

15 April 2013

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

Via email: ec.sen@aph.gov.au

Senate Committee Review – EPBC Amendment Bill 2013

BHP Billiton welcomes the opportunity to provide a submission on the *Environment Protection and Biodiversity Conservation Amendment Bill 2013* (Bill) to the Senate Standing Committee on Environment and Communications (Committee).

BHP Billiton is among the world's largest producers of major commodities, including aluminium, copper, energy coal, iron ore, manganese, metallurgical coal, nickel, silver and uranium along with substantial interests in oil and gas. We are a global organisation and with over 100 locations throughout the world. Our success is underpinned by the 100,000 employees and contractors who work at BHP Billiton.

BHP Billiton has Energy and Metallurgical Coal assets in New South Wales and Queensland which will be directly impacted as a result of the proposed amendments.

We note that the Business Council of Australia, the Minerals Council of Australia and the Australian Coal Association have all made comprehensive submissions to the Committee on the Bill. BHP Billiton supports the details of these submissions and separately makes the following specific comments on the Bill.

1. Exemption for Existing Operations

Items 22(3) and 22(4) of the Bill provide an exemption for existing projects and operations where all the necessary specific environmental authorisations are in place prior to the commencement of the Bill (prior authorisation exemption).

However this exemption may be lost should a specific environmental authorisation be renewed, amended or extended at any time post the Bill taking effect, or should a new environmental authorisation be required. From that point onwards any activities that may significantly impact a water resource would require *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) assessment, including activities already in operation.

Given the large number of approvals, licences, and permits that relate to mining operations and the frequency that these are renewed, amended or extended the practical outcome will be that current operations will very quickly no longer qualify for the prior authorisation exemption.

Should the Bill be implemented, the prior authorisation exemptions should be amended to ensure that existing projects and operations are exempt (provided that there is not an expansion or intensification of the operation that would lead to significant impacts on a water resource).

2. *Removal of Approval Bilateral*

The existing provisions relating to Approval Bilateral Agreements in the EPBC Act make very clear the standards and requirements that must be met before the Minister can enter into a bilateral agreement. These existing provisions, which include a legislative process that adequately assesses the impacts on matters of National Environmental Significance, ensure that the necessary checks and balances are in place so that bilateral agreements are appropriate and rigorous whilst maintaining environmental protection standards.

The Bill contains provisions (items 3A, 4A and 4B) which would remove the ability for the Government to enter into an Approval Bilateral Agreement for the water resource matter of National Environmental Significance. Such a move would restrict future opportunities and efforts to streamline the environmental assessment process in Australia - a move that would be contrary to the policy direction of the recommendations of the Hawke Review.

Prior to the Bill being implemented, items 3A, 4A and 4B should be removed to ensure that the Government retains the ability to enter into Approval Bilateral Agreements for the water resource matter of National Environmental Significance.

3. *Duplication of the Arrangements contained within the National Partnerships Agreement*

The need for the introduction of the water resource matter of National Environmental Significance is unclear given the previous establishment of the Independent Expert Scientific Committee (IESC) on Coal Seam Gas and Large Coal Mining Developments as a statutory body under the EPBC Act. The IESC provides advice to Commonwealth and State governments on potential water impacts of CSG and large coal developments. Supporting the IESC is a National Partnership Agreement, of which Queensland, New South Wales, South Australia and Victoria are participating members with the Commonwealth.

It is the view of BHP Billiton that the IESC is operating and functioning effectively, and the introduction of a coal mining specific referral and assessment trigger is in effect a duplication of the existing arrangements under the National Partnership Agreement.

BHP Billiton supports robust environmental regulation that maintains environmental protection standards. It is also important to minimise the duplication, cost and complexity of regulation in order to ensure Australia is internationally competitive for mining investment.

The Company has concerns in relation to the impact of the amendments to the EPBC Act on the coal industry. As highlighted by the specific comments provided in this submission, we are concerned that the way the Bill is currently drafted may result in unintended consequences for existing operations, impacts on the bilateral approval processes with the States and duplicates existing processes assessing water resources, creating general uncertainty around impacts on the timelines and requirements for approvals.

We are also concerned with the lack of due process in the development of the amendments, in particular those provisions which remove the ability of the Government to enter into Approval Bilateral Agreements. The manner and timing in which they were introduced, and the acceptance of the amendments without consideration, explanation or the opportunity for consultation with affected stakeholders, could lead to public policy outcomes that diminish the competitiveness of the Australian resources sector and without any benefits in improved environmental standards.

Thank you for the opportunity to make a submission on the Bill. Should you have any further queries, please contact Mr Richard Wise on 03 9609 2678.

Yours sincerely

Christian D. Bennett
Vice President
Group Government Relations