

29 January 2016

Water Trigger Review
GPO Box 787

Dear Review Secretariat,

NFF Submission – Water Trigger Review

The National Farmers' Federation (NFF) welcomes the opportunity to respond to the government's independent review of the Water Trigger legislation.

The NFF is the peak national body representing farmers and the broader agriculture sector. The NFF's membership comprises all of Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council.

In the NFF's view, suitable and comprehensive state and territory based regulations for large scale coal mining and coal seam gas developments that protect agricultural production from the impact of coal mining and coal seam gas are preferred. However, such arrangements are not in place. For example, the Shenhua mine approval decision demonstrates clearly how the current NSW Government's Strategic Regional Land Use Policy, introduced in 2013 to restore balance between agriculture and the extractive industries, has in the NFF's view, failed to provide adequate protection for agricultural production on the Liverpool Plains. In the NFF's view, this mine should never have been approved based on its proximity to prime agricultural land. Australia's agricultural land is a finite and valuable natural resource that deserves a more precautionary planning approach.

In the NFF's view, it is too early to tell whether the water trigger legislation has been effective in protecting the water resources on which agriculture relies from the impacts of coal mining and coal seam gas developments. The water trigger provisions have resulted in specific water-related conditions on developments – for example the condition set place on the Shenhua and Carmichael Coal mines. However, these conditions are not yet operational - so it is too early to establish whether the safeguards provided by the provisions are sufficient, and whether they will be effective.

There are possibilities for greater transparency around the operation of the water trigger provisions of the EPBC Act. The EPBC Act only requires the Commonwealth Minister to seek and receive the IESC's advice. There is no requirement for the Commonwealth minister to "take this into account" or to demonstrate how it has been taken into account. While the current Minister has been quite transparent in providing information about how the IESCs advice has been taken into

account for some approvals, this is not a requirement, and amendment to the Act would ensure that current practice is sustained over time.

The NFF recognises the delicate balance between the provision of independent scientific advice and the role of a regulator. There is an opportunity to ensure independent scientific review of the operation of relevant conditions of a development over time. This should be particularly the case where a condition is placed on an approval that responds to a concern raised by the IESC in the development approval process. For example, a condition that requires the preparation and implementation of a water management plan. The Minister should be required to seek the advice of the IESC prior to approving the plan, and also from time to time ensure the adequacy of the implementation of the plan.

Appropriate resourcing for a comprehensive research program, including the Bioregional Assessments Program, is required in order for the IESC to have access to the best available information, and a knowledge base that is continuing to improve. Additionally, The NFF seeks a commitment of resourcing for compliance activities. Such resourcing is fundamental to ensure the effectiveness of the operation of the legislative provisions subject to this review. NFF requests that this review specifically investigate the degree to which promised resourcing has matched actual commitments over time.

The NFF's views are supported by the findings and recommendations of the 2015 Independent Review of the National Partnership Agreement on coal seam gas and large coal mining development, In particular, the NFF supports:

- Recommendation 5: It is recommended that the Commonwealth in concert with the States give greater attention to the promulgation of Research Programme results with a view to enhancing uptake by regulators and more general community awareness of the existence of a scientific evidence base and its general implications for development and regulation of coal seam gas and large coal mining; and
- Recommendation 3 (part) IESC in consultation with Parties to review how its advice has been adopted in subsequent regulatory decisions to enable it to refine as necessary the framing of its advice in the context of the varying regulatory regimes of the Parties.

Should you seek further information regarding this submission, [REDACTED]

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Yours sincerely,

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SIMON TALBOT
Chief Executive