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Revised ANEDO submission on the *Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011*

The Australian Network of Environment Defender's Offices (**ANEDO**) welcomes the opportunity to make a submission to this Inquiry. We appreciate the extension of time in which to make this submission.

As a network of nine community legal centres in each State and Territory specialising in public interest environmental law and policy, ANEDO's interest in the legislation is the public interest in laws that support a safe and healthy environment. ANEDO has contributed extensively to the legislative and regulatory reform processes relating to the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**the EPBC Act**)¹.

¹ ANEDO Submissions include: Further comments on the EPBC Act Review Interim Report – 28 August 2009; ANEDO submission to the 10 year review of the *Environment Protection and Biodiversity Conservation Act 1999* – interim report – August 2009; ANEDO submission to the 10 year review of the *Environment Protection and Biodiversity Conservation Act 1999* – January 2009; *ANEDO submission to the Inquiry into the operation of the Environment Protection and Biodiversity Conservation Act 1999 – September 2008 : EPBC Act: Recommendations for Reform*, 5 March 2008; *Submission on the Use of environmental offsets under the EPBC Act 1999 - Discussion Paper*, 3 December 2007; *Submission on the Environment and Heritage Legislation Amendment Bill (No. 1) 2006* - 27 October 2006; *Possible new matters of National Environmental Significance under the EPBC Act 1999*, May 2005. Available at: <http://www.edo.org.au/edonsw/site/policy/>

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We note that the *Environment Protection and Biodiversity Conservation Amendment (Protecting Australia's Water Resources) Bill 2011 (EPBC (Water Resources) Bill)* seeks to introduce a new trigger in Part 3 of the EPBC Act. This would require mining operations that have, will have or are likely to have a significant impact on the quality, structural integrity or hydraulic balance of a water resource to be assessed and approved by the Commonwealth prior to the operations commencing. Mining operations are defined broadly. Water resources include rivers, lakes and aquifers, above and below ground, as well as their recharge zones.

Subject to the comments below ANEDO supports the amendments introduced by this Bill.

Urgent need for EPBC water trigger

ANEDO has previously recommended that a new trigger be included in Part 3 of the Act for extraction of surface and ground water resources which is likely to have a significant impact on aquatic or groundwater-dependent ecosystems². In light of this recommendation we support the measures introduced by the current Bill, however we recommend the trigger not be restricted to mining operations. A preferred approach would be that the criteria for assessing impact be based on any action that interferes with rivers, aquifers and recharge zones caused by any major works (such as dams over a certain size and including mining and gas exploration and production activities); and/or the extraction or diversion of volumes of surface or groundwater.

That said ANEDO recognises that mining and gas operations pose significant risks to Australia's water resources, especially the Great Artesian Basin, and these risks need to be effectively managed and regulated. These risks include drilling of wells through aquifers, removal of water and pressure from aquifers, depletion of aquifers and possible contamination. Commonwealth regulatory reform is necessary because of the inadequate and inconsistent State regulatory frameworks to manage the impacts – direct and cumulative – of these activities.

By way of non-exhaustive example we have identified two inadequacies in Queensland's regulatory framework for water management in the mining/gas sector to illustrate the need for enhanced Commonwealth oversight of water resources:

- Petroleum tenure holders (tenure granted under the *Petroleum and Gas (Production and Safety) Act 2004 (Qld) (P&G Act)*) are allowed to take an unlimited amount of water for their authorised activities: s. 185(3) P&G Act.
- Impacts of mining activities on water resources are generally not taken into account when preparing the water resource plans (and subsequent resource operations plans) under the *Water Act 2000 (Qld)*. The purpose of these plans is to ensure the fair and equitable allocation of water resources between all stakeholders, including provision of water for environmental flows.

State water management frameworks in other States are inconsistent, inadequate and in various stages of development. For example, in NSW, the new State Significant Development regime improves on the former Part 3A process;³ but (despite new requirements for aquifer interference licences) the environmental impact assessment of mining projects regarding water quality, quantity and sustainability remain inadequate; and certain water works approvals are not required.⁴

² See ANEDO submission to the 10 year review of the *Environment Protection and Biodiversity Conservation Act 1999* – January 2009, p27 Available <http://www.edo.org.au/policy/090219epbc.pdf>

³ Part 4, Division 4.1 of the *Environmental Planning and Assessment Act 1979* (NSW)

⁴ In accordance with s 89J of the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011* (NSW), the following authorisations are not required (among others): (g) a water use approval under section 89, a water management work approval under section 90 or an activity approval (other than an aquifer interference approval) under section 91 of the *Water Management Act 2000*.

Further, in South Australia, the *Roxby Downs (Indenture Ratification) (Amendment of Indenture) Amendment Bill 2011* (which was passed late last year by both houses of the South Australian parliament) enables the extraction of 42 million litres of water from the Great Artesian Basin per year (schedule 1, clause 13(8A)). The Bill allows for the Water Minister to restrict the abstraction of water if the continued abstraction may be detrimental to the water resource or there is a reasonable possibility of a complete or partial failure of the water supply (schedule 1, clause 13(8)). However, this notice may be disputed by the proponent (BHPB) and referred to arbitration. This abstraction of water is despite a likely impact on an MNES (the mound springs) (for which there are conditions under the EPBC Act approval and the obvious general impact on the GAB).

Similarities with the Hon. Mr Windsor's Bill

ANEDO recognises the similarities with *Environment Protection and Biodiversity Amendment (Mining, Petroleum and Water Resources) Bill 2011*, introduced by the Hon. Tony Windsor in September 2011. We agree with the concerns raised by Senator Waters in relation to Hon. Mr Windsor's Bill delegating final approval/refusal powers to the State governments. We strongly oppose any delegation of the Commonwealth's power to independently assess the likely impacts of development on matters of national environmental significance⁵.

Conclusion

ANEDO has consistently supported an enhanced Commonwealth role in water management, particularly in the Murray Darling Basin and in the Great Artesian Basin. The Commonwealth government has signalled its clear intent to become more involved in this area. Protecting Australia's water resources is a vital, cross-jurisdictional issue that requires an increased role for the Commonwealth in the assessment and approval of activities that are likely to have a significant impact on our water resources. This amendment Bill, subject to the recommendation above, is the necessary first step.

Further information

For further information on this submission, please contact Scott Sellwood, Solicitor EDO Qld,

Yours sincerely,

The Australian Network of Environment Defenders Offices

⁵ Our opposition to any delegation of final approval/refusal powers is reinforced by our previous submissions relating to the inadequacies and inconsistencies in the assessment regimes under the bilateral agreements, see *ANEDO submission to the 10 year review of the Environment Protection and Biodiversity Conservation Act 1999 – interim report – August 2009* Available http://www.edo.org.au/policy/090810epbc_interim_report.pdf