



XXXXX Resources

Department of Energy, Environment and Climate Action

By email: erppconsultation@ecodev.vic.gov.au

28 February 2023

Dear XXXXX,

Trailing Liabilities for Victoria's Declared Mines

ENGIE Hazelwood appreciates the opportunity to respond to the Department of Energy, Environment and Climate Action's ("the Department") consultation paper on Trailing Liabilities for Victoria's Declared Mines ("the Consultation Paper").

ENGIE Hazelwood appreciates the State of Victoria taking steps to appropriately protect taxpayers from worst-case scenarios associated with Victoria's declared mines. With this in mind, ENGIE Hazelwood supports the concept of the trailing liabilities powers to manage rehabilitation risks in-principle. Nevertheless, in avoiding a worst-case scenario for taxpayers it is not appropriate to place disproportionate and undue burdens on other parties.

As such, it should be acknowledged that the long history of declared mine development has resulted in challenges which no single party has benefited from in isolation or can be held wholly responsible for on an enduring basis. Thus, the trailing liabilities provisions while being prudent, must be proportionate, and while protecting taxpayers, cannot ignore the significant influences of the State in determining location and operation of declared mines, and final accepted rehabilitation outcomes.

Backdating

ENGIE Hazelwood is not concerned by the proposal to backdate the arrangements to 5 May 2022, and notes that backdating does not create any uncertainty given the nature of the ownership and operation of declared mines and the pre-existing announcements made by the then Minister.

Existing rehabilitation obligations and potential ownership changes

The shared understanding of declared mine rehabilitation has evolved significantly in recent years pursuant to the work undertaken by mine owners, Government, and interested stakeholders. This has included the Latrobe Valley Regional Rehabilitation Strategy, the Integrated Mines Research Group, and detailed technical studies to support the ongoing rehabilitation of each of the three declared mines.

The revised regulatory arrangements covering rehabilitation plans, the vastly increased bonds based on the Government determined process, and a shared commitment to progressive and final rehabilitation are the strongest guarantees that taxpayers will not be left with unexpected financial exposure to declared mine rehabilitation. In this context, any proposal to enforce trailing liabilities against a current or former site owner under the proposed legislation should form a last resort in extreme cases, as it should be noted that State has at its disposal ample powers to minimise risk to taxpayers.

In this regard, the flagged change of ownership provisions make sense where a change in shareholding has resulted in a change of control of the relevant declared mine – for example, where a new third party has acquired a majority shareholding (50.1%+) or has secured control via other means such as through specific voting rights. The test need not be onerous but requires the new controller to demonstrate it has the credit requirements to fund the existing rehabilitation bond and capability to undertake a current or future rehabilitation process.

Notwithstanding the above, while ENGIE Hazelwood understands the merits of the proposals, it notes that the extensive and at times conflicting regulatory processes and practices to date have hampered its ability to complete, or even fully commence, mine rehabilitation in an efficient manner. Reducing decision-making timeframes, ensuring a truly proponent led process, and implementing a requirement for Government bodies to be transparent and accountable for their positions would assist greatly in minimising risk to taxpayers.

Implementing trailing liabilities

ENGIE Hazelwood supports the use of trailing liability powers where a declared mine owner has abandoned their duty to rehabilitate. It does not endorse use of the powers where future rehabilitation objectives change, or circumstances change, after the completion of a rehabilitation process in line with a Declared Mine Rehabilitation Plan.

The rehabilitation processes associated with declared mines will cost the private sector billions of dollars, and it is not viable to expect former mine owners to have an enduring uncapped liability tied to the site. Once a rehabilitation process is completed to the agreed plan (a process which encompasses significant amounts of independent technical studies and detailed consultation with all stakeholders including Government, regulators and the community) and rehabilitation objectives under that agreed plan have been met, former mine owners must be able to relinquish the site in full.

This means a former mine owner should not be called back under the proposed legislation where a rehabilitation and aftercare has been completed in accordance with the agreed plan. In making the decision to site large open cut mines near townships, the Government shares a degree of risk and responsibility for future site management after rehabilitations have been completed. It is simply not reasonable, or rational, to attempt to tie investors to sites forever.

However, when a rehabilitation process has not been completed in accordance with an agreed plan, the Government is within its rights to call upon former owners to undertake further works and, in the first instance, utilise the rehabilitation bonds to complete unfinished works.

Furthermore, where former owners, or part owners, are recalled, their called upon trailing liability must be proportionate with the benefit they have derived from site and no more – most notably, any liability must be proportionate to reflect the time period in which they owned the site against the period in which the site was in operation. The purpose of trailing liabilities isn't to retrospectively punish companies that years past invested and operated declared mines with the effect of providing electricity to Victorian households. This means, in an extreme case, there may still be a gap between the outstanding obligation where the current majority owner cannot complete the rehabilitation and the proportionate additional funding requested of a former owner or part owner.

Likewise, the definition of related parties needs to be carefully considered. The proposal that a related party is one who acted jointly, derived significant financial benefit, and had the ability to influence outcomes appears appropriate.

ENGIE does not believe the trailing liabilities provisions will significantly aid its current rehabilitation experience, but if not implemented correctly, could introduce an enduring risk to its shareholders.

Should you have any queries in relation to this submission please do not hesitate to contact me on, telephone, XXXXXXXX.

Yours sincerely,

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