



SUBMISSION:
Independent Review of the 'water trigger' legislation

By email: wtreview@environment.gov.au

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Dear Sir/Madam,

Overview

Community Over Mining is a Gippsland community action group advocating for good governance and mining reform to inform good planning for our future well-being and prosperity.

I live in the Latrobe Valley Gippsland Victoria and as a community advocate I have been campaigning on regulatory issues including matters of nationally environmental significance (MNES) that, I believe, have been neglectfully ignored by our state government and have led to a litany of damaging and costly incidents to the environment and Victorian economy. With Gippsland having an existing environmental legacy of aquifer depletion and land subsidence from decades of past and ongoing offshore oil and gas extraction and dewatering of open cut coal mines, this has been to the detriment of our right to potable water in the future and to the ongoing degradation of our waterways.

However, it is to the future that concerned Gippslanders look to the Commonwealth to provide appropriate oversight of MNES that may be impacted by State government policy decisions. Where State governments are involved as proponents or actively support projects such as mining, vested interests and transparent decision making becomes blurred. Therefore, the states are not in a position to deal objectively with the consideration of MNES and, in particular, the water trigger.

Federally, CSG has seen much comment Australia-wide with committees and inquiries in place to develop guidelines and frameworks to ensure development will be subject to rigorous scrutiny and leading practices regulated and enforced by the State.

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Is there a significant likelihood of a substantial negative environmental impact from coal seam gas and large coal mining development on water resources in the absence of the water trigger legislation?

Yes. The water trigger was introduced in response to community concerns about coal seam gas and coal mining and the effect that would have on our water supplies because each state has a different regulatory regime and framework to assess project development and to its impacts. As aquifers and water basins cross state boundaries it is problematic how the States and Territories have got the capacity to adequately manage matters of national environmental significance, including international obligations under multilateral environmental treaties which, for many, relies on access to and supply of water both surface and ground waters.

There is clear evidence in Victoria that the state's resource department have consistently and irresponsibly failed to regulate and enforce their own laws.^{1,2,3,4}

With an expanding onshore mining exploration industry, how our state processes can safely protect our water resources into the future is one of significant concern.

With so many proposed changes to Federal environmental law and outsourcing to the states through the Bilateral Agreement, the transparency and community comment in whether or not a mine goes ahead, or its conditions is foolishly lessened.

Is the scope and focus of the legislation appropriate to the problem being addressed?

The premise of the 'water trigger' legislation is to protect a water resource (origin, supply, quality and quantity) whether groundwater or surface flows from being impacted only by a coal seam gas development or a large coal mine. Consequently, the scoping was always limited in that other forms of gas extraction were excluded from the water trigger as was any other form of mining be it a small coal mine or mineral mining in a sensitive area.

As limiting as the existing assessment/referral process is with the Independent Expert Scientific Committee (IESC), the Committee's advice only needed to be considered and is not binding on the State Minister to approve or refuse

¹ http://assets.justice.vic.gov.au/justice/resources/ccae0110-ea30-4f89-85a2-2bfb4eb06bbf/repor_stateemergencyriskassessment2014emergencyrisksinvictoria.pdf

² <http://www.audit.vic.gov.au/publications/20150819-Unconventional-gas/20150819-Unconventional-gas.pdf>

³ http://www.audit.vic.gov.au/reports_and_publications/latest_reports/2012-13/20121024-compliance-dpi-dse.aspx

⁴ Yallourn Mine Batter Failure Inquiry

<http://www.parliament.vic.gov.au/papers/govpub/VPARL2006-10No156.pdf>

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an application. This advice did, however, inform State Planning Ministers on numerous projects that further consideration was required, needed attention for a project development to proceed.

How can the IESC achieve beneficial outcomes given tight and shale gas and other forms of unconventional coal developments and mineral ore mining are still not part of the referral system.

As major water resources cross state boundaries and all State acts and regulatory frameworks differ significantly, non-binding advice is condoning a lessening of environmental worth and its importance to the health of the economy.

Are there significant gaps in the scope or intent of the legislation?

As the water trigger was 'to strengthen the regulation of coal seam gas and large coal mining developments by ensuring that future decisions are informed by substantially improved science and independent expert advice; if that advice is ignored by State Ministers then it proves that federal oversight should remain with the Commonwealth's principle environmental law to ensure compliance of the EPBC Act is facilitated.

In your opinion has the water trigger legislation been effective in protecting water resources potentially and actually affected by relevant developments?

If the IESC gave independent expert advice and it was not considered and ignored in the approval of a project development then the legislation in its current format has not been effective in protecting water resources.

Identify any opportunities to improve the effectiveness of the regulation

The water trigger was introduced to provide an extra level of scrutiny on water resources due to conflicting and inadequate protective state policy. To remove the water trigger or finalise the bilateral agreement (noted the water trigger is excluded) between the States would put our water resources back under the same threat with even less Federal oversight. The water trigger is not duplication of a process and is justified.

All onshore gas should be included and consideration of mineral mining and any open cut coal mine. This is relevant for Victoria in regards to a 2015 decision to grant a retention licence for an open cut coal mine in an area subject to past federal and state compensatory payments due to falling aquifer levels ⁵ without due regard to existing groundwater issues and

⁵ Recommendation 8

<file:///C:/Users/tracey/Documents/subsidence/good%20sub%20docos/senate%20commiittee%20acknowledgde%20csiro%202004.htm>

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predicted impacts from ongoing offshore oil and gas extraction in Commonwealth waters.

To improve the effectiveness of the regulation is to retain the water trigger and oversight with the Commonwealth and strengthen the legislation to make advice legally binding on the Minister.

Until the States can show that their regulatory mechanisms and practices are strong enough to protect the environment rather than just streamline a process, it would be foolhardy of the Federal Environment Minister to implement a bilateral agreement to give States control on future assessments for large coal and CSG mining projects.

Are there improvements that could be made to the way in which advice is sought by the Australian Government from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC) that could increase the efficiency of processes required as part of the water trigger?

If the Commonwealth were serious about establishing an expert committee to protect the nation's significant water resources then the advice should have been binding on signatory states in review of all new mining developments. It is a flawed process to protect our water resources if advice is sought and ignored from the Committee by a State regulator that is actively promoting mining investment and is prepared to offset and mitigate impacts to accommodate new mining development rather than be proactive to prevent impacts. Monitoring is not a protector of the environments rather it is an indicator that the environment has already been impacted.

To analysis how often that advice was accepted or rejected by the states and how the Federal government facilitated that needs to be forthcoming. Bio-regional assessments should also be incorporated into decision-making involving the 'water trigger'

Were stakeholders appropriately involved in the implementation of the water trigger legislation?

Clearly Victoria wasn't as we are prospective for tight and shale gas which is not part of the referral system.

The EPBC Act should be strengthened by amending the water trigger to improve effectiveness with what is covered and incorporating the results of bioregional assessments in decision making with consideration to -

- The lack of a national standard in the approval process of agreed environmental outcomes.
- Poor existing regulatory assessments to strengthen major projects.

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- Lack of appropriate mechanisms for monitoring, compliance of leading practices and reporting.
- Lack of transparency to ensure the principles of The EPBC Act is upheld to prevent health, economic and environmental impacts.

Has the water trigger been beneficial in providing environmental outcomes, community confidence in the regulatory system of applying science to decision-making and management of environmental risk?

Yes and No.

The intent of the water trigger is on the right track but if it is not backed up with legislative weight it does not allay community concern in the Commonwealth's ability to manage our vulnerable water resources.

The Council of Australian Governments has prioritised the improvement of environmental assessment and approval processes across all jurisdictions to reduce regulatory burden. However, they have failed to ensure that the appropriate regulatory environmental legislation is in place first.

It has to be noted that, due to the nature of the risks and impacts associated with the resource industry, it should be imperative that the environmental regulatory process be robust. Yet, Australia is seeing too many accidents, spills, collapses, etc. related to mining extraction with significant impacts on communities and the environment. It is for this reason that urgent reform of Environmental Effect Statement, Environmental Impact Assessment and/or Regulatory Impact Statements be completed and implemented.

State-managed EIA processes will almost certainly give rise to inconsistencies and uncertainties if nationalising of environmental processes are not part of the approval process.

In 2011 the ENVIRONMENT AND NATURAL RESOURCES COMMITTEE (ENRC) submitted their inquiry report into the Environment Effects Statement Process in Victoria. Environmental Effect Reform would allow for triggers to be acknowledged (eg, flood zone, major river system and existing land subsidence) to prevent poor planning decisions on known environmental issues.

Legislation strengthening reforms, if done correctly, will be what will provide better protection for industry investment and community liveability for any given area exposed to mining expansion.

At present, the majority of exploration or mining projects are approved without any requirement for a credible EIA process, and consequently without a credible and thorough assessment of environmental impacts. Without transparent and public processes, there is no evidence that an appropriate assessment of environmental impacts occurs, and certainly no way to scrutinise what actually does happen.

Currently, successive Victorian governments have failed dismally in protecting the environment from mining accidents and impacts which has resulted in considerable cost burdens to the taxpayer, let alone the major

health impacts to surrounding communities. Mining progression, work plan variations, monitoring and compliance have not been based on clear legislative criteria and procedures.

The primary objective of government assessment with large coal mining or CSG projects is to identify and assess the risks of likely environmental impacts, based on scientific evidence, proportionate to the scale of the proposal.

The following is the 2012 response from the Victorian Government to the ENRC report and recommendations. **We are yet to see this reform completed.**

Victorian Government Response to the Report of the Environment and Natural Resources Committee on its Inquiry into the Environment Effects Statement Process in Victoria

The report of the Environment and Natural Resources Committee (ENRC) Inquiry into Victoria's Environment Effects Statement (EES) process has recommended comprehensive reform, noting that the need for reform is both widely recognised and overdue. The Inquiry determined that reform would establish much-needed legislative clarity and provide a more robust basis for protecting Victoria's environment.

In Victoria, mining is exempt from the protective legislation and principle objectives of the Planning and Environment Act 1987 so our only recourse is for the discretion of the Victorian Government Ministers to apply a deficient environmental standard process in any assessment for mining projects.

If regulatory processes are not followed in each state, how then can the Federal Government assure our communities that any bilateral agreement will have no significant negative impacts on regional biodiversity, which would be contrary to the objectives of the EPBC Act.

Has the water trigger delivered an overall benefit when regulatory costs are compared to the environmental and other benefits?

To compare an overall benefit you would need to have a monetary value on the environment to equate it to. Normal agricultural and tourism assets can only exist within the confines of a healthy environment for without a healthy environment you do not have a healthy economy. Similarly the full cost analysis for a mining development over its production life plus impacts is impossible to determine vs environmental offsets and long term impact caused by mitigation strategies especially when water resources are affected.