

EXPLANATORY STATEMENT

Select Legislative Instrument No. 110, 2014

(Issued by the Authority of the Minister for the Environment)

Subject- *Environment Protection and Biodiversity Conservation Act 1999*
Environment Protection and Biodiversity Conservation Amendment
(Independent Expert Scientific Committee) Regulation 2014

The *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) provides a legal framework to protect and manage nationally and internationally important matters, such as flora, fauna, ecological communities and heritage places, defined in the EPBC Act as matters of national environmental significance.

The Governor-General may, under section 520 of the EPBC Act, make regulations prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The EPBC Act establishes the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (the Committee). The functions of the Committee include providing advice to the Environment Minister and to declared Ministers of states and territories in relation to proposed coal seam gas and large coal mining developments (section 505D).

Paragraph 505D(1)(h) of the EPBC Act allows the *Environment Protection and Biodiversity Conservation Regulations 2000* (the Principal Regulations) to prescribe other functions of the Committee.

The terms of reference for the Committee, set out in the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development, provide that the Committee will make its advice public. The terms of reference for the Committee do not set a timeframe for publication.

Part 15 of the *Environment Protection and Biodiversity Conservation Regulations 2000* (the EPBC Regulations) set out matters in relation to all Committees under the EPBC Act. The *Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee) Regulation 2014* amends the Principal Regulations to provide two additional functions for the Committee.

The additional functions of the Committee are:

- to provide scientific advice, requested under the EPBC Act, on proposed coal seam gas and large coal mining developments to the Environment Minister at the same time as it provides that advice to a Minister of a declared state or territory; and
- to publish scientific advice, requested under the EPBC Act, on proposed coal seam gas and large coal mining developments within 10 business days of providing it to the Environment Minister and/or a Minister of a declared state or territory.

The Regulation will ensure transparency in the assessment of environmental impacts on water resources from proposed coal seam gas and large coal mining developments and provide additional assurance on the Commonwealth's enduring oversight of the protection of water resources from proposed coal seam gas and large coal mining developments.

Regulation Impact Statement

The Regulation is technical in nature. A short form Regulatory Impact Statement was prepared on implementation matters for the one stop shop reform and associated minor amendments to the EPBC Act. The Office of Best Practice Regulation agreed that the regulatory costs of the amendments to implement the one stop shop reform, including the Regulation, are zero (Office of Best Practice Regulation proposal ID 15330).

Details of the Regulation

Formal consultation on the Regulation was not required as the Regulation is technical in nature and clarifies the original commitment in the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development to publish the Committee's advice. The Department of the Environment has consulted with relevant affected states.

The EPBC Act does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered on the Federal Register of Instruments.

Details of the regulation are set out in the [Attachment](#).

Authority: Section 520 of the *Environment Protection and Biodiversity Conservation Act 1999*

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee) Regulation 2014

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative instrument amends the *Environment Protection and Biodiversity Conservation Regulations 2000* to provide two additional functions for the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development in relation to providing scientific advice to the Environment Minister and publishing scientific advice in relation to proposed coal seam gas and large coal mining developments. The policy intent of these additional functions is to facilitate transparency and consistency in environmental approval decision-making.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Greg Hunt
Minister for the Environment

Details of the *Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee) Regulation 2014*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee) Regulation 2014* (the Regulation).

Section 2 – Commencement

This section provides that the regulation commences on the day after it is registered.

Section 3 – Authority

This section confirms that the regulation is made under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act).

Section 4 – Schedule

This section provides that the *Environment Protection and Biodiversity Conservation Regulations 2000* (the Principal Regulations) are amended as set out in the Schedule.

Schedule – Amendments

Item 1 – Before Division 15.1 of Part 15

This item inserts a new heading into Part 15 of the Principal Regulations to differentiate the new provisions from the existing Regulations.

Regulation 15.01A prescribes functions for the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (the Committee), in addition to those functions which are specified in Division 2B of Part 19 (Organisations) of the EPBC Act.

Providing certain advice to the Minister

Paragraph 505D(1)(b) of the EPBC Act provides that the Committee is to provide scientific advice in relation to coal seam gas or large coal mining developments that are likely to have a significant impact on water resources to an appropriate Minister of a declared state of territory within two months of receiving a request from that Minister.

Paragraph 505D(2)(b) of the EPBC Act provides that the Committee is to provide scientific advice to an appropriate Minister of a declared state of territory in relation to matters specified in the request from that Minister and with the written agreement of the Environment Minister.

Subregulation 15.01A(2) prescribes for the Committee to provide the scientific advice requested under paragraphs 505D(1)(b) or 505D(2)(b) to the Environment Minister at the same time as the Committee provides the advice to the Minister of a declared state or territory.

Publishing certain advice etc.

Paragraph 505D(1)(a) of the EPBC Act provides that the Committee is to provide scientific advice in relation to coal seam gas or large coal mining developments that are likely to have a significant impact on water resources to the Environment Minister within two months of receiving a request from the Minister.

As described above, paragraph 505D(1)(b) of the EPBC Act provides for the same timeframe for the Committee to provide advice to an appropriate Minister of a declared state or territory.

Subregulation 15.01A(3) prescribes for the Committee to publish the scientific advice it provides under paragraphs 505D(1)(a) or 505D(1)(b) on the internet within 10 business days of providing it to the Environment Minister or a Minister of a declared state or territory.

The subregulation provides that publication of the advice would include information identifying the particular development. This would not include commercially sensitive information but would allow any person to identify the advice to which the coal seam gas or large coal mining development relates.

The subregulation also provides that publication of the advice would include the date on which the advice was finalised by the Committee. For administrative reasons, this date may be earlier than the date on which the advice is provided to the Environment Minister or the Minister of a declared state or territory.

Subregulation 15.01A(4) clarifies that, in this regulation, a business day is a day in the Australian Capital Territory that is not a Saturday, Sunday or public holiday.

Item 2 – Part 20 (heading)

This item replaces the heading at Part 20 (Transitional) of the Principal Regulations so that the heading is Application and transitional provisions.

Item 3 – At the end of Part 20

This item provides that subregulations 15.01A(2) and (3) apply in relation to scientific advice provided by the Committee on or after the commencement of the Regulation, which is the day after it is registered on the Federal Register of Legislative Instruments.