

**PREMIER'S BRIEFING NOTE**

*Policy*

Tracking Folder No. TF/13/4436

Document No. Doc/13/41001

To: **THE PREMIER**  
Date: **8 April 2013**  
Subject: **COAG Reform Council (CRC) First Assessment Report on Coal Seam Gas (CSG) and Large Coal Mining Development and Announced Legislative Changes by the Australian Government.**

Approved / ~~Not Approved~~ / ~~Noted~~

Premier .....

Date **12/9/2013**

Date Action Required by: ...../...../.....

Requested by: .....  
(if appropriate)

**• RECOMMENDATION**

*IESC: Independent Expert Scientific Committee*

It is recommended that you:

- note the information in this brief
- sign the letter of response to the Honourable John Brumby, Chairman, COAG Reform Council (**Attachment 1**).

**• KEY ISSUES**

- Mr Brumby wrote to you on 28 February 2013 (**Attachment 2**) presenting the CRC finalised first report on the CSG and Large Coal Mining Development National Partnership Agreement (the NPA). The CRC report will be publicly released in April 2013.
- The NPA provides project payments to Queensland totalling \$18.5 million over three years subject to the achievement of milestones. The CRC report confirms that Queensland has met its first milestone and subject to the Minister's approval would be eligible for a \$3.70 million progress payment.
- On 12 March 2013, the Honourable Tony Burke MP, Minister for Sustainability, Environment, Water, Population and Communities and Minister for the Arts announced his intention to introduce amendments to the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC)* that will require federal assessment and approval of coal seam gas and large coal mining developments which have a significant impact on a water resource.
- This action is inconsistent with the NPA as the Prime Minister, the Honourable Julia Gillard MP, has previously indicated (in a letter to the former Queensland Premier dated 21 November 2011 – **Attachment 3**) that the Australian Government would only introduce a new trigger of this nature 'if agreement is not reached to progress the national partnership arrangements'.
- The changes will mean that that any coal seam gas or large coal mining development that was within scope of the NPA will now be captured by the EPBC Act as a controlled action. The major implications of this are:
  - o the Australian Government will have the ability to extend the decision timeframe, possibly resulting in project delays
  - o the power of the IESC will be extended as under the NPA the IESC advice only had to be considered by the regulator, whereas under the EPBC the Australian Government may reflect the advice in the form of conditions on the project.
- It is unclear whether this proposed change will have an impact on the third milestone payment (\$7.4 million) in the NPA or the NPA in general, as the primary purpose of that agreement was to ensure state assessments included consideration of IESC advice. If all such projects require EPBC approval then there is already a requirement to do that.

- On 14 March the Honourable Tony Burke MP wrote to you (**Attachment 4 – TF/13/5622**) to formally advise of the proposed EPBC amendments. A reply letter has been prepared, and submitted separately, that strongly argues the amendments increase the regulatory burden faced by proponents of major projects (**Attachment 5**).

• **CONSULTATION**

- Department of Environment and Heritage Protection.

• **BACKGROUND**

- On 14 February 2012, the former Premier, Ms Anna Bligh, signed the NPA which agrees to the establishment of an Independent Expert Scientific Committee (IESC).
- The IESC is to support regulatory decisions by commissioning scientific research and providing advice to decision-makers (within regulatory approval processes and timeframes) related to project proposals that have been referred to it by signatory jurisdictions.



Jon Grayson  
Director-General

**Comments (Premier or DG)**

*Premier - I have asked for a separate letter to the PM about Min Burke's amendment to the EPBC Act.*

For reply please quote: ERP/BZ – TF/13/4436 – DOC/13/48251

The Honourable John Brumby  
Chairman  
COAG Reform Council  
GPO Box 7015  
SYDNEY NSW 2001

Dear Mr Brumby

Thank you for your letter of 28 February 2013 presenting the COAG Reform Council's report, *National Partnership on Coal Seam Gas and Large Coal Mining Development: First Assessment Report*.

I notice with interest that only Queensland and Victoria have fully completed their milestones. In light of the Australian Government's recent proposal to amend the *Environment Protection and Biodiversity Conservation Act* to essentially capture the referral activities of the National Partnership Agreement, it will need to be determined whether further milestone reports are required.

Yours sincerely

**CAMPBELL NEWMAN**

# COAG Reform Council

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28 February 2013

The Hon Campbell Newman MP  
Premier  
PO Box 15185  
CITY EAST QLD 4002

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Dear Premier

On behalf of the COAG Reform Council, I am pleased to present our report, *National Partnership on Coal Seam Gas and Large Coal Mining Development: First assessment report*, prepared in accordance with clause C19 of the *Intergovernmental Agreement on Federal Financial Relations*.

In our first of two reports on this National Partnership, we have assessed whether the Commonwealth and States have met pre-determined milestones. We found the Commonwealth partially completed its milestone, NSW did not complete its milestone, Victoria and Queensland completed their milestones and South Australia partially completed its milestone.

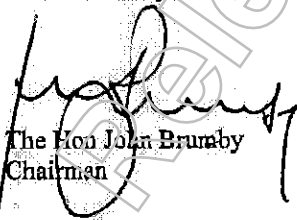
We found that although the Commonwealth and South Australia did not meet the milestones by 30 October 2012, there was little risk to them subsequently completing the milestones.

The NSW and Commonwealth Governments have not agreed on NSW's draft protocol. It remains unclear how NSW will decide which projects to refer to the Independent Expert Scientific Committee for advice outside of land it has identified as 'Strategic Agricultural Land'.

Building on the lessons learned from this National Partnership, the council has made a recommendation to COAG aimed at improving the design of reporting arrangements for future National Partnerships.

Consistent with the council's reporting responsibilities, the council will publicly release this report in April 2013.

Yours sincerely



The Hon John Brumby  
Chairman

Performance reporting and  
accountability for national reform



PRIME MINISTER  
PARLIAMENT HOUSE  
CANBERRA ACT 2600

The Hon Anna Bligh MP  
Premier of Queensland  
PO Box 15185  
CITY EAST QLD 4002

21 NOV 2011

~~Dear Premier~~  
Anna

I write seeking your cooperation to strengthen the regulation of coal seam gas (CSG) and large coal mining developments, where they have significant impacts on water resources, and to acknowledge the work already undertaken by your Government on this issue.

I believe there is a pressing need to address community concerns, particularly about the management of CSG and large coal mine impacts on water resources, now and in the future, and to fill critical gaps in scientific understanding, particularly in relation to impacts on water quality, structural integrity and hydraulic balance. Accessible, reliable information is necessary to ensure local communities are fully empowered and have confidence in licence and environmental approval processes by all governments.

I consider that there are meaningful steps that the State, Territory and Commonwealth governments can make together to meet these challenges. To this end, I propose a two-pronged cooperative approach to deliver a higher national standard of regulatory and licensing processes in circumstances where, either through accumulation, or significance, a proposed activity has potential for environmentally significant impact on water resources.

- First, the Commonwealth will establish an Independent Expert Scientific Committee.
- Second, the Commonwealth will make the independent Expert Scientific Committee's capabilities and advice available to State and Territory governments and will work with jurisdictions to drive best-practice, evidence-based assessments and approvals through a National Partnership Agreement.

#### Independent Expert Scientific Committee

The Commonwealth will aim to legislate in the 2012 Autumn Sittings a statutory advisory role for an Independent Expert Scientific Committee under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Committee, as an

independent statutory committee, will be supported by a dedicated, specialist Office within the Department of Sustainability, Environment, Water, Population and Communities with initial Commonwealth funding from the Minerals Resource Rent Tax of \$150 million over five years.

This will build scientific evidence and understanding of the impacts on water resources of relevant extractive industry activities to underpin bioregional assessments and improve the standards of regulation of these industries.

The legislation will ensure that the Independent Expert Scientific Committee's fundamental role will be to:

- commission and fund assessments for priority areas;
- advise on research priorities and commission and coordinate research to inform assessment and management of relevant extractive industry impacts, particularly CSG and major coal mining developments, including through engagement with relevant natural resource management/catchment management authorities; and
- provide scientific advice to federal and state ministers so that regulatory decisions take into account the best available scientific advice and to support development of relevant best-practice national standards.

The Independent Expert Scientific Committee would comprise leading members of a wide range of scientific disciplines including geology, hydro-geology, hydrology and ecology and would include participation from key scientific institutions.

The scientific evidence gathered and generated by the Independent Expert Scientific Committee will be central to the national partnership arrangement. It is expected the Committee will commission expert scientific studies and assessments by respected bodies including Geoscience Australia, CSIRO and university research institutions.

The Government will create an interim board of the Independent Expert Scientific Committee to ensure that assessment priorities are identified as soon as possible.

In addition, funding resources will be made directly available to allow local relevant natural resource management/catchment management authorities to participate fully in bioregional scale studies commissioned by the Committee and to integrate the results of those studies into their bioregional assessments.

#### National Partnership Agreement

I will be seeking your support at the first Council of Australian Governments (COAG) meeting in 2012 for a National Partnership Agreement (NPA), centred around the work of the Expert Scientific Committee, to lift the standard of extractive industry regulation across all jurisdictions, on a consistent basis.

I propose that the key elements of a NPA would include:

1. agreement that all Commonwealth, State and Territory relevant extractive industry assessments must take into account advice from the Independent Expert Scientific Committee (which must be made publicly available) relating to projects that involve significant potential impacts. The Committee will be able to take into account existing bioregional assessments, which will incorporate expert analysis of the spatial characteristics of a region, its ecology, geology and hydrology and related risks, or commission additional work.
  - a. the Commonwealth would seek the agreement of State and Territory governments to amend planning or relevant other legislation to give legal effect to this requirement in their jurisdictions;
2. agreement that all Commonwealth, State and Territory extractive industry approval decisions that involve significant potential impacts must take into account advice from the Independent Expert Scientific Committee:
  - a. the Commonwealth would seek the agreement of State and Territory governments to amend planning or relevant other legislation to give legal effect to this requirement in their jurisdictions;
3. agreement to a public review process of the operation of the arrangements set out in the National Partnership Agreement after a specified period.

The National Partnership Agreement will also provide a mechanism for the Independent Expert Scientific Committee to set research priorities and determine priority regions for bioregional assessments.

The final agreement should take effect immediately following agreement to the National Partnership Agreement. In this regard, and in recognition of the strongly held community views on these matters, I propose that all jurisdictions (including the Commonwealth) voluntarily impose these higher standards ahead of legislative arrangements being established.

To strengthen the national partnership, the Commonwealth will provide reward payments of up to \$50 million shared among the states, with larger payments to those states facing the greatest potential impacts on their water resources from extractive industry development upon demonstrated achievement of 1(a) and 2(a) above within an agreed period after the COAG finalisation of the National Partnership Agreement. State reward payments will be linked to performance and improving scientific understanding and capability.

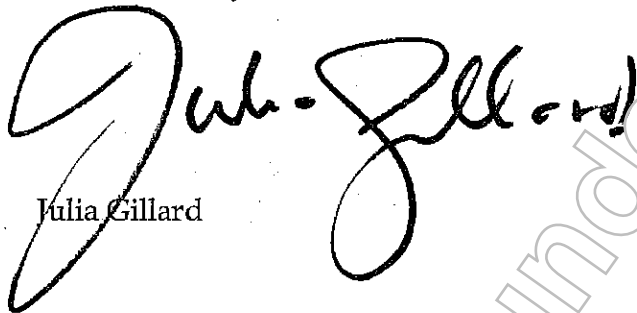
The National Partnership Agreement initiatives will be subject to normal COAG regulatory impact assessment processes and the COAG Reform Council will have oversight of the Agreement.

If agreement is not reached to progress the National Partnership arrangements outlined above at the first meeting of COAG in 2012, the Commonwealth will introduce into the Parliament legislation under the EPBC Act to create an appropriate trigger for the Commonwealth to assess cumulative impacts of extractive activity on water resources, following a regulatory impact assessment and consultation with relevant stakeholders.

I have asked my Department to bring forward a proposal to progress the National Partnership Agreement to the COAG Senior Officials Meeting on 2 December 2011.

This issue is of great concern to the Australian public and presents challenges that I consider require our immediate attention. I look forward to discussing these matters with you further. I have written in similar terms to other First Ministers.

Yours sincerely

A large, stylized handwritten signature in black ink, which appears to read 'Julia Gillard'. The signature is written in a cursive, flowing style with large loops.

Julia Gillard

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The Hon Tony Burke MP

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Minister for Sustainability, Environment, Water, Population and Communities

B13/367

The Hon Campbell Newman MP  
Premier  
PO Box 15185  
CITY EAST QUEENSLAND 4002

14 MAR 2013

Dear Premier

I am writing to inform you that the Australian Government intends to introduce an amendment to Australia's national environmental law, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), to provide greater environmental protection for water resources impacted by coal seam gas and large coal mining developments.

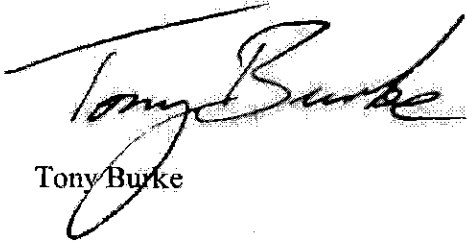
The proposed amendments will provide that coal seam gas and large coal mining proposals which are likely to significantly impact on a water resource must be assessed and subject to a decision on approval under the EPBC Act. The proposed amendments will also apply to existing proposals being assessed under the EPBC Act, unless there is a final approval decision in place for the project, or where final advice on the project has been provided by the *Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining* to the Commonwealth Environment Minister, or the relevant state or territory minister. Under the transitional arrangements, projects that are currently being assessed by the Australian Government will continue through the existing assessment process.

The Australian Government intends to implement the amendments in a collaborative manner which minimises duplication with State environmental assessment processes and to rely, to the extent possible, on existing State and proponent assessment information. I have asked my officials to provide the appropriate State officials with more details on this initiative and to ensure that duplication is minimised.

The Australian Government remains committed to the National Partnership Agreement and its objectives as a key mechanism for our governments to robustly manage the key environmental risks associated with coal seam gas and large coal mining developments on Australia's water resources and to enhance community confidence.

I have copied this letter to the Queensland Minister for Environment and Heritage Protection, the Hon Andrew Powell MP and the Queensland Minister for State Development, Infrastructure and Planning, the Hon Jeff Seeney MP. I look forward to continuing our joint work to improve the efficiency of environmental regulation, for the benefit of business and the broader community.

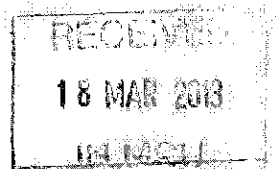
Yours sincerely



Handwritten signature of Tony Burke in black ink, featuring a stylized cursive script.

Tony Burke

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For reply please quote: *ERP/BZ – TF/13/5622 – DOC/13/47884*  
Your reference: *B13/367*

The Honourable Tony Burke MP  
Minister for Sustainability, Environment,  
Water, Population and Communities  
Parliament House  
CANBERRA ACT 2600

Dear Minister

Thank you for your letter of 14 March 2013 about your intention to amend the *Environment Protection and Biodiversity Conservation Act 1999* to increase duplication in the environmental assessment of coal seam gas (CSG) and large coal mining developments.

Given that the National Partnership Agreement (NPA) on CSG and Large Coal Mining was put in place to manage environmental risks to underground water, the Queensland Government's position is that this action is unnecessary and will not lead to better outcomes. It simply adds to the regulatory burden faced by proponents of major projects.

You will recall that, in August 2011, the Council of Australian Governments (COAG) agreed *on the need for major reform of environmental regulation across all levels of government to reduce regulatory burden and duplication for business and to deliver better environmental outcomes*. This position was again strongly endorsed at the April 2012 meeting.

Queensland has been actively meeting its commitments under the NPA and state government agencies have been working in good faith with industry and your department to develop efficient assessment processes for CSG, coal and other major projects. Through actions, such as this, and its own reform agenda, Queensland is making significant progress in delivering on the commitments made by COAG.

Unfortunately, the Australian Government appears to be taking the opposite approach and your recent actions are leading to industry confusion and yet more delays in assessment and approval processes.

The nation's economy does not need this and the nation's environment is no better protected.

Yours sincerely

**CAMPBELL NEWMAN**