Real Mining. Real People. Real Difference.

Submission in response to *Productivity Commission Issues Paper: Resources Sector Regulation September 2019* (Issues Paper)

Anglo American Metallurgical Coal Pty Ltd

15 November 2019

1. Introduction and Executive Summary

Anglo American Metallurgical Coal Pty Ltd (**Anglo American**) welcomes the opportunity to provide a submission to assist the Productivity Commission (**Commission**) in response to the Issues Paper. This submission focusses on matters which are of key importance to Anglo American's Australian operations. Anglo American has also participated in the development of industry submissions via the Queensland Resources Council (**QRC**) and the Minerals Council of Australia (**MCA**) and we support the recommendations within these submissions.

Anglo American is a globally diversified mining company, headquartered in London. In Australia, Anglo American's focus is on producing highest-quality hard coking coal for steel production with five metallurgical coal operations in Central Queensland and joint venture interests in metallurgical coal and manganese. We are the third largest seaborne exporter of metallurgical coal in the world and the largest underground coal miner in Australia. The company also has a large copper and other base metal exploration project in North Western Queensland.

Across our metallurgical coal business, we are investing in sustaining and expansionary projects at each of our coal operations. This year, the Anglo American Board approved the Aquila Project, which is a US$226 million project (Anglo American 70% share), extending the life of the Capcoal underground operations for another six years. We recently completed the commissioning and ramp-up of our new $1.6 billion Grosvenor underground metallurgical coal mine in Moranbah.

This submission responds to specific information requests set out in the Issues Paper. We have taken the opportunity to provide more substantive case studies and identify examples of effective regulatory approaches (particularly in Queensland), focusing on areas of key concern considered critical to investment decisions.

In summary, the key recommendations set out in this submission are as follows:

- **Scope of study:**
    - Anglo American suggests that the scope of the study be fine-tuned to include the final step of tenement/ tenure surrender.
    - It is also recommended that rehabilitation is treated as a progressive process undertaken continuously throughout the life of a project (and not an isolated, final step).
    - Other stages in the approval process should also be added to the scope of the study, including but not limited to variations to conditions, renewals and appeals/ judicial review avenues.
- **Identifying best-practice regulatory approaches:** It is Anglo American's view that assessment criteria for best practice regulation should prioritise regulator accountability over independence and should focus on achieving desired outcomes over prescriptiveness (to allow sufficient scope for innovation and competition by industry).
- **Risk-based approach:** Anglo American supports a risk-based approach to environmental regulation and considers that this would be especially welcome at a Federal level. In short, this

approach would require: having clearer definition regarding the scope and extent of information required in support of approval applications; encouraging stricter adherence to assessment terms of reference by regulators; and the development and implementation of codified or model conditions subject to project-specific variations required to reflect site specific circumstances and/or achieve innovative outcomes. Some examples of effective regulatory approaches in Queensland have been identified.

- **Current regulatory processes vs best practice approaches:**

    - Anglo American has identified some specific aspects of current regulatory processes and provisions of existing legislation which would benefit from the Commission's review and consideration and contrast with these with examples of effective regulatory approaches. This includes matters such as:

        - delays caused by regulator 'information requests' in the course of assessment and approvals processes;
        - the duplication and inconsistency between key aspects of State and Federal environmental regulation (particularly in respect of water and environmental offsets);
        - the uncertainty arising from the current approach to 'nested' approvals (at both a State and Federal level);
        - the need for review of the variation regime under section 143 of the *Environment Protection Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**);
        - the appropriateness of the frameworks surrounding and approach to review of threatened species and trigger mapping; and
        - the need to ensure that 'grandfathering' provisions relating to existing land uses and approvals are fit for purpose and in line with the original intent of such provisions (e.g. section 43A and 43B of the EPBC Act).

    - Anglo American supports the recommendation made by the Senate Select Committee on Red Tape that the Australian Government re-introduce legislation to repeal section 487 of the EPBC Act as a means of addressing the misuse of this section to delay projects. It is also recommended that the Commission consider mechanisms that remove or reduce the incentive for litigation that is intended to delay projects.

    - Anglo American supports a holistic review of the multiple public notification requirements applicable to projects (which may in turn trigger referral of overlapping issues to different courts), particularly at a State level.

- **Governance:** Anglo American reiterates its submission previously made to the Queensland Government of the benefits of a project facilitation function within government, whereby active case management of projects occurs with identified interfaces into lead government agencies. This would minimise the inconsistency, confusion and delays often caused by a less coordinated approach. Ideally this would be supported by a corresponding Ministerial structure such as the former Queensland Government Resources Committee of Cabinet.

- **Best-practice community engagement and benefit sharing:** Anglo American has implemented an industry best-practice social performance system (called Social Way) across its operations throughout the world and would be pleased to brief the Commission further.

2. Scoping the study and defining key concepts

2.1 Scope of study

INFORMATION REQUEST:

'Is the Commission's proposed scope for this study appropriate? Is it too broad or too narrow? How should the proposed scope be adjusted?'

Anglo American generally supports the scope of the study, however we suggest some minor fine-tuning as discussed below.

We recommend expanding the reference to site rehabilitation (figure 2) to include the final step of tenement/tenure surrender. Australia has many outstanding examples of rehabilitated land, but in recent decades, the difficulty has been in achieving the regulatory step of surrender of the mining tenement post-rehabilitation, enabling the freehold to be sold to another entity for commercially productive purposes. From an investment perspective, it is critical to have a clear and timely framework to remove contingent liability from accounts, by completing rehabilitation and achieving surrender, not completing rehabilitation and never being able to surrender.

An overly linear understanding of the steps is likely to be counter-productive noting that at most mines, rehabilitation is able to occur progressively, rather than being left entirely as a final step. Similarly, at larger sites, exploration may be continuing throughout the life of an operating mine, rather than just as an initial step.

Under the heading '*What steps are involved in the approval process*?' (pages 5-6), it is recommended that the following additional stages should be considered:

- at the Commonwealth level – referrals that do not result in an 'approval' but rather a determination that a matter is not a controlled action, or that it is not a controlled action subject to a 'particular manner';
- at all levels – variations of approvals and transfers of approvals;
- the appeal/judicial review stage;
- 'nested approvals', such as conditions requiring plans or other documents to be approved, but without any regulatory framework for those subsidiary approvals;
- the baseline for working out whether an approval is required, such as the framework for existing lawful uses, specific environmental authorisations, transitional provisions;
- the ability to review the triggers for approvals, such as the ability to challenge incorrect mapping; and
- renewals (for example, renewal of mining leases).

2.2 Definitions

INFORMATION REQUEST:

'Should the Commission's definitions of the concepts of broader impediments and community engagement and benefit sharing be refined? If so, how?'

Anglo American supports the proposed primary focus on regulatory impediments that have a material impact on investment, particularly regulatory approvals. We also support consideration of the secondary matters already listed in the Issues Paper (taxation and royalties, infrastructure and workforce issues such as skills), which are comprehensively addressed within the industry submissions made via the QRC and MCA.

One further matter recommended for consideration is the ability of States and Territories to cancel or resume mining tenements without compensation (a matter which has a long history in Queensland).

2.3 Other relevant reviews

INFORMATION REQUEST:

'Are there other relevant reviews that the Commission should be aware of, including ones being conducted overseas?'

In addition to the concurrent reviews listed in the Issues Paper, Anglo American urges the Commission to revisit previous completed reviews that have not been implemented (to the extent relevant to the Commission's scope) such as:

- the Senate Select Committee on Red Tape (**Red Tape Committee**) inquiry into the effect of restrictions and prohibitions on business (red tape) on the economy and community. An interim report was presented on 18 October 2017 (**Interim Report**). The Australian Government responded in July 2018, rejecting many of the key recommendations of the Red Tape Committee. The opportunity could now be taken to re-visit the original recommendations of the Interim Report; and

- the recent report published by the Queensland Department of Natural Resources, Mines and Energy (**DNRME**), *Resource authority regulatory efficiency and duplication: investigation, outcomes and actions* (October 2019). Submissions made by Anglo American and the QRC (of which Anglo American is a member) in response raised detailed concerns and recommended solutions, particularly relating to regulatory delays. It is recommended that the Commission review the original submissions by the mining industry to this review, to the extent that they have not already been progressed by the Queensland Government.

3. Identifying best-practice regulatory approaches

INFORMATION REQUEST:

'The Commission is seeking feedback on whether the criteria outlined in table 1 are appropriate for assessing whether regulation is best practice.'

3.1 Other suggested sources

The quoted sources on appropriate criteria for best-practice regulation provide a reasonable starting point for discussion. In addition to this, we note that more detailed information about appropriate criteria for regulation is available from other sources such as:

- section 4 of the *Legislative Standards Act 1992* (Qld) which includes key principles not listed in Table 1; and
- Queensland's former *Fundamental Legislative Principles: OQPC Notebook* published by the Office of the Queensland Parliamentary Counsel January 2008.[1] It is suggested that this notebook still provides the best summary available in Australia of appropriate criteria for assessing best-practice regulation.

3.2 Regulators should be accountable rather than 'independent'

There is considerable evidence available that the concept that regulators should be 'independent' has tended to be inconsistent with the more important requirement that regulators should be 'accountable'.

3.3 Prescriptiveness

Generally, Anglo American strongly supports the proposal that regulation should not be overly prescriptive. In other words, the normal position is that regulation should focus on desired outcomes, allowing companies to innovate and compete about how they can achieve those outcomes most effectively. It is also worth noting that, increasingly, companies employ their own stringent, internal approvals frameworks, technical standards and governance processes which must also be considered before investment can proceed.

It is noted that there are a few exceptions to this general rule, often relating to health and safety matters. There is considerable academic literature available about the limited circumstances in which it is appropriate to regulate prescriptively, and these are the types of requirements that should normally be set out in standards and codes.[2]

[1] See, for example, section 3.1, section 3.6, section 3.11.

[2] Gunningham, Neil, Two Cheers for Prescription? Lessons for the Red Tape Agenda [2015] 38(3) UNSW Law Journal 936.

4. To what extent are current regulatory processes consistent with best practice?

4.1 Case studies and examples of current regulatory practice

INFORMATION REQUEST:

'The Commission is seeking feedback on how jurisdictions design regulation that affects the resources sector. Information and examples, including case studies, of effective and best-practice approaches and those that are problematic would be appreciated.

In particular, the Commission is interested in whether:

- *approaches to consultation are amenable to best-practice community engagement*
- *regulatory objectives are clearly defined and articulated, and conflicting objectives are minimised or managed across different regulations*
- *regulatory 'creep' occurs*
- *regulation is overly complex or prescriptive*
- *regulations are subject to rigorous assessment and effective review processes.*

What are the consequences of identified instances of poor regulatory design for regulatory outcomes, investment in the sector and broader community outcomes?

How could identified shortcomings be remedied?'

4.1.1 Delays in the information request process

In the experience of Anglo American, a key driver of delays and unnecessary costs at both State and Federal level is the information request process.

Case study:

A recent example is the EPBC Act approval process for the Grasstree Extension Project (a simple brownfields expansion for the addition of five panels to an existing underground metallurgical coal mine in Central Queensland). This project endured significant additional information requests resulting in operational challenges to ensure continuity of production. The relevant controlling provisions for the project were limited to listed threatened species and Communities (section 18 and 18A of the EPBC Act). As such, the project should have received EPBC Act approval within a relatively quick timeframe. In our experience, the EPBC Act approval process should have taken in the order of six to seven months. Ultimately, the EPBC Act approval process for the project was concluded **11 months** from the date the referral was submitted to the Commonwealth Department of the Environment and Energy (**DoEE**). A timeframe of six to seven months would have been more consistent with the complex Queensland approval process for an environmental authority amendment, which was concluded within eight months. The environmental authority amendment required assessment of all environmental values (not just listed threatened species and communities).

Existing regulatory approaches that are reasonably effective to avoid unnecessary 'stop-the-clock' delays for multiple information requests about issues of questionable relevance include the following:

- only permitting one information request to be issued by the responsible agency rather than multiple supplementary requests;
- the applicant/proponent having the opportunity to decline to answer a stated part or all of an information request, at the same time giving notice that the clock is no longer stopped (see example below);

Example of an effective regulatory approach:

See section 146 of the *Environmental Protection Act 1994* (Qld) which is applicable under section 138 of that Act if certain types of applications have been lodged.

The public interest is preserved because, if an applicant declines to answer an information request which is fundamental to assessing the approval and which is unable to be adequately addressed by conditions, the Queensland courts have upheld the agencies' right to refuse the application.[3]

- specifying a timeframe for the responsible agency to provide its information request, which should be an earlier time than the total period allowed for assessing the application.[4] The timeframe should not be too short to enable the agency to review the application properly, but should not be open-ended; and
- limiting information requests to the issues that are both relevant and material to the decision. The ability to decline to answer irrelevant or immaterial information requests assists with focusing minds on these issues, but it may also be helpful for a guideline to remind agencies of these imperatives.

While it is desirable for the information request rules to be set out either in legislation or subordinate legislation for the sake of certainty, a potential interim measure that could be adopted at Commonwealth level would be development assessment rules published as a guideline.

4.1.2 Application supporting information

Supporting information for an application should be limited to the content necessary to decide approval/refusal and non-standard conditions

Issues to be addressed include:

- terms of reference for Environmental Impact Statements (or guideline requirements for supporting information for other applications) which are effectively 'wish-lists' for maximum data for a worst-case project, rather than being tailored to the specific characteristics of the site and the specific characteristics of the nature of the project, assessed against the normal conditions. For example, it is questionable whether standard groundwater modelling requirements should be imposed on a

[3] See for example *Keristar Pty Ltd v Maroochy Shire Council* [2004] QPELR 349 (Dodds DCJ), where an applicant had declined to answer a question about landslip potential for a residential development.

[4] Contrast section 89 of the EPBC Act, which sets out no timeframe. The only limitation is the total period allowed for deciding the assessment approach under section 88, which means the information request can be deferred until the penultimate day and then the clock is stopped.

project that does not propose to interfere with an aquifer, or dust modelling on an underground mine located within an industrial area;

- the extent to which regulators should be bound to their original terms of reference; and
- where there are standard conditions or requirements and a project commits to complying with those standard matters on a particular topic, the standard condition should simply be imposed and enforced.

Example of an effective regulatory approach:

Under the *Planning Act 2016* (Qld) local governments can zone land as 'High Impact Industry' subject to a list of code criteria regulating 'acceptable outcomes' for impacts and also subject to codes associated with mapping overlays for various site-specific issues such as acid sulfate soils or bushfire hazard. The various types of facilities intended to be established in these zones then do not need to go through a full impact-assessable planning approval process, but simply need to comply with the code requirements.

4.1.3 Water regulation – Federal duplication of a State issue

The mining industry is comprehensively regulated in relation to water at a State and Territory level. Aquifers are not Commonwealth waters. State waters do not comprise a Commonwealth head of power under section 51 of The Constitution. There is a case for individual States to work together to regulate impacts on individual aquifers or watercourses that cross State boundaries and for the Commonwealth to assist in that process, but it is contrary to the principles of best-practice regulation for the Commonwealth to duplicate the normal State processes regarding impacts on State waters.

4.1.4 'Nested' approvals

It has become increasingly common at both State and Federal levels for approvals to be granted subject to conditions requiring later lodgment and 'acceptance' of various types of plans or reports, which are required before operations (or, in some instances, construction) can commence. Anglo American is not opposed to this approach where the plans or reports are merely matters of detail, following a standard procedure with clear and certain criteria. However, for many of these 'nested' approvals, there are two significant risks:

- the matter that has been deferred for future consideration may be fundamental both to the approval and to the company's investment decision, in which case, it is a matter that should have been decided upfront. The types of conditions imposed post-approval may be invalid or in some instances may unintentionally invalidate the entire approval;[5] and
- there is no assessment framework for the plan or report, such as regulatory timeframes, criteria or appeal against refusal and consequently a lack of certainty and delay risk for the applicant/ proponent. There may be multiple information requests, with no way of closing out the process, preventing the operation (or construction) from starting.

A secondary risk is that a plan or report on the same subject-matter may be treated inconsistently from project to project, preventing a 'level playing field'.

[5] *Mison v Randwick Municipal Council* (1991) 23 NSWLR 734 at 739 (NSW Court of Appeal); *Mt Marrow Blue Metal Quarries Pty Ltd v Moreton Shire Council* [1996] 1 Qd R 347 at 354 per McPherson JA and Ambrose J (Queensland Court of Appeal).

Case study:

A recent example is the EPBC Act approval process for the Grasstree Extension Project (a simple brownfields expansion for the addition of five panels to an existing underground metallurgical coal mine in Central Queensland).

This project required the submission and approval of an Offset Management Plan (**OMP**) prior to the commencement of the project. The proposed OMP for the project was submitted on 13 February 2019 and approved on 5 June 2019, taking four months for approval.

DoEE has recently made OMP approval a pre-construction requirement for mining projects. There are no statutory timeframes for the assessment of an OMP. OMP approval timeframes of four months or longer therefore make OMP approvals typically the longest lead time pre-construction approval requirement. The timing of OMP approvals are becoming one of the biggest risks of delays to the commencement of mining projects.

The issues encountered during the OMP process could have been quickly overcome (or would not have arisen at all) if the DoEE accepted habitat quality values based on the existing published Queensland methodology or if DoEE had a publicly available guidance document detailing the methodology for scoring habitat quality.

Significant improvements could be made without the need for legislative amendments, for example:

- a guideline explaining the types of matters that should be determined as part of the primary approval (not deferred for future consideration). Extensive existing caselaw could be used to prepare this guideline; and
- for those technical matters of detail that can be addressed by post-approval plans or reports, a set of development assessment rules (again, this could be covered by a guideline as an urgent interim measure), setting out procedures, timeframes and internal review rights. If the subject matter is standard, then benchmark criteria could be included.

Example of an effective regulatory approach:

Queensland currently has '*Development Assessment Rules'* prescribed under the *Planning Regulation 2017* (Qld), in respect of non-resource projects. Compliance assessments are also required for a range of issues at a State level, such as plumbing and drainage. Some individual local governments in Queensland (such as the Brisbane City Council) have detailed frameworks and criteria for compliance assessment of a wide variety of topics (including environmental management technical details and nature conservation issues.[6]

4.1.5 Offsets – Federal and State overlap

An area of considerable duplication and inconsistency is the overlap between State and Federal offset requirements (and sometimes also local government requirements). In some States, such as Queensland, there is greater flexibility at State level than at Federal level, in relation to the types and delivery of offsets.

[6] https://forms.business.gov.au/aba/qldlg1/operational-works-compliance-assessment-application/

Example of an effective regulatory approach:

Queensland's Guideline – Model Mining Conditions[7] provides for staging of offsets (commencing at model condition H9). A proponent with an offset requirement may deliver the offset in any of the following ways:

- financial settlement offsets a payment made into the offsets account; or
- proponent-driven offsets which includes land-based offsets or delivery of actions in a Direct Benefit Management Plan or both; or
- a combination of these approaches.[8]

This enables offsets to be more tailored to the needs of a particular threatened species, rather than a blanket 'like-for-like' land-based approach. The Queensland Government also introduced an offset 'cap' for ratios under the *Environmental Offsets Act 2014* (Qld).

Land banking is a topic being explored at State level in several jurisdictions, which would enable longer-term, more strategic investments.

A difficulty for the Federal government is the current lack of authorizing provisions in the EPBC Act. An option in the meantime would simply be to recognise State-based offset requirements under a guideline and through bilateral agreements with the States.

Cultural change is also necessary, so that offsets are treated as targeted tools to assist with the recovery of species, converting them from being threatened to common. Once a species has been restored to a secure position as a common species, the species should be removed from the threatened species list. For example, if a fauna species is only threatened because of a disease, it would make sense to address the disease. If a species is threatened because of a pest, it would make sense to deal with the pest. It is also likely that local communities would prefer this approach, because a pest threatening a native species is often also a threat to livestock.

The Commission could also consider the utilization for offsets purposes of land rehabilitated for native ecosystems approximating the particular ecosystems affected by the original development or neighbouring developments.

4.1.6 Variations of existing approvals and determinations

Section 143 (Variation of conditions attached to approval) of the EPBC Act is currently too restrictive of Federal jurisdiction.

[7] Available at https://environment.des.qld.gov.au/management/activities/mining/guidelines

[8] Also see: https://www.qld.gov.au/environment/pollution/management/offsets/delivering

Example of an effective regulatory approach:

A significantly better framework for regulating post-approval changes is available under the *Planning Act 2016* (Qld).[9] Advantages of this framework include (for example): the ability to change not only the conditions but also the scope of approval; applications can be for either minor changes or material changes (with material change applications required to follow whatever additional processes would have been triggered if there had been a fresh application, such as public notification); and changed approvals are issued as consolidated approvals, making it simpler for both the operator and the regulator to administer the conditions.

In addition, it would be helpful if the EPBC Act could facilitate changes to determinations that a project is not a controlled action, or not a controlled action if carried out in a particular manner.

4.1.7 Review of threatened species and trigger mapping

Best practice regulation would enable proponents to apply for review of a wide variety of listings affecting their land, at both State and Federal level, covering both incorrect mapping and incorrect listings of species. Best-practice regulatory frameworks would include application and supporting information formats, regulatory timeframes for assessment, criteria for assessment and a right of review.

Example of an effective regulatory approach:

In Queensland, there is a mechanism available for proponents to ground-truth vegetation and apply for approval of 'property maps of assessable vegetation' (PMAVs) overriding incorrect mapping of remnant native vegetation under the *Vegetation Management Act 1999* (Qld). In the event of refusal, there is a right of review to a tribunal.

The Queensland Audit Office has published a report, *Conserving threatened species* (Report 7: 2018–19), which concluded (at page 10): '*Because it has no strategy, the department does not prioritise its activities to achieve the greatest conservation outcomes. Instead, its activities are largely ad hoc and focused on a relatively few individual species…The department's decisions about which species receive its greatest conservation efforts are often determined by iconic value, individual interests, departmental knowledge and advocacy, rather than by objective assessments of appropriate priorities*.' It recommended regular reviews, timeframes and a more strategic approach to species recovery.

Many of the same criticisms could be made at Commonwealth level. It is also unclear why there need to be duplicate lists of threatened species at State and Commonwealth levels, which are overlapping but inconsistent.

4.1.8 A risk-based approach to environmental regulation with codes and model conditions

Recommendation 6 of the Interim Report of the Red Tape Committee was that COAG should '*pursue the adoption of a risk-matrix based on international standards, with capacity to incorporate general risks and*

[9] See Chapter 3 Part 5 Division 2 Subdivision 2. Note that, unfortunately, the framework for assessing changes of resources project approvals under the *Environmental Protection Act 1994* (Qld) is inconsistent with the more modern version for non-resources projects under the *Planning Act 2016* (Qld).

specific risks' (page 18), noting that COAG had previously agreed to explore this,[10] but '*it appears to be underutilised'*.

In summary, a risk-based approach involves:

- identifying the potential consequences of an action, ranging from minor through to severe; and
- identifying the risk of those consequences occurring, ranging from low to high.

The thresholds for determining whether EPBC Act assessment and approval is required for a project (i.e. whether it is a 'controlled action') is that there are 'likely' (not low risk) to be 'significant' impacts (not minor consequences). The process for proponents to obtain determinations that projects are not controlled actions should be quick and simple. Although a self-assessment process may be undertaken to determine whether significant impacts are likely, as the assessment triggers change so frequently, proponents often seek a formal determination from the Minister to obtain certainty around the need for assessment.

For actions that cross the demarcation line of being 'likely' to cause a 'significant impact', but where the nature of the action and its impacts are standard, there should be codified or 'model' conditions, with the ability to apply to vary these conditions to suit site-specific circumstances or achieve improved and innovative outcomes, with documentation only focusing on the variation. There are various examples of this being successfully implemented in Queensland (see below).

Examples of effective regulatory approaches:

Queensland has various codes of compliance for exploration or for small mines, available under the *Environmental Protection Act 1994* (Qld).

A system of industry uses codes (together with mapping overlays and associated codes) are also used by local governments in Queensland to regulate industries other than mining and petroleum (for example, heavy manufacturing).

The system for remnant vegetation clearing in Queensland, firstly sets out a list of exempt activities, then a set of activities that are accepted subject to compliance with vegetation clearing codes together with providing a simple notice to DNRME.[11] It is not suggested that the specific scope of these exemptions or codes is currently acceptable to the agricultural industry in Queensland, just that the general framework would provide a baseline to work with if adapted for Commonwealth purposes, including for additional purposes such as exploration, vents for underground mines and the like.

A further example of model conditions is Queensland's *Guideline – Model Mining Conditions*, which includes model conditions for topics such as offsets that could readily be adapted at Commonwealth level.[12]

[11] https://www.qld.gov.au/environment/land/management/vegetation/clearing-codes

[12] https://environment.des.qld.gov.au/management/activities/mining/guidelines

4.1.9 Rehabilitation and surrender/relinquishment of mining tenements

The regulation and administration of mine rehabilitation in Queensland has undergone a significant transformation in recent years.

Some aspects of the new Queensland framework (including policy proposals that have yet to be implemented) are worthy of consideration by other States and Territories, though there are areas that could be improved. Some of the positive steps include:

- transfer of administration of financial provisioning securing rehabilitation from the Department of Environment and Science to a Scheme Manager under the umbrella of Queensland Treasury, which over time, is likely to be more financially robust;
- the opening up of post-mining land uses to a range of alternatives that are likely to be more commercially suitable for post-mining land owners and the agencies administering them than the previous regime;[13] and
- a proposed framework (including legislative amendments) for assessing residual risk and enabling mining tenements to be surrendered,[14] including provisions for greater transparency that were proposed by the QRC.

While these are significant steps forward, Anglo American believes further work is required - for example: improvements to, or development of, key definitions and the need to address the increased prescriptiveness relating to the details of mine planning and operations and reporting requirements. By their nature, mines are not static activities and operators need to respond to a range of external factors including the market and even weather events. Highly prescriptive planning requirements are inappropriate for non-static, long-term developments.

There ought to be a role for both the States and the Australian Government to recognise rehabilitation for native ecosystems as offsets. Other than this, Anglo American considers there is no case for the Australian Government to duplicate the role of the States and Territories regarding rehabilitation management.

4.1.10 Specific environmental authorisations, existing uses and transitional provisions of the EPBC Act

Anglo American is concerned that the provisions that were originally intended to 'grandfather' existing approvals and land uses (such as sections 43A and 43B of the EPBC Act) have been subsequently amended and interpreted so as to distort and undermine the original intention. This is important, because the scope of existing approvals sets the baseline for working out whether it is necessary to lodge a referral every time new triggers are added.

State planning legislation normally has clear and simple provisions about existing lawful uses and approvals, which could be adopted. It is noted that this topic was not raised in the original scope for the Issues Paper, but Anglo American would be happy to have the opportunity to provide further information.

[13] See Schedule 8A, Part 3, Table 1, item 1 of the *Environmental Protection (Rehabilitation Reform) Amendment Regulation 2019* (Qld) and associated notes published on 4 October 2019, due to commence 1 November 2019.
[14] https://www.treasury.qld.gov.au/programs-and-policies/improving-rehabilitation-financial-assurance-outcomes-resources-sector/

4.2 Governance

INFORMATION REQUEST:

'The Commission is seeking feedback on approaches to regulator governance in jurisdictions in Australia and overseas. Information and examples, including case studies, of both effective and best practice approaches as well as those that are problematic would be appreciated.

For example, the Commission is interested in whether:

- *the roles, responsibilities and requirements of different regulatory agencies are clear and duplication is avoided, including through models for coordination, or aspects thereof, and strategic assessments (in particular, their feasibility and how they can best be used to improve efficiency)*
- *decision makers are accountable, including through review processes that avoid unnecessarily long delays in approval processes*
- *regulators are independent, for example decision-making models (in particular, whether (and why) resources approvals are best determined by an independent body or at Ministerial level)*
- *regulators are adequately resourced and have necessary capabilities (in particular, the extent to which any under-resourcing of regulatory agencies is contributing to approval delays).*

What have been the consequences of identified instances of poor regulatory governance, including unnecessary duplication, for regulatory efficacy and efficiency and for investment in the sector?

How could identified shortcomings be remedied?'

4.2.1 Regulator models

The Issues Paper asks which is preferred: one-stop shop, lead agency model or coordination office model (page 12). It is Anglo American's view that this depends on the subject-matter of the application.

Anglo American has no objection to the current approach of a bilateral assessment agreement, as opposed to a bilateral approvals agreement, provided that Commonwealth/State duplication and inconsistency is reduced on substantive matters (such as the water trigger and offsets), as outlined elsewhere in this submission.

4.2.2 Project facilitation

In Queensland, the DNRME has recently published a report, *Resource authority regulatory efficiency and duplication: investigation, outcomes and actions (October 2019)*. Anglo American lodged a submission for that review; Anglo American is also a member of the QRC, which submitted a more detailed submission.

Anglo American's submission recommended that particular individuals should be identified as case managers or project facilitation officers within lead government agencies. This submission was supported by the QRC. In addition, supporting this structure with a Ministerial forum to resolve conflicting policy objectives or inter-agency issues, would provide further efficiencies to expedite project approvals.

5. Broader impediments materially affecting investment

5.1 Royalty and Taxation arrangements

The MCA recently commissioned a policy paper (**the Paper**) that makes the case for tax policy reform in Australia. The paper, "*Corporate Tax Reform: Australia watches the train go by*" was authored by Philip Bazel (Research Associate at the School of Public Policy, University of Calgary) and Jack Mintz (President's Fellow at the University of Calgary's School of Public Policy). The authors of the Paper observe that:

- capital investment is a critical ingredient to economic growth;
- taxation policy settings can be one of the key factors influencing investment decisions; and
- *Australia's key tax policy settings are uncompetitive and without a policy response our competitive position is set to deteriorate further*.

Anglo American endorses the key findings of the Paper, including opportunities for improving Australia's tax competitiveness. The Paper proposed two options for improving Australia's tax competitiveness:

- a reduction to the headline corporate tax rate, as has been observed in a number of countries in recent years including the US and UK; and
- *introduction of* some form of accelerated depreciation for new investments, which is an approach that has been taken in the US and Canada.

Anglo American supports either or a combination of these approaches as incentivizing additional investment in the Australian mining sector.

6. Best-practice community engagement and benefit sharing

6.1 Best practice community engagement and benefit-sharing

INFORMATION REQUEST:

'The Commission is seeking examples of both effective and best-practice community engagement and benefit-sharing practices, including with Indigenous communities, in Australia and internationally, and examples that are problematic.
What are key drivers of good or poor outcomes? How could identified shortcomings be remedied?'

Anglo American has in place an industry-leading social performance system (Social Way), which responds to evolving societal expectations and best practice in this area. Further information is accessible at:

https://www.angloamerican.com/sustainability/communities
https://www.angloamerican.com/media/press-releases/2019/30-09-2019

Recently Anglo American's CEO of the Metallurgical Coal business presented on this topic to the International Mining and Resources Conference. A copy of this presentation can be accessed at:

https://australia.angloamerican.com/media/press-releases/pr-2019/31-10-2019

In our Sustainable Mining Plan, Anglo American has committed to having all of our managed mines certified through an independent responsible mining standard by 2025. The group recently announced that its Unki platinum mine in Zimbabwe would be the first mine in the world to publicly commit to be independently audited against the initiative for Responsible Mining Assurance's Standard for Responsible Mining. Further details can be found at: https://www.angloamerican.com/sustainability/our-sustainable-mining-plan

Given the strong momentum in the development of international standards, responding to responsible sourcing initiatives, Anglo American recommends that regulation in this area recognises assurance against standards for compliance purposes, rather than impose additional regulation. For example, these standards typically require a comprehensive and evidenced social performance system, including best practice community engagement and participation methods, complaints and grievances systems, social investment aligned with impacts and needs, throughout the mine life cycle.

We would be pleased to brief the Commission in more detail on social performance governing framework. All of our operations, throughout the world, including in Australia, are independently assessed against our Social Way policy, with the results linked to the CEO's performance scorecard.