coal seam gas development' means any activity involving coal seam gas extraction that has, or is likely to have, a significant impact on water resources; in its own right; or when considered with other developments, whether past, present or reasonably foreseeable developments.

Item 8: Section 528

32. This item inserts a definition into section 528 of the Act to clarify that a declared state or territory means a state or self-governing territory that is declared by the Minister under section @505E.

Item 9: Section 528

- 33.** This item inserts a definition into section 528 of the Act to clarify that a reference to the ‘Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development’ means the Committee established by section @505C.

Item 10: Section 528

34. This item inserts a definition into section 528 of the Act to clarify that a reference to ‘large coal mining development’ means any coal mining activity that has, or is likely to have, a significant impact on water resources; in its own right; or when considered with other developments, whether past, present or reasonably foreseeable developments.

Item 11: Section 528

35. This item inserts a definition into section 528 of the Act to clarify that a reference to ‘water resources’ has the same meaning as in the *Water Act 2007*.

Item 12: Statement of Compatibility with Human Rights

37. This Bill does not engage any of the applicable rights or freedoms. This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.