

5 Whitham Road
PERTH AIRPORT
WA 6105

Locked Bag 42
WELSHPOOL DC WA 6986

Telephone: +61 (0)8 6242 1000
Fax: +61 (0)8 6242 1200



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Resources Sector Regulation
Productivity Commission
Locked Bag 2, Collins St East
Melbourne VIC 8003

via email: <https://www.pc.gov.au/inquiries/current/resources/make-submission#lodge>

Dear Ms Lisa Gropp

Re: FURTHER COMMENTS TO THE PRODUCTIVITY COMMISSION'S EXAMINATION OF REGULATION AFFECTING THE RESOURCES SECTOR

Roy Hill hereby provides this second submission to the Productivity Commission for their examination of regulation affecting the resources sector, following the release of the draft report in March 2020.

Roy Hill welcomes the opportunity to make further comments to the Productivity Commission following the release of the Commission's first draft. The opportunity to make further comments on the Commission's draft report is appreciated given the importance of the impact regulation has on the mining sector and the future of Australia's economy. It is noted there is an attachment to our submission that contains commercially sensitive information and therefore request that this attachment remains confidential.

We would be pleased to discuss these matters in further detail with the Commission if required. Please contact me should you have further queries

Yours sincerely

Damien McAlinden
General Manager Environment, Government Relations and External Affairs
Roy Hill

About Roy Hill

Roy Hill is an independent world-class integrated iron ore mining, rail and port operation in the Pilbara region with Western Australian majority ownership, chaired by Mrs Gina Rinehart.

The operation consists of:

- Mine, incorporating:
 - Conventional open pit, bulk mining operation from multiple production benches
 - 60 million tonne per annum (Mtpa) wet processing plant;
- 344 kilometre single line, heavy haul railway;
- Purpose built, dedicated two berth iron ore port facility at Port Hedland, capable of receiving, stockpiling, screening and exporting 60Mtpa (wet) of direct shipped iron ore as lump and fines; and
- Perth Headquarters and Remote Operating Centre.

Roy Hill has a defined mineralisation of approximately 2bt of +50% Fe iron ore of which 1bt forms the current +55% Fe mineral resource, enough to sustain a base case mine life of more than 11 years. Mining commenced in 2014, and current tonnages take into account mining depletion. With integrated mine, rail and port facilities, which have the current capacity to deliver 60 Mtpa – Roy Hill is one of the world’s major resource based operations, which will deliver enormous benefits to the broader community for years to come.

Roy Hill loaded its first shipment of ore for export on 10 December 2015 and has since loaded multiple shipments to its key markets in Japan, Korea, China and Taiwan.

Context

Our Chairman, Mrs Gina Rinehart’s mining entrepreneurial drive and passion has successfully unlocked economic opportunities to the benefit of thousands of West Australians both directly and indirectly. Her vision to leverage Australia’s unique mining assets to benefit the future prosperity of all Australians can only be realised through the Australian Government’s creation of mining policies that are free of red tape, encourages investment, business growth and jobs. As such, Mrs Rinehart is in support of the [Institute of Public Affairs May 2017 report](#) which highlights red tape reduction as a powerful driver for economic growth.

Roy Hill welcomes the opportunity to provide a second submission to the Productivity Commission (the Commission) on the examination of regulation affecting the resources sector. Roy Hill is well placed to provide insight into red tape impacting the resources sector, having recently successfully completed the fastest ramp up to nameplate capacity of 55Mtpa in the Pilbara. Since then, Roy Hill has gone on to receive government approval to increase iron ore shipping to 60Mtpa – enabling us to provide insight to the Commission on not only recently commencing a mining operation but expanding our operation.

Roy Hill’s first shipment of iron ore departed Port Hedland on 10 December 2015 and has since loaded multiple shipments to its key markets in Japan, Korea, China and Taiwan. Roy Hill has achieved many firsts, including the largest mainland resource debt funding in the world, from 19 of the world’s largest banks, and five Export Credit Agencies.

Roy Hill directly employs more than 2,600 people, with the majority of our mine and port workforce on even time fly-in fly-out (FIFO) rosters. Our Port and Rail management and their families live in the town of Port Hedland and are active members of this community. Further, our mine indirectly

supports the employment of thousands of local and Perth based businesses engaged to support the ongoing operational activities of Roy Hill.

Roy Hill is actively engaged on the need to cut red tape

As stated in our first submission to the Commission, a strong and prosperous resources sector is critical to Australia's economic future, and all tiers of Government working together to streamline approvals and improve regulation is an important step toward supporting future resources sector investment, industry growth and opportunities.

Roy Hill has previously reported on the more than 4,000 approvals required to achieve the pre-construction phase of our project, with more required for actual construction and ongoing improvements to infrastructure. Roy Hill also experiences ongoing compliance red tape as part of our day-to-day operations.

It is for this reason that Roy Hill is pleased to see many of the recommendations made in our original submission have made it into the Commission's draft report; specifically:

- The resources sector regulatory landscape is unnecessarily complex
- Scope creep and approval times have an impact on costs associated with regulatory submissions. This then hinders a proponent's willingness to push back on a regulator's requests for additional information, out of fear of further delays and associated costs. This subsequently further 'cements' scope creep, enabling further creep in later amendments.
- The need for best practice regulator conduct - defined as clear, predictable decision-making processes that minimise unnecessary regulatory costs or delays in decision making.
- A lack of transparency inhibits regulator accountability.
- The important role bilateral assessment agreements between the Commonwealth and the State can play on cutting red tape and reducing approval times.
- The current review of the Western Australian *Aboriginal Heritage Act 1972 (WA) (AHA)* is important so that it is culturally appropriate and equitable for Aboriginal people, while also more efficient for industry.
- It is important for government to allocate funding to ensure capacity constraints of Prescribed Body Corporates (PBCs) are addressed, enabling greater cooperation and increasing involvement of Traditional Owner groups in the mining industry, from both an employment and a community perspective.

It is also encouraging to see that since the release of the Commission's draft report, the West Australian Government announced on 13 May 2020 [measures to streamline environmental assessment and approvals processes](#). The State's \$28 million contribution, coupled with the Commonwealth's \$7.5 million contribution will go a long way to reduce assessment times, improve transparency and consistency of environmental approvals, and reduce associated costs for industry navigating joint State/Commonwealth environmental approvals for resources projects.

Roy Hill looks forward to hearing more details as to the practical implementation of measures in support of this joint State-Federal announcement. It seems logical that all duplication of Federal-State regulation should be removed, with the overarching philosophy that the Commonwealth should not regulate anything that's already regulated by the State. It is imperative that these measures are implemented as soon as possible, in order to support the State's post-pandemic economic recovery.

Additional information requested by the Productivity Commission

In response to the Commission's request for additional information, Roy Hill provides the below further comments:

Leading practice Indigenous heritage

Roy Hill follows best practice heritage management principles with a particular focus on consultation. The revised West Australian AHA as it is currently envisaged will improve a number of issues with the current system. Heritage and industry outcomes will be better understood in a broader view of land use in the best interests of the State. Native Title parties will also have a greater opportunity to weigh in on matters pertaining to their country, while the resource sector will be able to make decisions based on the level of disturbance proposed. All these amendments to the AHA will lead to faster turn-around times for ground-breaking activities and less costly heritage approval processes – a win for all parties.

Roy Hill proactively shares infrastructure with communities within our operating footprint

The Commission requested further information on how resources companies share infrastructure with communities. At Roy Hill, our inclusive culture extends beyond that of our employees to include our employee's families, our suppliers, and the Traditional Owners on whose land Roy Hill operates. As such, we seek to share our infrastructure in ways that positively support our communities, in a cost-effective way. We value the contribution these partnerships make to both Roy Hill's operations and the lives of our Traditional Owner groups – the Kariyarra, Nyiyaparli and Palyku people, to whom we each hold Native Title agreements.

Our commitment to the communities in which we operate includes in-kind support by enabling the regular use of our available infrastructure by visiting community stakeholders and not-for-profit groups, which would otherwise be unoccupied. This is mainly through offering rooms that would otherwise be vacant at our FIFO accommodation villages in both Port Hedland and our Roy Hill mine village.

For example, the [Earbus Foundation](#) makes a monthly trip to Port Hedland in their efforts to reduce the incidence of middle ear disease in Indigenous and at-risk children in Western Australia, and Roy Hill is happy to provide free accommodation at [Gateway Village](#) in Port Hedland to the Foundation's staff as they conduct their community visits, should those rooms not be required for operational purposes.

When possible, Roy Hill also makes available unused rooms we have allocated at Gateway Village in Port Hedland for visiting sporting groups. For example, in March this year Water Polo WA held its 2020 Country Championships in Port Hedland, and Roy Hill was pleased to be able to offer some rooms for visiting country water polo teams from all over the State. Roy Hill's Port Hedland employees were encouraged to watch the games at the local pool and have the chance to see the local Port Hedland club compete against some of the best regional players in the State.

Roy Hill has a strong relationship with the local WA Police in Port Hedland, and as such we are semi-frequently approached by the local Port Hedland WA Police to see if we were able to provide emergency accommodation to the Perth visiting officers who come up to investigate significant matters impacting the local community. Roy Hill is always very happy to help and provide accommodation, should there be vacant rooms available that would otherwise be unused.

Roy Hill is also pleased to provide available vacant accommodation at our mine village, as well as the use of our auditorium facilities for the annual [Martu Leadership Program](#) facilitators and delegates. The Martu Leadership Program is open to members of the four Martu communities in the Western Desert of the Pilbara region. The program aims to increase the Martu people's exposure to mainstream governance processes, while building confidence to engage and understand their appropriate application. Topics in the program include Australian corporations' law, native title law, trust law and the operations of for-profit and not-for-profit companies.

In addition, Roy Hill seeks to support regional economies and businesses in the areas within which it operates by applying fair payment terms, providing on-the-job employee training and apprenticeships, accommodating local, FIFO and DIDO options for our people, and working with Traditional Owner businesses to provide the best possible opportunity to successfully secure Roy Hill procurement contracts.

Roy Hill sponsors local initiatives that support a positive step change in the communities in which we operate. We support the Royal Flying Doctor Service, Pilbara sporting clubs such as fishing, golf and school sport programs, education initiatives in partnership with local schools and other philanthropic initiatives, like the Port Hedland Well Women's Centre. This support comes in the form of both donations and in kind, where Roy Hill staff give their time to volunteer, provide donations in the form of goods, for example we have provided emergency accommodation to members of our community at our Port Hedland Gateway Village.

Roy Hill also invests in local infrastructure to improve the safety of the communities in which we operate. In 2018 Roy Hill funded the upgrade of 22 kilometres of the Marble Bar Road from gravel to a fully sealed Main Roads WA compliant highway. This project cost Roy Hill approximately \$39 million, and while greatly benefiting Roy Hill, the upgrade of the road from gravel to now be Main Roads WA compliant - has also benefited the local community.

As too has the rail bridge Roy Hill funded to carry the Great Northern Highway over the Roy Hill rail line, leading in to Port Hedland. Costing Roy Hill \$18.66 million, the bridge has significantly improved road safety for the greater Port Hedland community by removing the risk of a rail-road collision posed by the previous level crossing. It has also improved road user travel times and traffic flow, reducing delays associated with trains passing through the intersection up to 13 times a day.

Changes to statutory obligations on private agents

The Commission requested the opinion of industry on whether the *Native Title Act 1993 (Cth)* should be amended to impose statutory obligations on private agents that are equivalent to those imposed on Native Title representatives. Roy Hill would support such an amendment. This would offer certainty to all stakeholders that the legal representation can be relied upon to provide properly authorised decisions on behalf of a Native Title group.

If the legal representative is acting on behalf of a Native Title group, and decisions are based on the processes and procedures established by the Native Title group, there is less likelihood of delays and uncertainty regarding applications. A decision that applies to the whole of the Native Title group will also allow anyone to point any dissenters to the decision made as a reliable one that both sides must adhere to.

It is often in instances where legal representatives are not acting on behalf of the whole of the Native Title group that there is an inability to reach a decision, or that the decision-making process itself causes unrest, which in turn can lead to tensions in negotiations. As such, if private legal

representation had the same obligations as Native Title representative bodies to consider the broader Native Title group's interests, it would likely result in less of the actors that are trying to benefit sub-groups of the Native Title holding society.

Government support for Aboriginal Heritage and Native Title

The Commission also asked for further insights from the resources sector on the impact of government support for Aboriginal Heritage and Native Title. In Roy Hill's experience, the West Australian government's funding of Native Title representative bodies in the claim phase is helpful and ensures Native Title parties have the necessary legal advice and support from experts to undertake negotiations and future act considerations. This funding is necessary in order to see matters continue to progress, and works well in its current form.

Native Title agreements with compensation payments managed through benefit management structures, such as most section 31 and Indigenous Land Use Arrangements (ILUAs) entered into in the Pilbara region, reduce the reliance on government funding and in cases of Native Title determinations/claims with large resource extractions, it removes the need for government funding to the Prescribed Body Corporates (PBCs).

The issue lies more in areas where land is not used for resource extraction and there is a Native Title determination where a PBC is still required to comply with the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) – for example holding annual general meetings and managing future acts. Such compliance is costly for many PBCs, and if there are no Native Title Agreements with compensation for impairment of Native Title rights and interests, then there is no funding or resourcing to implement these compliance measures.

As stated in Roy Hill's earlier submission, reforms to the PBC sector as part of Commonwealth amendments must be mindful of ensuring there is funding for governance capacity built into any changes, in order to ensure a successful transition across the sector is adequately resourced. Additional funding to address the capacity constraints of PBCs will enable greater cooperation and capacity building for increasing the involvement of Traditional Owner groups in the mining industry, from both an employment and community perspective.

Deficiencies in compliance monitoring and enforcement efforts

The Commission also asked for further details regarding regulatory compliance monitoring and enforcement efforts. It is Roy Hill's experience that regulators in general very rarely travel to site. Roy Hill believes it is in the best interests of both the regulator and industry to promote more site visits, with the objective of enhancing transparency and understanding. It is for these reasons that Roy Hill regularly invites government agency representatives to visit our sites, though few of these invitations are taken up.

Roy Hill has found there are often separate 'approvals' and 'compliance' divisions within a regulator, and although compliance officers may have come to site as part of their monitoring role, approvals officers have very rarely visited. We believe more site visits by approvals officers will help to improve understanding, reduce approval times and enable regulators to have greater confidence in applying the appropriate conditions on industry when issuing an approval.

Roy Hill queries as to whether compliance agencies are adequately resourced to carry out effective monitoring and enforcement programs. Currently Roy Hill has onerous administrative compliance

reporting requirements embedded into conditions of approvals to which very little feedback is received on the compliance reports submitted (for example compliance assessment reports).

In addition, we believe current compliance reporting requirements are not providing adequate or effective information that can inform future decision making. For example, surface water monitoring has been conducted over a number of years, however the data collected is often unable to be interpreted. This is due to the inconsistent nature of surface water flows and a lack of access to sampling sites for a considerable time after the surface flows took place – however there is still a requirement to sample. In another example, a licence amendment for a managed aquifer recharge (MAR) trial required Roy Hill to provide a bore log within 30 days of completion of each bore. As the bore drilling program takes a number of weeks, this resulted in Roy Hill needing to make a number of submissions to the regulator of individual bore logs, creating a considerable administrative burden. There doesn't appear to be any need for bore logs to be provided within 30 days of drilling specifically, and as such the opportunity to provide a complete bore log at the completion of the drilling program would have saved considerable time and effort on Roy Hill's part.

That being said, Roy Hill is pleased the WA Department of Mines, Industry Regulation and Safety (DMIRS) updated its Mining Proposal Guidelines in 2016, to take a more risk-based and outcomes focused approach. This is a welcome improvement that has clarified mandatory requirements and improved understanding on how information is considered in regulatory decision making. May such risk-based improvements continue to reduce the regulatory burden for the resources sector.

In our first submission to the Commission, Roy Hill strongly encouraged regulators to adopt new technology to help reduce the administrative burden on both themselves and industry. This point has been made more relevant with the rise of COVID-19 over the last few months, and as previously stated the West Australian Government announcement on 13 May 2020 to [streamline environmental assessment and approvals processes](#) is a welcome statement and we await to see its prompt implementation.

On 7 May 2020 the WA Minister for Mines and Petroleum [announced](#) new procedures to support the mining industry during COVID-19. The fact that these measures include now accepting electronic signatures on documents not required to be witnessed or sworn, or the now enabling the emailing of other tenement-related documents, highlights just how far regulators have to go to streamline submissions.

Post-relinquishment obligations of a mining tenement

The Commission requested information on leading-practice ways of managing residual risk to Government following the relinquishment of a mining tenement. Roy Hill is able to provide an example of the relinquishment of rehabilitation monitoring through progressive rehabilitation, having recently relinquished a portion of land under our Special Rail Licence in 2019.

This example shows the WA Department of Mines and Industry Regulation Mine Closure Guidelines recommendation to progressively rehabilitate land has enabled Roy Hill to effectively plan and budget for this activity as part of its ongoing operations, reducing risk for both parties. This approach also reduces the potential risk of a tenement holder walking away at the conclusion of its mining operations having conducted no mining rehabilitation. Roy Hill has found the progressive relinquishment process has also created a positive relationship between the company and the regulator, enhancing transparency and supporting two-way communication. Refer to Attachment A for the detailed example.

Support the resources sector to continue to deliver for Australia's economy post COVID-19

The catastrophic impact of the coronavirus on Australia's economy is evident, and our resources sector must continue and grow in order to support our country's economic recovery. Australia's mining and related industries must continue to remain globally competitive in order to deliver the prosperity we rely on to create jobs, support incomes and build businesses. By earning export income through the sale of iron ore, Roy Hill pays royalties and taxes, and keeps businesses and people in related industries employed, purchasing supplier products and services – which in turn also contribute to Australia's tax system.

Roy Hill is proud to support Australia's economic recovery, though in the short term there is the opportunity for the Commonwealth to consider a transitory regulatory 'holiday' in order to support the economy back to pre-COVID levels of economic activity.

- The Government could freeze the number of regulations (ie not introduce any new red or green tape) until employment and economic activity is restored to pre-crisis levels. This action, in conjunction with the West Australian government's recently announced [measures to streamline environmental assessment and approvals processes](#) and other State government initiatives like the current amendment bill before the West Australian Parliament to cut red and green tape contained in the *Environmental Protection Act 1986* (EP Act) would act to support not only existing resources projects, but help stimulate investment for new projects.
- State and Federal governments could also reign in unproductive public sector spending (for example on consultancy) and implement an employment freeze until the economy has returned to pre-crisis levels.

These recommendations, in conjunction with longer term regulatory reform measures will help to maintain Australia's competitiveness internationally and facilitate the sustainable growth of the resources sector beyond the immediate COVID crisis.