APPEA Comments on the Productivity Commission Draft Report

Non-financial Barriers to Mineral and Energy Resource Exploration

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Water Trigger as New Matter of National Environmental Significance (NES)

On 19 June 2013 the Senate passed the Environment Protection and Biodiversity Amendment Bill 2013 [Provisions] (the Bill) despite there being no demonstrated clear policy failure that warrants the introduction of 'water resources' as a matter of National Environmental Significance (NES) for Coal and Coal Seam Gas projects. APPEA remains opposed to the change but will be working with the Government to minimise unintended consequences and provide clarity as to its operation.

'Water resources' are now a matter of NES under the EPBC Act for large coal mines and coal seam gas projects and as such require an additional Commonwealth environmental approval.

The Bill contained a number of provisions that seriously negatively impact the assessment process for coal seam gas operations, as well as affect the structure, intent and objectives of the EPBC Act. This includes the duplication of existing State and Territory environmental legislation and the introduction of significant inconsistencies with the objectives of the EPBC Act and reform processes.

The EPBC Act water trigger utilises the definition of coal seam gas development activity used by the existing Independent Expert Scientific Committee gateway. 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 (including any impacts of associated salt production and/or salinity). This is a broad definition that is likely to extend to petroleum exploration activities, which involve small amounts of coal seam gas extraction. While APPEA acknowledges that it is likely that the intent of the legislation is to not cover small exploration activities, the inclusion of exploration activities in the scope may result in situations where exploration is covered and cannot proceed. This is despite the fact that it is the act of exploration that informs the assessment of a water resource. This paradox is particularly concerning in remote areas where little or no information already exists. Ideally, the Bill should have expressly excluded exploration activities from the definition of coal seam gas development.

The Commission's Draft Report highlights the evidence presented, via submissions and from previous Government reviews and reports, that Australia's oil and gas industry continues to suffer from a duplicative and inefficient regulatory systems and approvals processes. Much inefficiency exists in the overlaps between federal and state government regimes and inefficiency within Federal Government departments and federal agencies. The EPBC water trigger creates an additional unnecessary layer of approval that significantly increases the complexity and uncertainty on industry and adds a preventable burden on the resources of the Federal Government. By explicitly exempting the new matter of NES from agreed and established bilateral processes, the Government has acted contrary to good policy making and regulatory reform.

The amendments to the EPBC Act impact both industry and Government by expending effort and resources in unnecessary and duplicative referrals and processes that will lead to delays in projects for no environmental benefit.

Examples of water regulation in the oil and gas industry

- The Australian natural gas industry works within a robust regulatory framework for environmental approvals and water management. All State and Territory environmental approvals require detailed assessment of the impacts of an activity on water resources and for water use. These existing assessment processes require detailed scientific, social and economic analysis of both surface and groundwater at both a local and regional scale to ensure potential impacts are understood, mitigated and managed.
- In addition to the existing environmental approval processes, a number of policies and regulations further address specific issues in an approval. This includes aquifer interference policies, groundwater monitoring requirements,

water resource plans, resource operations planning and others. For example, in Queensland, the relevant legislative framework concerning the management of groundwater production, its storage and disposal is provided in 12 different pieces of State legislation, policy and water resource plan documents.

- In NSW, there are distinct water specific requirements which apply in addition to the State Government's environmental assessment processes for petroleum developments. These requirements are for water works approvals, water use approvals and water access licenses. The NSW *Water Management Act 2000* sets a limit on the amount of water that can be taken from any surface or groundwater source under water access licences. These licences cannot be granted unless the Minister is satisfied that "adequate arrangements are in force to ensure that no more than minimal harm will be done to any water source as a consequence of water being taken from the water source under the licence" under the Water Management Act.
- Consideration of the impacts of an operation on a water resource is deeply imbedded into the existing environmental approval process. The additional impost of consideration of a 'water resource' as potentially a matter of National Environmental Significance does not provide any additional environmental benefit in an already robust regime.

APPEA's submission to the Senate hearing on the water trigger amendment can be found here: https://senate.aph.gov.au/submissions/comittees/viewdocument.aspx?id=df211021-34f2-4b9d-871a-27eab72a0efd

APPEA welcomes the Commissions endorsement of the COAG principles of best practice regulation with respect to the reach of any action of government regulation. APPEA is of the view that the Commonwealth marine environment trigger is a catch all and covers species and ecosystems already captured under other means. APPEA strongly supports the review and revision of the triggers under the EPBC Act to better target matters of national environmental significance.

Transition to National Offshore Petroleum Safety & Environmental Management Authority

The industry continues to support the objective of achieving sound regulatory oversight of industry environmental practices, however we note that the management of the transition to National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) becoming the regulator of environmental management of the offshore industry has posed significant and costly challenges for the industry.

Attachment 1 contains a letter exchanged between APPEA and the then Minister for Resources and Energy regarding issues relating to the establishment of NOPSEMA. APPEA feels that this material strongly supports the points raised in the public hearing relating to ways of better handling the transition to new regulatory regimes, agencies and/or policy frameworks.

APPEA discussed the utilisation of 'significant impact' or 'materiality thresholds' as a means of achieving streamlining of approvals being assessed with the Commissioners at the public hearings. The attached letter gives context to this concept. For example, with respect to the application of the Environmental Regulations (under the OPGGSA 2006), narrowing the definition to 'activities which may have a significant impact on the environment' will mean that low risk activities not undertaken pursuant to a petroleum instrument are not caught by the regime and can be progressed without an EP. This would not mean that such activities are unregulated as the operator must generally comply with requirements of the OPGGS Act and other relevant legislation. APPEA considers that such threshold concept could also be applied to other regulatory processes.

In APPEA's Cutting Green tape Report which was submitted in the first phase of the inquiry, numerous examples are cited of where additional regulation, (including the regulation of the same

activity under separate pieces of legislation) has not improved the achievement of environmental objectives or delivered greater environmental outcomes. APPEA considers that significant improvements in efficiency, and therefore cost reduction, can be achieved if governments at all levels work together to improve the overall regulatory process.

Queensland Exploration Tenure Review and Streamlining

APPEA would like to draw to the Commissions attention to the recently completed review of Exploration Tenure which was undertaken in Queensland. Attachment 2 provides a summary prepared by APPEA for its members on the Standard Environmental Approvals Framework for oil and gas (including CSG) exploration onshore in that state. The main elements are also described below.

Standard Environmental Approvals - Queensland as a Reform and Streamlining Case Study of Good Practice

Following the introduction of the changes, it is now possible for a permit holder to obtain an Environmental Authority with Standard Conditions within 30 Business Days for the following tenure types:

- Authority to Prospect (Exploration Permit) – 65 Conditions
- Petroleum Survey Licences (pipelines) – 35 Conditions
- Petroleum Pipeline Licences (for pipelines up to 150km and existing pipelines being extended by 150km) – 65 Conditions.

In early July 2013, the government has issued the first conversion application for an exploration company within 9 Business Days. The department is now looking to move to issuing approvals online for these activities which will represent a further enhancement to the approval process.

APPEA and its members are working with the Queensland Government to expand the work done on Exploration Approvals to develop a similar process for Production Activities.

EPBC Act - Strategic vs. Individual assessments

Strategic assessments are regional scale assessments and unlike project-by-project assessments, consider the wider environment and the broader set of actions in that environment. For example, a Strategic Assessment Report on the proposed Browse LNG precinct was prepared by the Western Australian Government through a joint process between the State and the Commonwealth.

The Strategic Assessment report for the proposed LNG precinct describes the proposal, examines the likely environmental and social effects and the proposed environmental management procedures associated with the proposed development.

Under Section 146 of the EPBC Act, the Minister may agree to undertake a strategic assessment on the impacts of actions under a policy, plan or program. Section 146 also provides for a public comment period for the draft terms of reference for a report on the impacts to which the agreement relates.

Strategic assessments address regional-wide development pressures, high growth areas with a large number of projects requiring assessment and approval, multiple stakeholders and cumulative

impacts on matter of national environmental significance protected by the EPBC Act. From a project proponent's perspective, it may be difficult to assess "cumulative" impacts of unrelated projects. The strategic assessment process must be undertaken carefully, with clear objectives, goals, scheduling and terms of references. Previous strategic assessments have led to additional regulatory costs for some operators. For example, the WA Northern Development Taskforce and the Commonwealth Strategic Environmental Assessment of the Kimberley commenced after companies had, in good faith, already undertaken detailed site selection, agreed guidelines and scoping for the Environment Assessment and had spent significant amounts of time and millions of dollars on studies.

APPEA notes that strategic assessments may not only provide information on a region, but can also be used to endorse a particular policy, plan or program, and then approve the types of activities that can take place in accordance with it. This means individual activities that are done according to that policy, plan or program will not need to get federal approval under national environment law. This is one of the avenues available to the Government in considering streamlining options for environmental approvals for exploration activities. An overriding concern with the strategic assessment process is the long time periods that may elapse between the commencement of the assessment and its conclusion. This may affect project schedules and investment. There may be a need to establish some time guidelines for major milestones within the assessment process to deal with this issue.

Class Approvals

The Commonwealth Marine Reserve management plans have now passed through the Senate. The plans manage what activities are allowed to occur in the reserves and came into effect from 1 July 2013 in the Southeast, and from 1 July 2014 for the rest of Australia (Southwest, Northwest, North, East and Coral Sea).

APPEA will be continuing to work with SEWPC and RET on the development of "Mining Class Approvals" for activities that do not require an EPBC Referral. This work is focused on ensuring that all activities that do not require EPBC Act referral should be allowed under class approvals. In APPEA's view, this means not just those activities deemed to be in a 'low impact' category. It should also include those activities that are strictly regulated through NOPSEMA.

Buffer Zones

APPEA continues to have ongoing concerns in relation to how exploration activities carried out in proximity to marine reserves or world heritage areas are being treated by regulatory agencies. For example, APPEA is aware of recent cases where attempts have been made to apply arbitrary buffer zones to exploration activities that reach beyond the boundary of a marine reserve. This may become a more wide spread practice.

The industry does not support buffer zones in the management of conservation estates. The spatial extent of any reserve, park or heritage area must be designed to provide adequate protection of the conservation values contained in them without having to extend beyond the physical border established. Management procedures should only extend to activities that are within the reserve estate. In the Commonwealth marine reserves, buffer zones are already established by instituting different categories of zoning, from strict marine parks to multiple use-areas. Arbitrarily applying additional restrictions in areas 'around' reserves unnecessarily increases sovereign risk and compliance costs to industry.

In addition, in the tenure allocation process, companies bid on exploration permits based on the defined spatial boundaries provided to them. It is unacceptable to apply buffer zones at a later date that lock explorers out of part of their permit. This is particularly evident when considering that a company may be required to pay a cash bid for that acreage.

Section 2: Comments on Specific Recommendations of the Draft Report

RECOMMENDATION	APPEA Comment
DRAFT RECOMMENDATION 3.1 Governments should ensure that their authorities responsible for exploration licensing: • prepare and publish information on the government's exploration licensing objectives and the criteria by which applications for exploration licences will be assessed • publish the outcome of exploration licence allocation assessments, including the name of the successful bidder and the reasons why their bid was successful.	Agreed
DRAFT RECOMMENDATION 3.2 Where possible, governments should not allocate exploration licences for tenements that would be too small or too irregular a shape for an efficient mine or production wells to be established. The release of exploration tenements should be deferred until tenements of appropriate size and shape can be issued.	Agreed
DRAFT RECOMMENDATION 3.3 If an Act requires the Minister to notify a person of a decision regarding an exploration licence, the Act should require that the notice include the reasons for the decision.	Agreed
DRAFT RECOMMENDATION 3.4 Where not already implemented, governments should ensure that at a minimum their lead agencies responsible for exploration coordinate exploration licensing and related approvals (such as environment and heritage approvals). This should include the provision of guidance on the range of approvals that may be required, and on how to navigate the approvals processes.	Agreed
DRAFT RECOMMENDATION 3.5 Governments should ensure that their regulators publish target timeframes for approval processes, including exploration licensing and related approvals (for example environmental and heritage approvals). The lead agency for exploration should publish whole-of-government performance reports against these timeframes on their website.	Agreed

DRAFT RECOMMENDATION 4.1 Drawing on the guiding principles of the Multiple Land Use Framework endorsed by the Standing Council on Energy and Resources, Governments should, when deciding to declare a new national park or conservation reserve in recognition of its environmental and heritage value, use evidence-based analyses of the economic and social costs and benefits of alternative or shared land use, including exploration. Governments should, where they allow for consideration of exploration activity, assess applications by explorers to access a national park or conservation reserve according to the risk and the potential impact of the specific proposed activity on the environmental and heritage values and on other users of that park or reserve.	Agreed Agreed
DRAFT RECOMMENDATION 4.2 State and territory governments should ensure that land holders are informed that reasonable legal costs incurred by them in negotiating a land access agreement are compensable by explorers.	Agreed
DRAFT RECOMMENDATION 4.3 Governments should ensure that the development of coal seam gas exploration regulation is evidence-based and is appropriate to the level of risk. The regulation should draw on the guiding principles of the Multiple Land Use Framework endorsed by the Standing Council on Energy and Resources to weigh the economic, social and environmental costs and benefits for those directly affected as well as for the whole community, and should evolve in step with the evidence.	Agreed
DRAFT RECOMMENDATION 6.1 The Commonwealth should accredit the National Offshore Petroleum Safety and Environmental Management Authority to undertake environmental assessments and approvals under the Environment Protection and Biodiversity Conservation Act for petroleum activities in Commonwealth waters.	APPEA agrees with this recommendation and requests that the Commission note the comments made elsewhere in this document regarding the suggestions for handling the transition to a new regime.
DRAFT RECOMMENDATION 6.2 The Commonwealth should improve the efficiency of environmental assessment and approval processes under the Environment Protection and Biodiversity Conservation Act by strengthening bilateral arrangements with the states and territories for assessments and establishing bilateral agreements for the accreditation of approval processes where the state and territory processes meet appropriate standards. The necessary steps to implement this reform should be properly scoped, identified and reviewed by jurisdictions and a timetable for implementation should be agreed.	APPEA agrees with this recommendation. APPEA draws to the Commissions attention to comments made earlier in this document regarding the 2013 Amendments to the EPBC Act (with the Water Trigger) which effectively removed the ability to put in place bilateral agreements on this.

DRAFT RECOMMENDATION 6.3 State and territory governments should reconsider the option of conferring their existing petroleum-related regulatory powers in state and territory waters seaward of the low tide mark, including islands within those waters, to the National Offshore Petroleum Safety and Environmental Management Authority.	Agreed. This is strongly supported by APPEA and is in line with the original intent of the proposal for the establishment of a single national offshore regulatory regime (Recommendations of the Montara Commission of Inquiry).
DRAFT RECOMMENDATION 6.4 Governments should ensure that their environment-related regulatory requirements relating to exploration: • are the minimum necessary to meet their policy objectives • proportionate to the impacts and risks associated with the nature, scale and location of the proposed exploration activity.	Agreed. This is strongly endorsed by the industry.
DRAFT RECOMMENDATION 6.5 Governments should ensure that their environment-related regulation of exploration activities should be focused towards performance-based environmental outcome measures and away from prescriptive conditions, in order to better manage risk and achieve environmentally sound outcomes.	Agreed.
DRAFT RECOMMENDATION 6.6 Governments should ensure that when there is scientific uncertainty surrounding the environmental impacts of exploration activities, regulatory settings should evolve with the best-available science (adaptive management) and decisions on environmental approvals should be evidence-based.	Agreed. This is the foundation of sensible and appropriate policy. As highlighted in APPEA's initial submission, there are fundamental differences between the State and the Commonwealth environmental assessment and approval processes which have resulted in inconsistent assessment processes. In its operation, the EPBC Act provides the Commonwealth Government with a traditional decision making approach that allows the Minister to make a Yes / No decision on a proposal. By contrast, the States and Territories have the responsibility to manage, assess, understand and mitigate the on-going impacts of any activity on a wide scale. To do this the States have primarily adopted adaptive management processes. By allowing the conditions and management of an activity to change as new information, technologies, techniques arise, a range of acceptable outcomes are generated and refined over time, rather than through the delivery of a simple yes or no approval.
DRAFT RECOMMENDATION 6.7 Governments should clearly set out in a single location on the internet environment-related guidance on the range of approvals that may be required.	Agreed

DRAFT RECOMMENDATION 6.8 Governments should ensure that their authorities responsible for assessing environmental plans and environmental impact statements (and equivalent documents) should make archived industry data publicly available on the internet.	Agreed, however clarification regarding what types of archived environmental information would be made available is needed. APPEA strongly supports the need for government agencies to provide better access to environmental data they hold. Utilisation of previously acquired environmental survey and study material would have significant benefit to industry. Areas of concern for industry are around the inclusion of any proprietary information. This could be managed through the operation of an exclusivity period as currently applies to petroleum geophysical and seismic data.
DRAFT RECOMMENDATION 7.1 Governments should monitor the outcomes of the cost recovery funding approach to the provision of pre-competitive geoscience information being adopted by the New South Wales Government, with a view to its possible broader application in those jurisdictions.	Not supported. Pre-competitive geoscience information- this is a public good and should be funded as such. The value of pre-competitive geoscience has been well documented (Policy Transition Group, Review of GA by DOFA, Energy White Paper) and the various rationales for and against have been discussed in the Commission's draft report. It is in the national interest for the government to maintain access to high-quality expertise in the areas of technical and commercial evaluation and risk assessment of offshore petroleum prospects in order to ensure resource management decisions are made on a fully informed basis. Continuing government investment in geological surveys and pre-competitive geoscience sends a clear message that investment in oil and gas exploration and development industry is welcome (Energy White Paper, 2012).