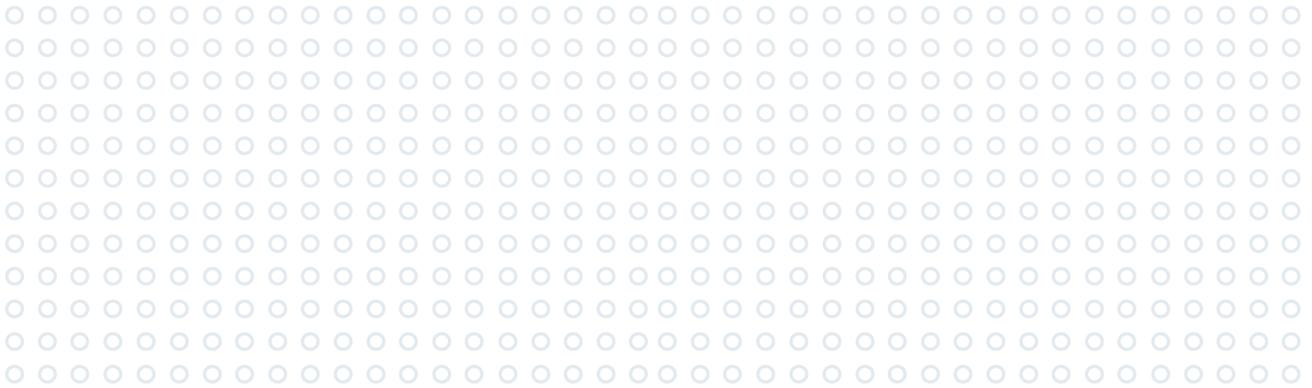


Business
Council of
Australia



Submission to the Department of
Sustainability, Environment, Water,
Population and Communities: Draft
significant impact guidelines: Coal
seam gas and large coal mining
developments – impacts on water
resources

JULY 2013

The Business Council of Australia (BCA) brings together the chief executives of more than 100 of Australia's leading companies, whose vision is for Australia to be the best place in the world in which to live, learn, work and do business.

About this submission

The BCA is making this submission to the Department of Sustainability, Environment, Water, Population and Communities in relation to the draft significant impact guidelines: Coal seam gas and large coal mining development – impacts on water resources.

On 19 June 2013 the amendment to the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) passed Parliament to make water resources a matter of national environmental significance, in relation to coal seam gas (CSG) and large coal mining developments.

The amendment means CSG and coal mining developments require federal government assessment and approval for matters to do with water resources, in addition to the existing state government processes.

This was done in the absence of a Regulatory Impact Statement to assess the costs and benefits of the proposal (including any identified environmental benefit), without genuine stakeholder consultation, with little, to no, regard for the unnecessary duplication of existing state responsibilities regarding water resources and the uncertainty created for affected projects.

The BCA is concerned that this approach risks setting a precedent for regulatory-making that could see future regulations also subvert due process.

The BCA's membership consists of both users and producers of gas – a valuable commodity, not only fundamental to their operations, but to the energy security and wealth of the Australian people. Any unfounded regulations that risk undermining the supply of gas is deeply concerning.

It is therefore important that the guideline development process does not continue this record of poor process and thorough consultation and constructive engagement with stakeholders occurs.

Summary of key points

The BCA's key concerns with the guidelines are as follows (more detail on each is outlined later in this submission):

- the retrospective application of the 'water trigger' to projects that have already been approved
- that the current 'catch all' nature of the guidelines will likely result in all actions being referred creating a process that will add significant burden, delays and cost to a proponents operations for no commensurate environmental benefit
- the need for better criteria including thresholds and magnitude of change which recognise natural variability and more detail on water quality criteria to provide clarity on the likelihood of significant impacts
- the lack of recognition of state authorities existing work with respect to regional groundwater models, conditions of approval, and data already obtained in respect of currently approved projects.

Key recommendations

The BCA recommends:

- that the guidelines make it clear that it is not intended that existing projects that have already been assessed, or approved, be reassessed
- a simple overall matrix and summary should be included in the guidelines to clearly state the trigger points for a referral and also assessment of the likelihood of a significant impact
- that the guidelines provide greater clarity around the nature and extent of information that is expected to be covered regarding cumulative impacts, given a full assessment of potential cumulative impacts is not possible at the referral stage
- that the guidelines (as far as practicable) acknowledge that a project that secures state approval will also satisfy a number of federal requirements in the guidelines such as water quality, hydrology and cumulative impacts
- issues with respect to the “value of a water resource” in terms of its “education, recreation and spiritual services” are outside the purview of matter of national environmental significance (MNES) and should not be included in the guidelines
- that given the relatively low impact involved in exploration, the guidelines be amended to more clearly recognise the difference between exploration activities and development activities
- the guidelines should make it clear that the intention is for the Independent Expert Scientific Committee (IESC) to be consulted only once during the assessment process and not at the referral phase
- that the department appoint a dedicated senior referral liaison officer(s) to provide a single consistent contact point to guide project proponents through the process, particularly as the process is establishing itself.

Key points

Retrospectivity

The BCA is significantly concerned about the retrospective application of the ‘water trigger’ on existing assessed and approved CSG extraction activity.

The EPBC Amendment Act 2013 (No 60) transitional provisions make it clear that previous approvals for developments already assessed are not meant to be affected by the new ‘water trigger’ amendments¹.

However, the definition of CSG development in the EPBC Act that now appears is:

“an activity involving coal seam gas extraction.... in its own right; or, when considered with other developments, whether past, present, or reasonably foreseeable developments”...

Which means existing projects, where there is already CSG extraction occurring and which have been deemed controlled actions (including in relation to matters pertaining to surface water, ground water and aquifer interaction), will have to be reassessed.

Notwithstanding the definition of coal seam developments in the EPBC Act, it has not been the intent of the new provision to reassess developments. This position was reinforced at the public forums held in respect of the new MNES where departmental officials made clear to BCA members in attendance that where a project has approval by the EPBC Act, no retrospectivity is to apply.

The BCA therefore recommends that the guidelines make it clear that it is not intended that existing projects that have already been assessed, or approved, be reassessed.

1. See item 20 and 22 of the Amendment Act.

The effect of not clarifying this would be to, in effect, eliminate the Minister's discretion, as he or she would almost always have to decide the referred action was "controlled" because previous CSG extractions were found to be controlled actions.

Guidelines too broad

While it is noted that the guidelines state that the 'significant impact criteria' is not intended to be exhaustive or definitive, unless further clarity is provided it is difficult to see how to avoid all extractive activities being required to be referred.

The current definitions relating to significant impact outlined in the guidelines would appear to capture all actions, regardless of their scale or potential impacts in terms of prior, or, future activity.

This will lead to a huge number of referrals, and will also presumably lead to a large number of controlled actions.

Without more clarity being provided by the guidelines, the onus will be on proponents to take a risk adverse approach which would likely see the department inundated with referrals for actions that were in fact not intended to be captured by the amendments.

If it is however, the intention of the guidelines to have everything referred it would seem almost impossible for the department to be in a position to be able to effectively cope with the influx of referrals without leading to extensive and costly delays in the process.

Need for criteria

At present the guidelines do not provide a succinct clear set of trigger criteria, or a logical process to undertake the necessary technical assessments. In order to address this and the issue of everything being referred, the guidelines should include specific scale, or, materiality criteria and, or, thresholds and provide clarity regarding the actions which do not have significant impacts.

For example, this could include impacts on water quality and quantity criteria as outlined below:

	Surface Water	Ground Water
Water Quantity threshold or criteria	This would include some descriptors for the materiality of the potential impact in terms of: 1. the degree and nature of the impact itself; and/or 2. the value / importance of the water resource	This would include some descriptors for the materiality of the potential impact in terms of: 1. the degree and nature of the impact itself; and/or 2. the value / importance of the water resource
Water Quality threshold or criteria	This would include some descriptors for the materiality of the potential impact in terms of: 1. the degree and nature of the impact itself; and/or 2. the value / importance of the water resource	This would include some descriptors for the materiality of the potential impact in terms of: 1. the degree and nature of the impact itself; and/or 2. the value / importance of the water resource

Note: Water Quantity threshold or criteria: This could include reference to the National Water Inventory allocations and the QLD UWIR such that these mechanisms are used as the basis of assessing a likely significant impact.
Water Quality threshold or criteria: This could include reference to Australian water quality guidelines however this does not talk to the uncertainty of seasonal water flows that lead to water quality peaks and troughs.

Further clarity and criteria is needed regarding the current definition of 'substantial change' as all actions, including neighbouring users of water resources, could also risk 'reducing the current or future utility of the water resource'. This includes changes caused by users other than those in the CSG or coal mining industry.

The guideline should make clear that such anthropogenic and other natural variations (e.g. due to surrounding soil type, rainfall etc.) are not relevant to determining the likelihood of a “significant impact” being caused by a particular action.

Greater clarity regarding exploration actives

The BCA does not accept that exploration activities involve a significant impact to the new MNES given the limited nature of extraction involved in exploration, and the fact that exploration is often required to assess the nature of relevant water resources, and therefore determine if a referral is necessary.

The BCA therefore recommends that given the relatively low impact involved in exploration, the guidelines be amended to more clearly recognise the difference between exploration activities and development activities. The guidelines could, for example, effectively deal with this issue by identifying that a certain amount of production testing (e.g. up to 13 months) required for exploration is not likely to involve a significant impact.

Cumulative Impacts

The current definitions of ‘CSG development’ and ‘large coal mining development’ effectively make the proponent responsible for impacts outside their control such as those relating to ‘past, present or reasonably foreseeable developments’.

The current provisions of the guidelines relating to cumulative impacts exacerbate this issue and creates further uncertainty as exploration and other activities which are outside of what would ordinarily be considered CSG and coal mining could be captured.

In the circumstances listed, data may be only partially available, or even unavailable, therefore it would not seem realistic for proponents to be able to undertake cumulative impact modelling, particularly at the referral stage. The guidelines should therefore make clear the expectations when data is not available.

To overcome these issues the BCA recommends the guidelines be amended to clarify that a full assessment of cumulative impacts is not required at the referral stage.

Also, the guidelines seek project proponents to assess the impact of their actions even after the action has ceased. It is not clear how this could be reasonably enforced and the guidelines should seek to provide further clarity on these matters.

Recognition of state requirements

The guidelines provide little recognition of state authorities existing work with respect to regional groundwater models, conditions of approval, and data already obtained in respect of currently approved projects. Until now, state regulations have been principally responsible for managing water impacts. It would be desirable for the guidelines to (as far as practicable) acknowledge that a project that secures state approval satisfies a number of requirements in the guidelines such as water quality, hydrology and cumulative impacts.

The guidelines should make clear that proponents are able to rely on data relating to previously approved projects (e.g. obtained through assessment required under management plans prepared under conditions of approval relating to those projects) in providing contextual information, and assessing the likelihood of a significant impact.

Independent Expert Scientific Committee (IESC) consulted once

The guidelines should seek to make it clear that the intention is for the Independent Expert Scientific Committee (IESC) to be consulted only once during the assessment process. It would not be feasible, or efficient practice, for the IESC to be consulted more than once, and it is at the assessment stage of the process where it is expected the detailed analysis by the IESC is most appropriate. To seek to have a full IESC assessment at the referral phase for every action would

become a seemingly unwieldy task for the IESC to manage, particularly for actions that are deemed not to be “controlled actions”.

The BCA is concerned if project actions were to be referred to the IESC at the both the referral and assessment stage it would lead to undue delays to the process. Rather, the BCA recommends that the advice to the Minister at the referral stage should be made by the department. This is important to ensure projects are not referred to the IESC on two or more occasions, each time potentially adding months to the approvals process, particularly considering that the EPBC Act does not currently prescribe timeframes within which such iterative advice is to be provided.

Appoint a dedicated visible senior referral liaisons officer(s)

To facilitate and assist project proponents in determining whether an action needs to be referred, or not, the department should look to appoint a dedicated senior referral liaisons officer(s). This is particularly important given there is much uncertainty surrounding the new requirements and would assist both the department and project proponents in efficiently stepping through the new process.

The benefit of appointing a dedicated senior referral officer is to ensure continuity in the process, with dedicated staff providing a central contact point and the ability to ensure consistent advice is being provided across all projects.

Without a central contact point to guide project proponents, uncertainty regarding the new process and the adoption of a risk adverse approach would see proponents referring everything. This may put at risk the ability of the Minister (or their delegate) to be able to meet the specified 20 day decision timeframe.

The liaisons officer(s) could also assist in guiding the level of detail expected at the referral stage. This would assist in avoiding the risk of the department becoming inundated by detailed referrals that may not be intended to be captured, or where they, ensure the level of detailed information provided by proponents, at this early stage, is appropriate.

In turn, this would benefit the proponent involved by minimising any unnecessary regulatory burden and would help ensure the new process can avoid unnecessary delays.

Variability of water resources

The guidelines should recognise the variability of water resources, for example due to seasonal fluxes in surface waters associated with the wet season. Water sources are generally more dynamic than other systems regulated under the EPBC Act – they deplete naturally as well due to human causes (mostly agricultural) and are restored naturally on a continuous basis. The criteria for the impact’s duration is should be more clearly defined.

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