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To Whom It May Concern

Resources Sector Regulation Productivity Commission Issues Paper

The NSW Business Chamber ('the Chamber') is one of Australia's largest business support groups, with a direct membership of more than 20,000 businesses, providing services to over 30,000 businesses each year. The Chamber works with thousands of businesses ranging in size from owner operators to large corporations, and spanning all industry sectors from product-based manufacturers to service provider enterprises.

The Chamber shares some of the concerns which have recently been highlighted by several high-profile decisions to reject mining development proposals in New South Wales. In particular, the Chamber notes the processes for obtaining approvals for resources sector proposals appear to be too long, lack clarity in respect to planning criteria against which approval will be assessed, and lack certainty for all participants about what stages an application will have to go through and what information requirements need to be satisfied.

The problem, as the Chamber sees it, is not necessarily that mining proposals may not be approved. Rather, it is that those proposals have been denied following lengthy, extensive, and expensive application processes. Had it been clear from the outset that, for example in the case of Bylong, 'scope 3' emissions would be a significant factor in the way the application was to be assessed, it is possible the proponent would have taken a different approach to the application. There is a risk if such factors are seen to be brought in 'at the last minute', that proponents have little ability to meet review bodies' expectations.

The Chamber proposes four areas for improvement:

- Reduce the time involved in the consideration of applications and in the application process.
- Provide greater certainty about process stages and requirements at an early stage of the process.
- Provide clearer criteria for decision at the outset of the process and avoid last minute additional obligations on proponents.
- A central agency responsible for processing applications.

Other jurisdictions are grappling with similar issues. Canada has recently passed legislation to overhaul its environmental assessment (now 'impact assessment') regime.[i] While the overall legislative package is a mixed bag in terms of its effects on

investment clarity[ii], it does provide a model for addressing the three areas for improvement that the Chamber proposes.

The Canadian legislation sets out a clear timeframe for decision making in regard to major projects:

- 'Pre-application phase' for preliminary consultation (with community stakeholders, government agencies, etc)
- 180 day time limit for agency to decide whether a 'full' impact assessment is required after application submitted
- 300 day time limit (the proponent can apply to 'stop the clock' in situations where they require more time) for proponent to complete impact assessment
- 30 day time limit for final ministerial decision to approve/disapprove
- *Complex projects may, at ministerial discretion, be assigned to an extended timetable with 600 days to complete impact assessment and 60 days for final ministerial decision*

This structured timetable gives certainty to proponents and to other stakeholders. It abbreviates the amount of time projects spend in pre-approval limbo. It restricts foot-dragging by government agencies. Compare these timetables to the following NSW mining projects:

- Rocky Hill mine: Gloucester Resources initiated application February 2012, rejected in late 2017, court appeal rejected February 2019
- Bylong Mine: Kepco initiated application in early 2014, rejected in September 2019
- Dendrobrium mine expansion: South32 began consultation in August 2016, application still ongoing
- Narrabri Gas Project: After launching exploratory activity in summer 2014 Santos submitted its Environmental Impact Statement (EIS) in February 2017. The application remains under assessment.

Canada has a similar legal and political structure to Australia, and similar outlooks on balancing development with environmental objectives. Yet it has processes for major project approvals to be achieved within 2 year of application, whereas application period of 4 or 5 years are currently the norm. It is possible to have thorough processes which take into account meaningful and rigorous community consultation without it needing to take anywhere near as long as it currently does in Australia. The Commission should support establishing firm timetables for decisions on major projects to be reached in keeping with those now established under the Canadian rules.

The second attractive feature of the Canadian approach is the use of the initial 180 day period to establish which approval 'pathway' a project will need to go through. This restricts the need to recall or add extra information requirements at late stages of the application process, requiring agencies to set out their requirements clearly at the outset of the application. (It also enables delegation of authorizing powers over certain types of decision to indigenous communities in relevant situations, also creating greater clarity for proponents and communities over areas of mutual interest).

Finally, an area where there is room for Australia to improve on the Canadian example is with regard to setting clear parameters against which a project application will be based.[iii] Weighing the very different types of information required by environmental/impact assessments is a challenging task for government, but to those outside the process can resemble a 'black box'. The situation is exacerbated when decisions are made to reject applications on the basis of factors that were not clearly identified as priorities early in the process (as was the case with the role of 'Scope 3' emissions at the Bylong mine), or authorities are granted discretionary powers to consider factors outside the rubric of information applicants are obliged to provide (as with Rocky Hill). For clarity, this is not an argument that Scope 3 emissions or other factors should not be applied in assessing projects, but it should be clear to proponents and other stakeholders what factors will be used to judge a project from the outset, not seemingly have them introduced at the last moment.

There may be a role for a coordinating environmental assessment agency to absorb some application assessment powers from individual government agencies, to avoid duplicative or contradictory information requests and streamline processes for all parties. Such an agency may also be better equipped to implement the recommendations above in a coherent manner and provide a single point of communication for project proponents.

The Chamber is happy to provide further information if required.

Yours sincerely

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[i] https://www.parl.ca/legisInfo/BillDetails.aspx?billId=9630600&Language=E
[ii] Industry reaction to the Canadian proposals at the time was mixed
[iii] The Canadian version sets out what information should be provided, but gives limited guidance on how different components will be weighed against each other