

8 November 2019

Resources Sector Regulation study
Productivity Commission
LB2, Collins Street East
Melbourne Vic 8003
Via email: resources@pc.gov.au

Dear Commissioner

Inquiry into Resources Sector Regulation

The Northern Territory Chamber of Commerce and Industry (**Chamber**) welcomes the opportunity to respond to the Productivity Commissions' above inquiry.

Established in 1957, the Chamber is the largest employer association in the Northern Territory, representing over 1,200 businesses. The Chamber is an independent, not-for-profit and non-government body - our membership and offices span the Territory.

The Chamber provides members and the Northern Territory business community an effective platform for lobbying on the issues that impact upon business, whilst providing services and support in a number of key areas including industrial relations, training, employment, education and training advice, networking and premier business events.

We look forward to the Commission's consideration of our comments which are intended to illustrate the importance of the resources sector to the Northern Territory economy and the importance of streamlined regulatory practices that support business investment.

Kind Regards

Brian O'Gallagher
Deputy Chief Executive Officer
NT Chamber of Commerce

Kevin Stephens
Partner
Ward Keller

INTRODUCTION

Importance of the Resources Sector to the Territory

The resources sector is the largest sector of the Northern Territory (NT) economy:

- Minerals and energy accounts for 13% to 20% of NT GSP, compared to national average of 8%. It is the largest private economic sector in the NT and as a percentage of GSP is exceeded only by WA.
- Mining employment tends to be regional and not the greatest employer, gauged by employee numbers (3.1% of NT workforce).
- NT minerals exploration of \$111.8m in 2017/18 is down from \$250m in 2012, but up from \$100.8m in 2015/16. 33% of 2017/18 minerals exploration was on base metals, 24% on gold 10% on rare earths and 9% on Lithium.
- In 2010 60% of the NT land mass was subject to mineral exploration licences, at the start of 2019 13% of the NT was subject to mineral exploration licences.
- Although the Territory is more reliant on Commonwealth funding than other Australian jurisdictions, the Territory's Own Source Revenue forms an important component of total revenue. In 2018/2019 Territory taxes and royalties contributed \$1.06 billion of Territory Own Source Revenue, 17% of the NT's total revenue (confirm NT revenue)
- In 2018/2019 Royalties made up 40% of Territory Own Source Revenue.
- The NT economy continues to be in a precarious state, with a fiscal balance deficit of \$1.1 billion and a total net debt of \$6.2 billion in 2019/2020, fuelled in part by a contracting economy, including a 14% drop in Royalties from the preceding year.

| NT Tax Type | 2018/2019 Estimates (\$m) | 2019/2020 Budget (\$m) |
|---|------------------------------|---------------------------|
| Mining and Petroleum Royalties | 425 | 366 |
| Payroll Tax (now 5.5% of total payroll above \$1.5 million) | 253 | 238 |
| Stamp Duty (from 1.9% to 4.95% above \$525,000 and 5.75% above \$3m and 5.95% above \$5m from 1 July 2017) Derelict and Vacant property Levy – 1% of unimproved capital for vacant buildings and 2% for vacant undeveloped land. | 172 | 77 |
| Taxes on gaming and lotteries (various) | 84 | 85 |
| Motor Vehicle Taxes | 77 | 79 |
| Taxes on insurance | 50 | 51 |
| Total | 1061 | 896 |

RESPONSE TO ISSUES

| 1. NT issues with project approval processes (impediments to timing, nature and extent of investment) | |
|---|---|
| Issue | Recommendation |
| <p>a) Additional regulatory approvals for project commencement and removal of one stop shop approvals for resource projects:</p> <ul style="list-style-type: none"> i. <i>Environment Protection Act 2019</i> (NT) requirement for environmental approval and approval on transfers. ii. <i>Water Act 1992</i> (NT) requirement for water extraction licences and process to obtain | <p>Create an effective one-stop shop for major project approvals that has the effect of streamlining the approvals processes and improving efficiency.</p> <p>In each jurisdiction this responsibility should rest with the relevant agency for regulation of mining and petroleum otherwise the system runs the risk of becoming unworkable. In the NT the relevant agency is the Department of Primary Industry and Resources (DPIR).</p> |
| <p>b) Time taken to secure environmental approvals</p> <p>The time taken to secure environmental approvals can take from 1 to 3 years and involve over \$1m in costs.</p> | <p>The time taken to secure environmental approvals is often not representative of the level of complexity involved in a project.</p> <p>Certainty in the regulatory system and processes is critical in order for appropriate business planning and investment decisions to be undertaken.</p> <p>Efficiencies must be considered to reduce approval timeframes to provide certainty and investor confidence in the Northern Territory resources sector.</p> |
| <p>c) Process under <i>Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) (ALRA)</i> to access Aboriginal land (49% of NT):</p> <ul style="list-style-type: none"> • cost (\$40,000 per meeting); • time (60 months to finalise ALRA exploration agreement and 9 months of 9 months for EL grant on non-ALRA land); • effect on completion (lack of turnover of ground on Aboriginal land – anti-competitive and out of step with other land tenure); • duplication of regulation; and • administrative burden. | <p>The Chamber considers that as mining and petroleum resources are the property of the Crown, commercial transactions relating to the exploration and extraction of these resources should be managed by the government for the benefit of all Australians.</p> <p>Notwithstanding the above, the Chamber also acknowledges and respects Aboriginal cultural heritage and the rights afforded to Aboriginal land owners under the ALRA.</p> <p>As such, the Chamber advocates:</p> <ol style="list-style-type: none"> 1. consultations and negotiations between resources companies and traditional owners must be carried out expeditiously and in good faith to allow access to the Crowns' resources; 2. reasonable commercial benefits should be made available to Traditional Owners should a resources company gain commercial value from the resources; and 3. fees charged by Traditional Owners under permits, consent or agreements reached in accordance with the ALRA should be capped. |
| <p>d) Process under <i>Native Title Act 1993 (Cth)</i></p> | <p>The comments and recommendations above are</p> |

| | |
|---|--|
| <p>(NTA) for production tenure:</p> <ul style="list-style-type: none"> • cost (Land Council costs, meeting costs); • time; • payments exceed entitlement to compensation (generation of economic rents to native title holders and compare to payment to pastoralists); • duplication of regulation; and • administrative burden. | <p>equally relevant to this issue.</p> <p>Fees charged by native title holders, native title claimants, Native Title Representative Bodies (NTRB's) or Prescribed Body Corporates (PBC') under agreements reached in accordance with the expedited procedures or RTN provisions of the NTA should be capped.</p> |
| <p>e) Approval delays</p> <p>The response to duty of care regulation under which resources companies submit management proposals is incessant requests for information, a lack of distillation and focus on the key issues and delay.</p> | <p>Clarity is required around the approval processes to avoid costly delays.</p> <p>Increase capacity and capability of government staff with responsibility for assessing management proposals and delegated officers through the introduction of minimum standards of professional competency.</p> <p>Formal training should be supported by mandatory annual Continuing Professional Development (CPD) requirements which are linked to salary progression.</p> |
| <p>f) Increasing requirement for independent experts to certify (increased cost, lack of expertise within department, coverage for when things go wrong).</p> | <p>Note comments above.</p> |
| <p>2. NT issues with regulatory practices (reduction of complexity and duplication and improve transparency)</p> | |
| <p style="text-align: center;">Issue</p> | <p style="text-align: center;">Recommendation</p> |
| <p>a) Duplication of approvals</p> <p>In addition to submitting a Mining Management Plan (MMP) to obtain an Authorisation under the <i>Mining Management Act</i>, a company must obtain:</p> <ol style="list-style-type: none"> Environmental Approval for mining in advance of an MMP (and for any transfer); Water Extraction Licence; and submit a certified Risk Management Plan under the <i>Work Health and Safety (National Uniform Act) Regulations</i>. | <p>Environmental Approvals should be in the form of a recommendation to the relevant Minister, otherwise the Environment Minister effectively has a veto over all resource's projects in the NT.</p> <p>Environmental Approvals should not be required for the transfer of existing mining/energy operations absent a significant change in those operations.</p> |
| <p>b) Lack of transparency</p> <p>The NT Government prepared a Regulatory Impact Statement (RIS) for the Environment Protection Act after it prepared and circulated the draft Act (cf COAG guidelines).</p> <p>The Chamber and other groups made submissions to the RIS but Government has refused to release the RIS.</p> | <p>Require public release of Regulatory Impact Statements and/or the cost-benefit analysis on which the RIS is based.</p> <p>The public should have benefit of the same information about the costs of legislation as government when bills or regulations are tabled.</p> |

| | |
|---|--|
| <p>c) Lack of skills and industry experience in regulators (qualifications in department, Montara report).</p> | <p>As per 1(e) above, reduce delays in assessments and approvals through the introduction of minimum standard of professional competency for regulators responsible for approvals, assessments, recommendations and delegations. Formal training should be supported by mandatory annual CPD requirements which are linked to salary progression.</p> |
| <p>d) Access issues Non legislative (policy) requirement for access agreement or determination by Land Access Assessment Panel before substantial disturbance on pastoral land:</p> <ul style="list-style-type: none"> i. Contrary to legislative provisions. ii. Creates leverage in negotiations through delay. iii. Focus from the landholder ends up being compensation. iv. Land Access Assessment Panel is viewed as biased by pastoralists and therefore does not contribute to positive view of the process. | <p>Access procedures and requirements must be governed by regulation which is underpinned by legislation and not by non-legislative policy that has not been subject to parliamentary scrutiny. Firm time limits must be established.</p> |
| <p>e) NT Government attitude to risk and company size:</p> <ul style="list-style-type: none"> i. Does not focus on managing risk on the downside rather, seek to undertake lengthy reviews of applications and then imposes material conditions. ii. Focus on large companies and projects with consequent adverse effect on the economy and attempting to pick winners. | <p>Investment activity in mineral and petroleum projects from major investors to entry level exploration companies should be actively encouraged and supported by government to drive ongoing interest and investment in the NT.</p> |
| <p>f) Operation of the Mining Register and DPIR's current practice of not maintaining a copy of registered agreements with consequent negative effect on investment and security.</p> | <p>DPIR's current policy of not maintaining a copy of registered agreements is inconsistent with the provisions of the <i>Mineral Titles Act 2010</i> (NT) (MTA) and operates to defeat the purpose and effect of a mining register. Review of government regulatory practices is required to ensure security of title and investor confidence in the registration system.</p> |
| 3. NT issues with environmental management and compliance arrangements | |
| Issue | Recommendation |
| <p>a) Time and cost of environmental approvals:</p> <ul style="list-style-type: none"> i. Lack of use of less intensive environmental impact assessment provisions for smaller projects. ii. Lack of focus in Terms of Reference. iii. Time taken in assessment process, including time taken to review and decide | <p>Require use of public environment reports or focused Environmental Impact Statements for smaller/less intensive projects or projects with limited potentially significant impacts. Terms of Reference should be standardised and specific to identified potentially significant impacts.</p> |

| | |
|---|---|
| <p>on Notice of Intent (NOI); issue draft Terms of Reference; review Reports; and to issue Assessment Report).</p> <p>iv. Quality of Assessment Reports (overlap with other legislative requirements, referral back to Environmental Protection Agency, requirement for independent expert reports, lack of specific requirements).</p> | <p>Assessment Reports should be written as mitigation, monitoring, and reporting plans that can easily be incorporated into conditions of approval in Project permits and licenses.</p> |
| <p>b) Increasing complexity</p> <p>Response of substituting action with legislation by passing <i>Environment Protection Act 2019</i> (303 sections over 156 pages, and same again for regulations) to replace <i>Environmental Assessment Act</i> (16 sections and 13 pages).</p> | <p>Environmental impact assessment should be the subject of stand-alone legislation.</p> <p>The complexity is unnecessarily increased by tying all assessment (not just for the resource sector) to waste management and pollution control law.</p> |
| <p>c) Water Act amendments:</p> <p>i. Application to mining and petroleum – second set of approvals.</p> <p>ii. Conservative approach to resource.</p> <p>iii. Time taken to determine water allocation plans and deal with water extraction applications.</p> <p>iv. Increased process to obtain water extraction licence.</p> <p>v. Information requirements and consultant studies.</p> <p>vi. Creation of strategic indigenous reserves and economic rent.</p> | <p>The new amendments add increased complexity and cost to the mining and petroleum approvals processes.</p> <p>Government should take appropriate action to ensure requirements for approvals processes are clearly defined to minimise processing delays.</p> |
| <p>d) Northern Territory Petroleum Reserved Block Policy:</p> <p>i. makes 49% of NT off limits to petroleum exploration and development (includes Aboriginal land under ALRA);</p> <p>ii. Sites of Conservation Significance and Indigenous Protected Areas, introduced with stated purpose of notice of matters to be considered but with no legislative effect, now off limits for petroleum exploration (Legune and McArthur River).</p> <p>iii. NT Parks and Reserves legislation specifically contemplates petroleum exploration.</p> <p>iv. NT determining non-prospective blocks.</p> <p>v. Aboriginal land gives traditional owners veto rights (not enjoyed by any other citizen) when minerals are owned by the Crown.</p> | <p>Government policy reserving areas from development should not be unnecessarily prescriptive (i.e., suitability of land for development should generally be on a case by case basis).</p> <p>Policy should be consistent with existing legislation.</p> |

| | |
|---|--|
| <p>e) Use of moratoria:</p> <ul style="list-style-type: none"> i. Seabed mining moratorium. ii. Hydraulic Fracturing Moratorium. | <p>Periodic technical reporting requirements with moratoria to expire if timeframes not met.</p> |
| 4. NT issues with expediting project approvals | |
| Issue | Recommendation |
| <p>NT has Major Project Status:</p> | |
| <p>a) Various administered by Department of Chief Minister and Department of Trade Business and Industry.</p> | <p>Responsibility for Major Projects should rest with a single department for consistency Policy Framework last updated in July 2015. Industry has provided mixed views on usefulness and success.</p> |
| <p>b) Does not change the approvals required but is designed to assist with approval identification, co-ordination and expediting</p> | <p>Review of Policy Framework with industry engagement is recommended.</p> |
| <p>c) Enter into a non-binding Project Facilitation Agreement to identify scope of Project, identify Project Control Group, commitments to Local Industry Participation.</p> | |
| 5. NT issues with broader impediments materially affecting investment | |
| Issue | Recommendation |
| <p>a) Mineral royalty regime:</p> <ul style="list-style-type: none"> i. Profits based (20% Net Value) combined with ad-valorem (2.5%) with no offset. ii. Denying Operating Cost deductions to seek to implement policy of NT residence (increases effective royalty rate to 22% of Net Value). | <p>The recent introduction of the requirement for gross royalty payments on top of the pre-existing profits-based elements has created an expensive mineral royalty regime which is a significant deterrent to investment in the NT resources sector. Engagement with industry and review of the royalty system is required.</p> |
| <p>b) Effect of security:</p> <ul style="list-style-type: none"> i. \$38.2 million held in 2005, \$1.34 billion now held in security (cash or bank guarantees) for NT mining and exploration industry, represents capital tied up and duplication when rehabilitation works underway. ii. 1% environmental levy on security, to fund rehabilitation of mines subject of Government regulatory failure. Issues with equity, use and transparency of such funds. | <p>The current system governing the imposition and administration of mining securities in the NT requires 100% of the calculated rehabilitation liability to be held as security, with an additional 1% environmental levy imposed. Cf WA and Qld. The system as it currently operates in the NT is ineffective, lacks transparency, restricts industry growth and contradicts the NT and Commonwealth government policy of promoting mining as a critical industry.</p> <ul style="list-style-type: none"> • A comprehensive review of the current security system is required, together with more effective procedures governing a long-term fund for ongoing rehabilitation requirements. • The requirement for, and the value of security should be assessed on a case by case basis. • The method of calculating estimated rehabilitation liabilities and residual risks should be publically available. |

| | |
|--|--|
| | <ul style="list-style-type: none"> • Higher levels of security should be required from unsatisfactory or high-risk operators, with discounts available for low risk operators. • Only 33% of the current environmental levy is required to go into MRF. Transparency required on where the 67% balance is directed and for what purpose. • Introduction of independent advisory panel to provide advice on MRF proposals. Panel membership should include industry representation and professional/technical expertise. |
| c) Proposal for mining activities to be regulated by Environment Department and NT EPA. | Regulation of mining activities should remain with DPIR. |
| d) Infrastructure challenges: <ol style="list-style-type: none"> High electricity costs. Gas (limited network and gas availability). Water (generally too much of it). Road transport (upgrades required – eg Tanami Road). Rail transport (regulated monopoly and access fee based on replacement cost not acquisition cost). Ports (potential new ports issue with proposal for intertidal zone to be Aboriginal land – 90% of NT coastline and NT cannot compulsorily acquire). | <p>Development of infrastructure should support, stimulate and enhance economic productivity, reduce commercial costs for business and provide ongoing social benefits.</p> <p>Expedited permitting for energy projects is required.</p> <p>Re-direct road transportation funding to regional projects necessary for transport of extracted resources. A fit for purpose road network contributes to economic productivity by enabling heavy vehicle road usage, improving access to infrastructure and providing linkages between mining operations, improving road safety and reducing the risk of seasonal road closures.</p> |
| e) Functioning of Northern Australia Infrastructure Facility (NAIF). | Better strategic use by the NT Government of the NAIF for regional infrastructure projects. |
| f) Failure of Government to champion mining in the NT <p>There is a gap between the NT's overseas investment strategy, Critical Minerals Strategy and Investment Territory (which refers to 10 key investment sectors including minerals) and the failure to promote the NT as a place to invest and management of development.</p> | <p>Aspirations of NT and Commonwealth governments to promote mining as a critical industry is not supported by current regulatory environment.</p> <p>The NT requires consistent and progressive policy settings supported by a sound regulatory framework that attracts investment, increases competitiveness and facilitates economic growth of the resources sector.</p> |

| 6. NT issues with community engagement and benefit sharing arrangements | |
|--|---|
| Issue | Recommendation |
| <p>a) A rise in activism associated with hydraulic fracturing.</p> <p>Response was Moratorium and Inquiry (good idea and response given oil & gas prices at the time).</p> <p>Outcome was lots of recommendations on additional regulation which Government fully accepted, so the industry is being strangled by regulation.</p> | Regulatory review required to ensure the industry can properly function. |
| <p>b) 34% of NT population is indigenous (cf 2% for Australia).</p> <p>New <i>Environment Protection Act</i> has specific provisions targeting indigenous engagement (section 43) imposing a general duty of proponents to:</p> <ul style="list-style-type: none"> i. consult Aboriginal communities; ii. seek and document traditional knowledge and understanding of the natural and cultural values of an area; and iii. address the rights and interests of Aboriginal communities in relation to areas that may be impacted. | Additional complexities and duplication of requirements under ALRA and NTA add to cost and timeframes for approvals. |
| <p>c) Under ALRA and NTA resources projects generally have agreements that provide for:</p> <ul style="list-style-type: none"> i. Employment, training and business commitments ii. Environment commitments iii. Sacred site protection processes iv. Cultural inductions v. Liaison Committee vi. Provision of Information vii. Financial Benefits including up-front payments, annual area based payments, percentage of project capital payments, royalty payments and administration payments – total cost is between 1.5 and 4.5% of project revenue. | <p>No issues with requirement to negotiate agreements in general however there are some concerns about distribution of benefits within community and effect of payments on the community.</p> <p>Financial payments can be excessive and there is no industry standard. An agreed capped fee schedule should be introduced to avoid unreasonable fees being charged and to expedite negotiations.</p> |
| <p>d) Mines in the NT average between 15% to 20% indigenous employment. NT public serviced has 10% indigenous employment.</p> | Apply equitable principles in requirement for Indigenous employment across the Territory. |

7. Proposed key regulatory settings for life cycle of resources project

Exploration evaluation

- i. Land access
- ii. Swift approvals (given low impact)
- iii. Minimal conditions (general duties stated)

Development

- i. Studies confined to identified key issues
- ii. Efficient and timely approvals process
- iii. Appropriate and confined conditions

Production and processing

- i. Appropriate royalty regime
- ii. Monitoring and ongoing licencing regime

Rehabilitation

- i. Effective security regime