

29 January 2016

## **SUBMISSION ON THE INDEPENDENT REVIEW OF THE 'WATER TRIGGER' LEGISLATION**

### **Background on Yancoal**

Yancoal Australia Ltd (Yancoal) is one of Australia's largest and leading producers and exporters of coal, and plays a critical role in contributing to the export earnings and employment rates of Australia.

Yancoal is an Australian based coal producer and developer that operates open cut and underground coal mines in New South Wales, Queensland and Western Australia. Yancoal operations produce metallurgical and thermal coal products for export, primarily for steel and power industries in Asia. Yancoal also has access to a growing portfolio of intellectual property assets, including the proprietary Longwall Top Coal Caving (LTCC) technology, and has shareholdings in major infrastructure, including the Newcastle Coal Infrastructure Group (NCIG) coal loading facility in NSW and the Wiggins Island Coal Export Terminal in Queensland.

Yancoal has a long term vision for Australia and is well placed through the backing of its majority shareholder (Yanzhou Coal Mining Company Limited) to commit the financial investment needed to realize the potential of its local assets.

Yancoal provides the following comments on the 'Water Trigger' legislation:

### **1. General**

In summary, the *Environment Protection and Biodiversity Conservation Act 1999* (the Act) Water Trigger provisions:

- Undermines the Government's commitment to reduce regulatory burden, streamline environmental regulation and provide a "one-stop shop" for regulatory assessment and approval of coal mine developments.
- Creates inequities and inefficiencies in the regulation of impacts on water resources by not recognising the significant impacts of other industries and activities that interact or interfere with and or impact on water resources (such as non-coal mines, irrigated agriculture and the uncontrolled and or over allocation of water entitlements, among others).
- Duplicates State based regulation.
- Leads to assessment delays.
- Creates investment uncertainty and increased sovereign risk for the development of state-owned mineral resources.
- Does not recognise that coal mines are an equally legitimate and valued land use and water user and unfairly and inequitably biases the regulatory burden of water resource protection on that industry.

The definitions in the Act for "Large Coal Mine Development", "Significant Impact" and "Water Resources" are broad and far reaching which leads to inefficient regulation and increased regulatory burden by effectively

requiring consideration under the Water Trigger of practically every coal mine development and modification of existing coal mine developments.

The Federal Government is ill-equipped to assess and regulate impacts on the State's water resources. This leads to unnecessary delays in assessment timeframes and duplication of regulatory processes and controls across state and federal jurisdictions.

The prohibition in the Act for bilateral approval of impacts on water resources from coal mine and coal seam gas developments further creates unnecessary regulatory duplication and inefficiencies.

In Yancoal's opinion, State regulators are best placed to assess, approve and regulate impacts on the State's water resources and there is no justification for the continued imposition of the Water Trigger.

## **2. Appropriateness of the regulation including whether it is necessary and well targeted**

The regulation is inappropriate, unnecessary and poorly targeted.

Coal mine developments are assessed, approved and regulated under State legislation that requires the determining authority to consider (inter alia and in the context of impacts on water resources):

- the principles of ecological sustainable development;
- balancing environmental outcomes with social and economic outcomes (i.e. a triple bottom line consideration);
- landuse conflicts – e.g., coal mining and agricultural landuse conflicts;
- cumulative impacts; and
- availability of and access to water entitlements and allocations.

The Water Trigger provisions of the Act do not recognise that other industries can and do have equally significant impacts on water resources (such as irrigated agriculture). The existing provisions therefore bias the regulatory burden of managing water resource impacts unfairly and inequitably on coal mine (and coal seam gas) developments, which are equally valid and beneficial land and water users.

## **3. Effectiveness of the regulation in protecting water resources from the impacts of large coal mine projects, including the role of the Independent Expert Scientific Committee (IESC)**

It is the State regulatory regime that provides the mechanisms for coal mine (and other) developers to secure water licences to account for and or offset impacts to water resources. Hence regulation of the State's water resources is beyond the administrative jurisdiction of Federal regulators. Further, the Federal Government is ill-equipped to assess and regulate impacts on the State's water resources. This leads to unnecessary delays in assessment timeframes and duplication of regulatory processes and controls across state and federal jurisdictions.

A review of the advice provided by the IESC on various Large Coal Mine Developments highlights the typical academic make-up of the committee, with the committee typically advising that further monitoring, modelling, study and research is required. This demonstrates limited experience, knowledge or understanding of the requirements and application of state based legislation, assessment requirements and processes and the approval and licensing regime that coal mine developments are subject (and required) to adhere to. On this basis the IESC provides limited value in the process.

#### **4. Opportunities to improve the effectiveness of the regulation**

In the interests of regulatory efficiency the Water Trigger provisions of the Act should be repealed. Failing this the prohibition of bilateral approval of water resource impacts should be repealed to remove duplication between State and Federal regulatory approvals. This would reduce assessment and approval timeframes and remove duplicate and or contradictory controlling provisions prescribed in the respective State and Federal instruments of approval.

#### **5. Efficiency of the regulation in protecting water resources from the impacts of large coal mine projects**

The Water Trigger provisions of the Act provide no additional value in regulating protection of water resources from the impacts of large coal mine developments beyond that provided by in State legislation. Hence, State regulators are best placed to assess impacts and regulate approved activities.

Yours sincerely,



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Yancoal Australia Limited