AUSTRALIAN COAL ASSOCIATION

23 January 2013

Committee Secretary
Senate Standing Committee on Environment and Communications
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

Inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012*.

The Australian Coal Association (ACA) welcomes the opportunity to provide a submission to the Senate Standing Committee on Environment and Communications inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012*.

The ACA does not support the Bill. By removing the option for the Commonwealth to accredit State or Territory environmental approval processes, the Bill would reverse the current momentum towards greater streamlining of environmental approvals.

The ACA welcomed the commitment of the Council of Australian Governments to fast-track the development of approval bilateral agreements and we believe implementing these agreements should remain a high priority. By removing duplication in the approvals process, these agreements can deliver enormous benefit to industry and governments, including reducing project delays which can cost as much as half a million dollars a day for coal developments. The agreements can also address the current inconsistency and duplication in approval conditions and reduce the number of referrals under the *Environment Protection and Biodiversity Conservation Act 1999* which are straining Commonwealth resources.

Importantly, the streamlining of approvals processes can be achieved without compromising environmental protection outcomes. State agencies have considerable expertise and familiarity with local issues and are well-placed to deliver equivalent or better management of matters of national environmental significance in accordance with accredited processes. Further, the Commonwealth's oversight role continues where these bilateral agreements are in effect and the Minister would retain the power to immediately suspend an agreement in the event of a breach or imminent breach.

The need to reduce complexity and improve the efficiency of our national environment laws has never been greater. Escalating costs and delays are making Australian mining projects less internationally competitive and this is jeopardising a once-in-a-generation opportunity for Australia to capture the benefits of global demand for our resources.

The ACA would welcome the opportunity to discuss our submission with the Committee.

Yours sincerely

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AUSTRALIAN COAL ASSOCIATION

SUBMISSION TO SENATE STANDING COMMITTEE ON ENVIRONMENT AND COMMUNICATIONS

Inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012*

JANUARY 2013

About the Australian Coal Association

The Australian Coal Association (ACA) represents Australia's black coal industry. Its members account for over 95 per cent of Australia's coal exports, which added $48 billion to national income in 2011-12. Black coal is the most important export earner for NSW and Queensland, and Australia's second largest export industry.

The ACA's members also supply coal for domestic power generation and for the manufacture of iron, steel, alumina, manganese, mineral sands and cement. Currently, black coal fuels 51 per cent of electricity produced in Australia for public consumption, including 90 per cent of electricity in NSW and 77 per cent in Queensland.

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INTRODUCTION

The Australian coal industry is committed to preserving Australia's high environmental standards and protecting our natural environment. There are currently more than 120 coal mines operating across Australia under some of the world's most stringent environmental standards. The industry supports the preservation of these standards and indeed ACA Members have demonstrated their commitment to go above and beyond regulatory requirements when it comes to biodiversity conservation and ameliorating the environmental footprint of mining activities. Perhaps more than any other mining activity, coal developments are often located in relatively close proximity to communities and the industry understands that its social licence to operate is indelibly tied to its environmental performance.

In framing its submission to the Senate Standing Committee on Environment and Communications, the ACA emphasises that the industry is not seeking any diminution of environmental protection standards. Rather, we believe that greater use of approval bilateral agreements presents an opportunity to reduce duplication and improve administrative efficiency in the application of the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) in such a way that preserves or even improves environmental outcomes.

Further, by addressing increasingly costly project delays, these agreements could play an important role in ensuring Australia's resources sector remains competitive and that, as a nation, we can continue to capture the enormous economic benefits of strong global demand for our commodities.

Several ACA Members are also members of the Minerals Council of Australia (MCA). We support the MCA submission to the Standing Committee.

BUILDING AUSTRALIA'S PROSPERITY

Australia has been blessed with vast quantities of the energy and mineral resources that power economic growth and build nations. Over several decades, Australia has successfully turned this natural advantage into real wealth for the community and our mining industry has provided the foundation for a strong and resilient economy.

As Professor Quentin Grafton, the Executive Director and Chief Economist of the Bureau for Resources and Energy Economics (BREE), recently noted:

> *The mining boom has been unambiguously good for the Australian economy, allowing us to weather the storms of the GFC better than almost any other developed economy and allowing for real income growth of about 40 per cent over the past decade*[1].

Coal has played a major role in delivering this economic growth and prosperity. Coal is Australia's second-largest export earner, worth $47 billion in 2011-12, and also provides a reliable and affordable fuel for around 75 per cent of Australia's electricity generation. The industry directly employs over 50,000 people and is a major contributor to regional economies, particularly in NSW and Qld.

Despite recent market volatility, the global outlook for coal remains strong. According to the International Energy Agency (IEA), coal will come close to surpassing oil as the world's top energy source by 2017. The IEA's Medium-Term Coal Market report forecasts that by 2017, the world will use around 1.2 billion more tonnes of coal each year compared to today – equivalent to the current coal consumption of Russia and the United States combined[2]. Longer term, the IEA's

[1] Professor Q Grafton "Australia and the Millennium Mining Boom", Presentation to the Australian National Conference on Resources and Energy (ANCRE), September 2012; http://www.bree.gov.au/presentations/index.html
[2] International Energy Agency, "Coal's share of global energy mix to continue rising" http://www.iea.org/newsroomandevents/pressreleases/2012/december/name,34441,en.html

New Policies Scenario suggests that global [thermal] coal use will continue to grow by 0.8 per cent a year to 2035 and it will remain "the backbone of electricity generation"[3].

The benefits of this unprecedented global demand for coal for Australia are substantial. The IEA has estimated that Australia's future coal and gas export revenue alone could exceed $2 trillion to 2035[4]. Underpinning this is a potential investment pipeline of over $90 billion for coal projects[5].

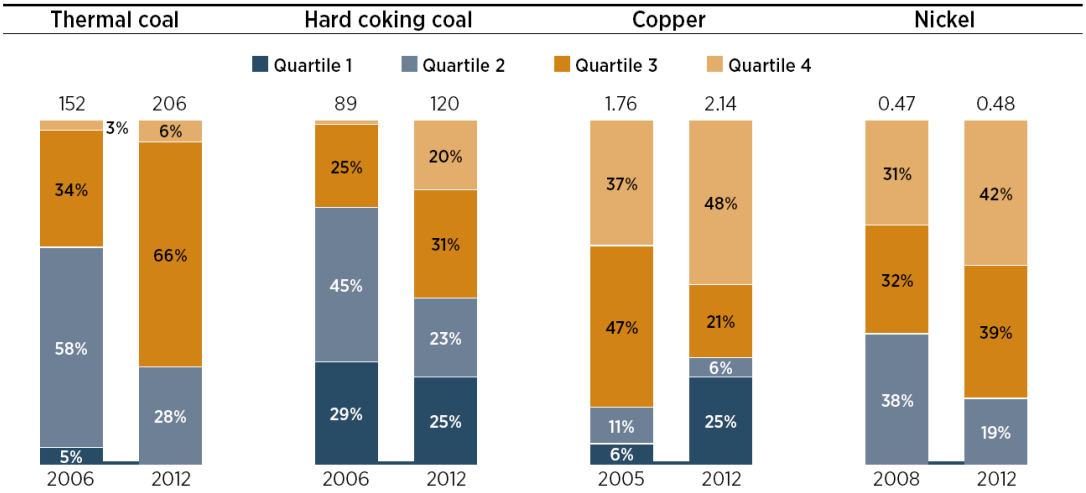
While $14 billion of this potential investment has already been committed, the remainder of the investment 'pipeline' and our future coal export revenue is far from assured. As Marius Kloppers, CEO of BHP Billiton, warned "the next round of minerals investments in Australia will, almost without exception, be captured only if costs are decreased and productivity is improved"[6].

Mr Kloppers is referring to the fact that, since the mid-2000's, capital costs in Australia have been rising more rapidly here than in the rest of the world. According to a recent study by Port Jackson Partners, commissioned by the Minerals Council of Australia, five years ago Australia could build coal and iron ore projects as cheaply as our competitors. Today, more than half of our thermal and metallurgical coal mines have costs above global averages. For thermal coal, the proportion of Australia's production in the lower half of the global cost curve has fallen from 63 per cent to 28 per cent and only 15 per cent of potential capacity falls within the most attractive half of the global project pipeline (Figure 1)[7].

Figure 1

Competitiveness of Australian Mines – Cash Operating Costs

Percent of production by cost curve quartile, Mt of production; coal delivered to China; metals costs net of by-product revenue



* Q1, Q2, Q3 and Q4 represent the percentage of total Australian production within the first, second, third and fourth quartiles of the global cost curve. Copper and nickel costs based on C1 cost ranking.

Source: AME; Brook Hunt

The study concludes that the majority of the thermal coal project pipeline is at risk. Indeed, "ranked by price needed for investment, the most attractive projects are overwhelmingly in other countries"[8].

The impact of this on Australia's international competitiveness is already evident. Australia accounts for less than 6 per cent of global coal production and the industry operates in a highly competitive market. The list of countries vying for our export markets is considerable – Indonesia,

[3] International Energy Agency, *World Energy Outlook 2012*, November 2012, p155
[4] Dr F Birol "World Energy Outlook 2011", Presentation to the Energy Exchange Series, Brisbane, 13 December 2011
[5] See Bureau of Resources and Energy Economics, *Resources and Energy Major Projects October 2012*
[6] M Kloppers "Diversification and Delivery in a Cyclical World", Presentation to the Brisbane Mining Club 17 October 2012 http://www.bhpbilliton.com/home/investors/reports/Pages/Roll%20up%20Pages/Brisbane-Mining-Club.aspx
[7] Port Jackson Partners, *Opportunity at Risk: Regaining our competitive edge in minerals resources,* September 2012, p26
[8] Port Jackson Partners, Op Cit 7, p10

Canada, United States, South Africa, Colombia, Mozambique and Mongolia to name a few. The growth in exports from these countries is having a real impact on our market share. In 2011, Australia lost its position as the world's largest coal exporter by volume – a title we've held consistently for almost three decades – to Indonesia, whose coal exports have been increasing on average by 18.4 per cent a year[9]. This demonstrates that we are not the only country with coal resources and the benefits of the 'mining boom' will not automatically flow to Australia.

IMPROVING THE REGULATORY ENVIRONMENT

Meaningful reform of Australia's environmental regulatory framework will be a critical part of efforts to address the decline in our international competitiveness and secure future investment in our resources sector.

These reforms must be targeted towards removing duplication and improving the efficiency of regulation. To that end, the ACA welcomed the commitment of the Council of Australian Governments (COAG) last year to fast-track the development of bilateral arrangements for accreditation of state assessment and approvals processes. The ACA notes that COAG appeared to retreat from this commitment at its December 2012 meeting – an unfortunate development and a missed opportunity for COAG to address the growing cost of delays to major projects.

Despite this setback, it remains important that the Commonwealth's option to enter into approval bilateral agreements is retained. The ACA considers that the adoption of these agreements would deliver material benefits for governments and industry, including:

a. Reducing project delays
b. Removing inconsistency in approval conditions
c. Reducing the number of referrals

Importantly, these benefits can be realised without compromising environmental protection outcomes.

Project Delays

Implementation of approval bilateral agreements would help to address the costs and delays associated with complex and onerous environmental approvals processes by removing (not just reducing) duplication. As Ergas and Owen highlight:

> *These processes are not only costly in themselves: they add sovereign risk and translate into delays over which companies have little or no control, disrupting supply chains and making it difficult for the myriad players involved in major resource projects to plan and deliver. These effects can make the difference between a project which is viable and one which is not. And they tarnish Australia's reputation as a location in which to invest*[10].

Australian coal projects in particular are experiencing costly delays on an increasing basis. According to Port Jackson Partners, the average Australian thermal coal project is now delayed by 3.1 years and each year the average delay increases by a further 3-4 months[11]. These delays have a profound impact on the industry's ability to maintain market share and take advantage of global demand. They also come at immense cost. A one month delay in commissioning a large greenfield open-cut coal mine can cost in the order of $10 million in lost revenue.

Even where projects are assessed by state governments under an assessment bilateral agreement – and the industry supports the use of these agreements – the additional time required for Commonwealth approval can significantly delay project commissioning. While the EPBC Act requires the Commonwealth Minister to make an approval decision within 30 days of receiving the

[9] International Energy Agency, *Medium Term Coal Market Report 2012*, December 2012, p12
[10] Ergas H & Owen J, *Rebooting the boom: Unfinished business on the supply side*, December 2012 p8
[11] Port Jackson Partners, Op Cit 7, p10

State's assessment report[12], in practice the experience of the coal industry has been that the approval can take anywhere from two weeks to 128 business days.

The case study below outlines the impact of inefficient process and delays experienced by an underground coal mine in seeking approval under the EPBC Act.

Case Study A: Underground Coal Mine

This example is an underground longwall coal mine which employs approximately 275 people and produces up to 3.4 million tonnes per annum supplying both the domestic and export markets.

Longwall A:

This mine initially commenced discussions with the Department of Sustainability, Environment, Water, Population and Communities (SEWPAC) in December 2009 seeking guidance regarding a variation to longwall A. SEWPAC advised in January 2010 that the variation for this longwall triggered an EPBC referral.

After ongoing consultation between the mine and SEWPAC, the mine was informed in October 2010 by SEWPAC that the referral for longwall A (only) would not be accepted. SEWPAC then requested the mine submit a referral for the remainder of the mine which included three additional longwalls (B, C and D).

As a result in the delays of this process, and the Department's insistence on including all four longwalls in the referral, the Federal approval could not have been achieved before mining in longwall panel A would have reached an area of national environmental significance (temperate highland peat swamps on sandstone).

As a direct result, longwall A was shortened. This resulted in the sterilisation of 1.5 million tonnes of coal, with a profit impact to the company of approximately $26 million, together with the loss of $10.9 million in state royalties and $14 million in federal taxes.

Longwall B, C and D:

The Mine submitted a referral to SEWPAC for longwalls B, C and D on 28 April 2011 and it was declared a 'controlled action' on 10 June 2011. The mine entered into an extended non production period on completion of longwall A in November 2011 and was scheduled to recommence operations on 14 February 2012 in anticipation of receiving an approval for longwalls B, C and D.

As part of the extensive consultation process with SEWPAC, the mine proposed variations to the mine plan which sterilised 2.5 million tonnes of coal. Over the remaining life of the mine this equated to a loss of approximately $30 million in federal taxes, $16.4 million in state taxes and a P&L impact on the company of $90 million. The mine experienced four different SEWPAC assessment officers during the assessment period, with each requiring additional time to review the referral.

Despite lodging the referral in April 2011 and the company's efforts to ensure the approval was obtained in advance of the scheduled date to recommence operations, the approval was not received until 19 March 2012. From the scheduled date of 14 February, **the delay cost to the company was half a million dollars per day**.

Consistency in Approval Conditions

Implementation of approval bilateral agreements with state governments would provide an effective solution to the issue of duplicative and inconsistent approval conditions being imposed on projects. According to a 2009 Australian National University survey of EPBC Act stakeholders, 81 per cent of projects assessed under the EPBC Act were subject to "overlapping or duplicative approval conditions from State and Territory Governments"[13].

[12] Section 130 (1B)(a) *Environmental Protection and Biodiversity Conservation Act 1999*
[13] The Australian National University, *The EPBC Survey Project: Final Data Report*, September 2009, p137

The Hawke Review acknowledged this problem and recommended the Commonwealth "take a leadership role in simplifying the EIA process…to reduce duplication of effort and encourage consistency in the setting of conditions on project approvals"[14].

The application of biodiversity offset requirements has been a particular area where duplicative and/or inconsistent requirements are imposed on projects by the Commonwealth and States. While the ACA believes the Australian Government's new Environmental Offsets Policy will improve certainty and transparency for project proponents, it will not directly address the inconsistency of approaches between the two levels of government.

Case Study B (below) provides a current example of an ACA Member's experience in with inconsistent offset requirements for two of their mines.

Case Study B: Biodiversity Offset Requirements

One ACA Member has two projects that are subject to both State and Commonwealth approvals. In each case, both of the State and Commonwealth approvals require biodiversity offsetting, but neither approval is consistent in the way the offsetting requirements apply. In fact, in both cases, the State and Commonwealth approvals require different offset areas to be secured. There is also no alignment between the State and the Commonwealth regarding the method for securing the offsets. The company is yet to obtain a consistent position between the relevant State and Commonwealth government departments regarding the preferred method to be employed to secure the long term conservation of the offset areas, with the result that securing the long term conservation of those areas has been delayed. In addition, deadlines in approvals have needed to be extended to allow additional time for the respective government departments to reach a common position on the preferred method of ensuring the long term security of the offset areas. As at the date of this submission, this issue remains unresolved.

Reducing the Number of Referrals

The Australian Government acknowledges that assessment decisions under the EPBC Act are not keeping pace with growth. According to the Government's own analysis:

> *Just over one third of all approvals granted under the Act over the past 11 years have been issued in the past two years. One half of all approvals have been issued in the past three years*[15].

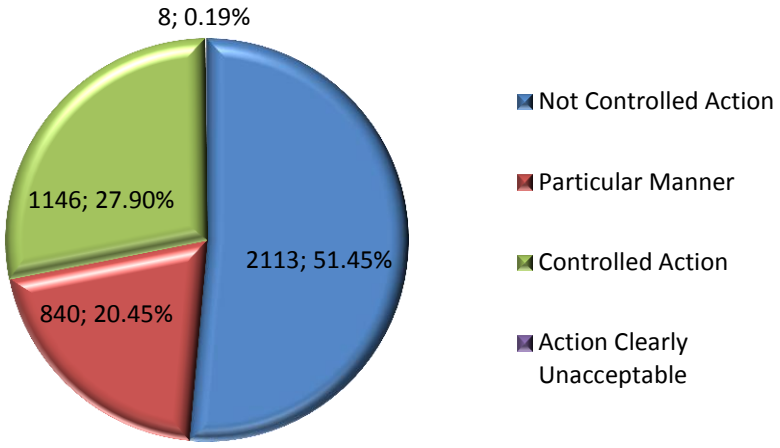
Consequently, there has been a significant increase in delays in approvals over recent years. In 2011-12, 85 per cent of all decisions were made within the statutory timeframes, compared with 90 per cent in 2010-11 and 94 per cent in 2009-10[16]. The 2011-12 performance is well below the Department's target of 95 per cent.

One of the drivers behind the high number of referrals is the increasing prevalence of 'insurance referrals', where project proponents submit their proposal in the interests of legal certainty even when they do not consider the project would trigger a Matter of National Environmental Significance (MNES). State planning agencies can also refer a project independent of the proponent. ACA Members report that there can be a predisposition amongst some state regulators to refer mining projects based on their perception that the Australian Government's position is that it should review <u>all</u> major mining projects, irrespective of whether they are likely to impact on a MNES. This is clearly contrary to the intent of the EPBC Act and the Hawke Review's emphasis that the Commonwealth Environment Minister is not, and should not be, the arbiter of last resort on all environmental issues[17].

[14] Hawke A, *Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, October 2009, p13
[15] Department of Sustainability, Environment, Water, Population and Communities, *Reforming National Environmental Law: An Overview*, 2011, p4
[16] Department of Sustainability, Environment, Water, Population and Communities, *Annual Report 2011-12*, p241
[17] Hawke A, Op Cit 10, p12

The use of approval bilateral agreements which accredit state assessment and approval processes would remove the need for project proponents to separately seek Commonwealth approval and reduce the number of referrals. Importantly, this would have had absolutely no impact on environmental outcomes in the majority of cases considered under the EPBC to date. Figure 2 highlights that, since the inception of the EPBC Act in 2000, more than 50 per cent of all referral decisions have resulted in the Commonwealth not imposing any additional conditions on the project.

Figure 2: EPBC Act Referral Outcomes 2000-2012



Reducing the number of referrals would ameliorate the current strain on Commonwealth resources and allow the Department to focus on a more proactive approach to environmental management, including the development of strategic assessments and regional environmental plans. The Australian Government has acknowledged – and the ACA agrees – that this would deliver superior biodiversity and environmental protection outcomes. This compares to the current reactive approach, where most projects are considered on an individual basis[18].

Preserving Environmental Standards

Implementation of approval bilateral agreements can reduce duplication and deliver administrative efficiencies without any erosion of Australia's rigorous environmental standards.

Delivering Equivalent Protection

The accreditation of State and Territory assessment and approvals processes must only occur where these processes meet appropriate standards that reflect the requirements of the EPBC Act, as recognised by the Hawke Review. The ACA notes and endorses the Australian Government's commitment to the principle of equivalent protection: specifically, that any State and Territory legislation that is accredited should deliver an equivalent level of environmental protection and due process, to that which would otherwise apply under the EPBC Act[19].

The Australian Government's *Draft Framework of Standards for Accreditation of Environmental Approvals* provides a sound basis for negotiating these bilateral agreements consistent with this principle.

Provided the appropriate frameworks are in place, the ACA considers that State and Territory officials are very well-placed to deliver equivalent or better environmental protection outcomes for MNES in approval decisions. Over the last 30 years, State-based environmental agencies have significantly expanded their capability and employ highly skilled people who have unique

[18] Department of Sustainability, Environment, Water, Population and Communities, Op Cit 15, p6
[19] Australian Government, *Australian Government Response to the Senate Inquiry into the Operation of the Environment Protection and Biodiversity Conservation Act 1999*, p5

familiarity with local issues and communities. ACA Member companies report that State officials have superior knowledge and expertise and adopt a more holistic approach to project assessment. State agencies also have considerably lower staff turnover. One large mining company advised that the Commonwealth case manager had changed at least two or three times for each of their projects, exacerbating project delays.

Commonwealth Oversight

The protection afforded by Commonwealth oversight of MNES is not removed with the adoption of approval bilateral agreements. Consistent with the Government's *Draft Framework of Standards*, both assessment and approval bilateral agreements must include assurance mechanisms including "monitoring, reporting, compliance and review", which would allow the Commonwealth to regularly assess the rigour of State processes and the integrity of decisions made within this framework.

Should the State or Territory fall short of its responsibilities under the agreement, the Commonwealth Minister retains the ability to suspend or cancel the agreement under Section 57 of the EPBC Act. Section 60 would further allow the Minister to immediately revoke the State's authority if he or she was satisfied that a significant impact on a MNES was imminent. Claims that the use of approval bilateral agreements are an abrogation of the Commonwealth's responsibility that would pave the way for the destruction of some of Australia's most iconic and important ecosystems are completely unfounded.

CONCLUSION

Addressing the current duplication and inefficiency in our national environmental law must be a high priority for Governments if Australia is to remain internationally competitive. For the coal industry, the costs of project delays are increasingly a major hurdle to investment and are jeopardising our ability to capitalise on expected growth in global demand.

Greater use of assessment and approval bilateral agreements offers an opportunity to ameliorate these issues without compromising environmental protection outcomes. The proposed legislation would reverse this trend. The ACA therefore submits that the option contained in the EPBC Act for the Commonwealth to enter into these agreements must be retained and, accordingly, the Senate should reject the legislation.