



**Australian Government**

**Department of the Environment and Energy**

Finn Pratt AO PSM  
Secretary

Ref: EC17-001336

Mr Tom Hatton  
Chair, Independent Scientific Panel Inquiry  
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Dear Mr Hatton

**Independent Scientific Panel Inquiry into Hydraulic Fracture Stimulation in  
Western Australia 2017**

Thank you for your invitation to respond to the independent scientific panel inquiry into the effects on the environment of the process of hydraulic fracture stimulation.

The Department of the Environment and Energy administers the *Environment Protection and Biodiversity Conservation Act 1999* which provides for the protection and biodiversity conservation of nationally and internationally important flora, fauna and heritage places, collectively known as nationally protected matters.

While the Act does not have a specific provision to regulate shale and tight gas, any action that is likely to have a significant impact on a nationally protected matter will require consideration under the Act to determine if further assessment and approval is required before the action proceeds.

Please find attached the Department's submission responding to the terms of reference.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Finn Pratt'.

Finn Pratt

23 March 2018





## **SUBMISSION TO THE SCIENTIFIC INQUIRY INTO HYDRAULIC FRACTURE STIMULATION IN WESTERN AUSTRALIA**

In responding to this inquiry, the Department of the Environment and Energy (the Department) has primarily addressed the operation of the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act), and the scientific advice that the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC) provides to the Australian Government and relevant states.

### **The EPBC Act and division of responsibility between the Commonwealth, states and territories**

The EPBC Act is the Australian Government's central piece of environmental legislation. It provides a legal framework to protect and manage a broad range of matters of national environmental significance, such as nationally and internationally important flora, fauna, ecological communities and heritage places. Collectively these are referred to as nationally protected matters.

Under the EPBC Act, any action that has, will have, or is likely to have, a significant impact on a nationally protected matter must be referred to the Australian Government Minister for the Environment and Energy (the Environment Minister) for assessment before proceeding.

States and territories primarily have responsibility for environmental matters of state and local significance, such as air and water quality, noise, odour, visual and other general amenities and for mining regulations. If an action is not likely to significantly impact a nationally protected matter, the EPBC Act does not apply unless the action is conducted on Commonwealth land or Commonwealth heritage places overseas, or by Commonwealth agencies.

### **Hydraulic fracturing projects and the 'water trigger'**

In June 2013 the EPBC Act was amended, adding water resources from coal seam gas and large coal mining developments as an additional nationally protected matter under the Act. This amendment is known as the 'water trigger'. This means that if a coal seam gas action is likely to have a significant impact on water resources, the action must be referred for assessment before proceeding.

The water trigger does not cover all hydraulic fracturing actions; it only covers coal seam gas and not shale and tight gas actions. However, shale and tight gas actions must still be referred for assessment under the EPBC Act if the action is likely to have a significant impact on other nationally protected matters.

Where a development has been referred to the Environment Minister that relates to the water trigger, the Minister must seek the advice of the Independent Expert Scientific Committee on

Coal Seam Gas and Large Coal Mining Development (IESC)<sup>1</sup>. The IESC provides scientific advice on the impact that these developments may have on Australia's water resources.

The Environment Minister can also request scientific advice from the IESC in relation to potential impacts on nationally protected matters from shale and tight gas projects. This scientific advice can only be in relation to water resources to the extent that the nationally protected matters are dependent on water resources, for example a wetland of international importance declared under the Ramsar Convention on Wetlands.

Under the EPBC Act, the Environment Minister has the power to attach conditions to actions approved under the Act for the protection of a nationally protected matter. The Minister can use the IESC's advice to inform what conditions to attach to an approval. The introduction of the water trigger meant that conditions of approval were able to address protection and biodiversity conservation of water resources associated with coal seam gas actions, or any nationally protected matter dependent on the water resource.

The conditions of approval may include requirements for additional baseline data, additional monitoring of water levels and water quality, assessments of aquifer connectivity, improvements to modelling, peer review, limits to the type and extent of actions such as hydraulic fracturing, disposal of co-produced water and management of the final void at large coal mines.

States that were signatory to the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Developments must request and consider advice from the IESC for actions assessed under the water trigger. Western Australia was not a signatory to the Agreement and cannot request the advice of the IESC.

### **Strengthening evidence-based decision making**

The Australian Government has undertaken a number of initiatives to strengthen the uptake of science and evidence in decision making in relation to coal seam gas and large coal mining developments – not just for decisions under the EPBC Act, but also making this evidence and advice available to state and territory regulators.

The initiatives include the Australian Government providing:

- \$49.25 million to support signatory states to implement the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development. This included implementing the requirement to seek the IESC's advice on coal seam gas and large coal mining developments
- \$94 million to deliver the Bioregional Assessment Program<sup>2</sup> which analyses the impacts of coal seam gas and coal mining developments on water and the environment

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<sup>1</sup> <http://www.iesc.environment.gov.au/>

<sup>2</sup> <http://www.bioregionalassessments.gov.au/>

- \$30.4 million to extend the current program of bioregional assessments to assess the potential impacts of shale and tight gas projects on the environment and consider appropriate mitigation and management approaches
- \$19 million to commission research to better understand the impact of coal seam gas and large coal mining development on water resources.

### **Effectiveness of the water trigger**

The effectiveness of the water trigger legislation was reviewed in 2017 (Independent Review of the Water Trigger Legislation<sup>3</sup> (April 2017) (the Review)). The Review concluded that the water trigger is an appropriate public policy response to the potential risks associated with coal seam gas and large coal mining, and did not recommend any legislative changes. Furthermore, the Review found that the water trigger has strengthened the use of adaptive management in coal seam gas actions. The scope of the Review did not include examining whether the water trigger legislation be amended to include shale and tight gas. The Department has no plans to amend the scope of the water trigger.

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<sup>3</sup> <http://www.environment.gov.au/epbc/publications/independent-review-water-trigger-legislation>