

25 March 2013



Mr Jonathon Coppel
Commissioner
Major Project Development Assessment Processes
Productivity Commission
Locked Bag 2, Collins St Eats
Melbourne VIC 8003

Dear Jonathon

CME Submission to the Productivity Commission Inquiry into Major Project Development Assessment Processes - Issues Paper

The Chamber of Minerals and Energy of Western Australia (CME) welcome the opportunity to provide comment on the Productivity Commission Inquiry into Major Project Development Assessment Processes.

CME is the peak resources sector representative body in Western Australia funded by its member companies who generate 95 per cent of the value of all mineral and energy production and employ 80 per cent of the resources sector workforce in the State.

The Western Australian resources sector is diverse and complex covering exploration, processing, downstream value adding and refining of over 50 different types of mineral and energy resources. The sector is also a significant generator of power, predominantly for its own use, and identifier and developer of water resources. Besides being the largest private employer in regional and remote Western Australia, the sector is also the largest private sector employer of Indigenous Australians.

In 2011-12, the value of Western Australia's mineral and petroleum production reached \$106 billion, and accounted for 91 per cent of Western Australia's total merchandise exports and 46 per cent of Australian merchandise exports. Furthermore, royalty payments to the state government totalled \$5.3 billion in 2011-12.

In order to ensure the Western Australian resource sector continues to develop, and support other sectors and the State and national economies as a whole, it is important to ensure effective measures to deliver increases in productivity are put in place. Economic development of this kind provides a valuable platform for the ongoing and future growth of our State.

Recent CME research shows the increasing cost of doing business is becoming a significant challenge for many energy and mining companies as they grapple with global market dynamics, increasing input costs and policy and regulatory settings that are volatile, complex and at times costly. Current tax and regulatory reviews are compounding this situation causing unnecessary business uncertainty.

Development Assessment and Approval (DAA) processes present one of the single biggest challenges facing "greenfield" resource project development in Australia. Duplication between federal and state approvals, time delays and complexity of process are all contributing to the increasing costs of resource projects in Australia.

Additional increases in costs impacting the Australian resource sector include:

- Imposed business costs including uncertainty of the timing and settings of new and changing taxation imposts such as Minerals Resource Rent Tax (MRRT) and the carbon pricing regime;

- Productivity challenges for the sector (including declining ore grades);
- Increasing cash costs for gold companies, capital costs for iron ore development in the Pilbara, non-Pilbara and emerging regions, and LNG projects already sitting at the higher end of the international cost curve;
- Increasing salaries and labour shortages; and
- Increasing energy demand and rising costs for resource projects.

While the Australian resource sector has an important foothold in the global industry, it does not dominate any one market. Therefore it remains susceptible to changes in policy that alter its attractiveness against resource sectors in other jurisdictions that compete for market share. Australia must remain internationally competitive in order to attract resources investment, economic development and employment growth into the future.

CME has considered the questions raised in the Issues Paper and has the following comments to assist the Productivity Commission in developing a Discussion Paper on major project DAA processes.

The Commission's approach to benchmarking major project DAA processes

A Port Jackson Partners report prepared for the Minerals Council of Australia found the average Australian coal project is delayed in approvals processes by an average of 3.1 years. This compares to an average internationally of 1.8 years¹. As this delay has been increasing over a number of years, it puts future investment in projects under consideration at further risk.

Furthermore, recent CME research has found capital spend for iron ore projects in Australia was higher per tonne of new capacity than the rest of the world in 2010. That margin has widened significantly over the past 4-5 years. This figure has likely increased given rising costs for materials, labour, energy and inputs.

LNG projects are significantly less competitive in WA with costs of building and operating major capital LNG facilities in Australia continuing to further increase over and above that of our competitors.

CME supports the Productivity Commission's proposal to benchmark DAA process against the set of qualitative criteria (or principles) identified in the Issues Paper. Where possible the Commission should supplement its qualitative analysis with quantitative benchmarking. Benchmarking of DAA processes is an important tool to measure where Australia stands comparatively to other jurisdictions we compete against for market share.

The Issues Paper identifies Canada as one country which would provide a useful benchmark due to it having a comparable international system and alternative investment destination. CME supports this approach and would also recommend the Commission consider benchmarking Brazil, Finland and Sweden with Australian DAA processes. These countries all scored highly on recent benchmarking completed by the Fraser Institute².

Key features of major project DAA processes

Resource companies frequently state the time taken for project approvals is one of the single biggest challenges to getting projects off the ground, particularly small and mid-tier companies.

¹ Opportunity at Risk, Regaining Our Competitive Edge in Minerals Resources, Port Jackson Partners Report prepared for the Minerals Council of Australia, September 2012.

² Fraser Institute Annual Survey of Mining Companies 2012/13

To promote the continued growth and investment in the resources sector, Australia requires an approvals system framework that is timely and well resourced, accountable and transparent, and above all adheres to the principles of procedural fairness. These principles are more fully described below.

1. Timeliness and Resourcing

- Increased use of regulatory timelines and the development of appropriate escalation procedures.
- Improved use of parallel processing of applications in multiple approval processes to ensure timeliness of decision making.
- Removal of duplication in the assessment requirements or condition setting across approval agencies.

2. Accountability and Transparency

- Policies and technical guidelines used by approval agencies to inform decisions are readily available to proponents, and clearly identify the proponent's obligations for the assessment of proposed developments.
- Applicants are able to independently identify the progress of their particular application within the approvals process.

3. Procedural Fairness

- Fair and reasonable opportunities for stakeholder input into the formulation of procedures, policies and guidelines used by approval agencies.
- Decision making is transparent and unbiased, and stakeholders treated fairly and equitably.
- Stakeholders have a fair and reasonable opportunity to make and respond to submissions.
- Appeals are assessed independently in a fair and equitable manner following the principles of natural justice.

The above principles are highlighted further in the CME Approvals Reform Implementation Report 2011³. This report summarises the past decade of approval reform reports and provides an industry assessment of progress so far with implementation of recommended reforms and to provide guidance on priority reform actions in the future. While the report focussed predominantly on Western Australian based approvals, the principles are just as applicable for commonwealth DAA process.

What are the impacts of the current arrangements?

Timelines

The major issue with the current DAA process is not the decision, rather, the time and resources to reach that decision. Environmental approvals are typically long and drawn-out for new "greenfield" projects and require a substantial front-end investment to undertake the approval process.

³ CME Approvals Reform Implementation Report 2011
<http://cmewa.com.au/UserDir/CMERPublications/111220-ENV-Approvals%20Reform%20Implementation%20report%20v1336.pdf>

A Gantt Chart prepared by the WA Department of Mines and Petroleum which maps out the DAA process from exploration to production for a Uranium mine in Western Australia estimated the best case scenario for approval timeline of 4 ½ years. While this timeline can be less for other commodities it is still a significant amount of time.

The vast majority of time limits set by agencies for stages in the approval process are administrative and not statutory. The key concern raised by resource companies are that timelines, particularly in the environmental impact assessment process, are not often achieved either as a result of lack of resources or the "stopping-the-clock" by approval agencies during the assessment process.

There are often significant delays in receiving comments from advising agencies during the response to submissions phase of the EIA assessment process which extends the overall time for approval. Changes or absences of personnel in approval agencies also often cause unnecessary delays in approvals.

The need to collect a large amount of data at various times of the year has inevitably extended the timeline for gaining approval. The amount of detail required for EIA assessments results in the focus being driven away from key environmental issues. A risk-based approach is seen as a way to concentrate on the key issues in the approval process.

The circumstances approval agencies give for "stopping-the-clock" and then either restating or resuming the clock are not clear or consistent. Some agencies are putting into place escalation protocols to resolve deadlocks in the approval processes. Presently, several iterations are expected in some stages of approval processes.

The specification of statutory limits or timelines is seen as a way to enforce a timeliness discipline on approval processes but there is reluctance in approval agencies to support this approach.

The issue of timeliness for decision making will be contingent on addressing the following:

- adequate resources being available in approving agencies;
- establishment of acceptable protocols for stopping, resuming and restarting the clock in all agencies;
- establishment of protocols to escalate issues of difference to the most senior level if matters cannot be resolved within a short time;
- increased use of statutory timelines; and
- investigation of other mechanisms to make assessments utilising risk-based or adaptive management approaches in the absence of detailed data.

Resourcing

The resourcing of approval agencies is a key consideration in the conduct of efficient and effective DAA processes. The extent to which sufficient resources are available to approval agencies is critical to the timely arrival at approval decisions.

The resource sector's general experience with the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) is a lack of adequate staff resources to effectively manage the DAA process. Too often decisions need to be elevated from the officer level to senior leadership on the grounds of unreasonableness and unfairness. This can often come down to inadequate experience and training of staff at the officer level. Officers can also sometimes come across as being too adversarial to proponents and unsupportive towards state governments' ability to perform their environment assessment responsibilities.

These resourcing and intergovernmental cooperation issues could be improved by the allocation of more staff resources in State and Territory branches of SEWPaC.

Strategic Planning

CME strongly supports the Council of Australian Government's (COAG) commitment to broad environmental regulation reform to enhance efficiency and increase certainty for business, while maintaining high environmental standards. At the 6 December 2012 COAG Business Advisory Forum, participants noted the efforts jurisdictions have made to date to improve regulatory arrangements, including increased use of strategic tools and commitment to early engagement with proponents. CME encourages the states, territories and the commonwealth to progress these reforms. Greater co-operation in reducing duplication between the commonwealth and states will provide greater business certainty, reduce both opportunity costs to industry and the resource burden on governments and provide for greater environmental outcomes by integrating commonwealth and state priorities.

CME also supports the use of strategic assessments where these approaches reduce regulatory burden and provide for positive environmental outcomes. Ideally, these strategic environmental approaches should be integrated with strategic planning at the landscape scale.

The integration of planning, development and environment functions at the state and commonwealth level should be encouraged to improve the efficiency and coordination of strategic planning processes including strategic assessments under the EPBC Act.

It is also important to ensure that strategic planning at the state and commonwealth level is forward looking and accounts for the broad range of social, environmental and economic issues and aligns with rather than duplicates existing state and territory processes.

Possible measures to improve the efficiency and effectiveness of processes

Lead-Agency Framework

In 2009 the WA State Government implemented the Lead Agency Framework (LAF) to create a single access point for resource development projects to navigate the environmental assessment and approval processes.

Under LAF, proponents are allocated a Lead Agency and a degree of assistance from that agency throughout the approvals process. The level of assistance depends on the size, complexity and broader significance to the State of the project and may consist of front end scoping, coordination and project management assistance.

It is important to note the LAF as currently applied is not a "one stop shop" and is not a mechanism to overrule or resolve the requirements or established approval timelines of other agencies. The effectiveness of the LAF relies heavily on being supported by the Premier and other key Ministers but is operated at officer level with limited ability for officers to influence other department's performance.

Industry tends to view LAF as a step forward and for the relatively few state significant projects attracting the maximum level of assistance it has been a welcome improvement. However, for the majority of WA projects, the LAF falls short of expectations. Some of the factors contributing to these perceptions are:

- lead agencies unable to resolve specific issues between the proponent and other agencies;
- lack of understanding of how the LAF is intended to work within agencies and with proponents;
- implementation of the coordination role is less active than that anticipated by industry;
- lack of knowledge of approval processes of other staff in the lead agency; and

- absence of universal approvals information tracking in place across agencies.

The WA Government's establishment of the LAF appears to have had some positive results, particularly for large state significant projects. However, it is an inadequate alternative to fundamental reforms to remove duplication and improve the efficiency and effectiveness of approvals processes in WA.

CME believes LAF as currently implemented cannot meet the expectations of the mining and petroleum industry and would urge the Government to consider a single decision maker model for mining and petroleum projects. This model, endorsed by the Productivity Commission⁴, would have a number of benefits to the current model applied in WA including:

- Focussing inputs from all agencies through one decision point – but consultation with advising agencies would still occur;
- Easy tracking of applications;
- Proponents need to deal with only one approving agency instead of the current multiplicity of decision making agencies; and
- Removing overlap and duplication of processes, reporting requirements and consideration of issues.

The single decision maker model would involve the rationalising of primary and some secondary approvals into one process administered by one Minister advised by expert agencies. This model would have implications for a number of statutes including the *Environmental Protection Act 1986*, *Mines Act 1978*, and the *Planning and Development Act 2005*.

An alternative to the single decision maker model in the short term, but not as ideal, would be the creation of a specific agency whose role is to facilitate mining and petroleum developments but is provided with enough "clout" (backed up by legislation), resources and staff capability to resolve issues arising in other agencies approval processes in a timely and efficient manner.

Risk-based regulation

CME has previously advocated the adoption of a risk-based approach for state *Environmental Protection Act 1986* (EP Act) Part IV environmental impact assessments. A risk-based approach to environmental impact assessments is seen as a way to concentrate on the key issues in the approval process.

A risk-based approach was recently trialled for Chevron's offshore gas Wheatstone project and Australian Premium Iron, iron ore mine and rail project. Both these projects were assessed at Public Environmental Review level⁵.

Feedback on the trial of a risk-based approach has indicated limited efficiencies and improvements in timelines for the approval. The resource sector would need to be well consulted before implementation to formulate standards and guidelines to confirm the terminology, methodology, consequence criteria and risk scale to be used. The application of a risk-based approach for Federal environment approval under the EPBC Act has merit as scientific knowledge surrounding matters of National Environmental Significance is relatively well known.

⁴ The Productivity Commission 2008, Performance Benchmarking of Australian Business Regulation: quantity and quality, Research Report, Canberra, available at: <http://www.pc.gov.au/projects/study/regulation-benchmarking>

⁵ EPA Report 1404 - Wheatstone Development - Gas processing, export facilities and infrastructure & EPA Report 1409 - West Pilbara Iron Ore Project - Stage 1 Mine and Rail Proposal

In any event, before such a system is applied, stakeholders would require significant consultation, particularly in respect of the consequence definitions and how interpretation of acceptable risk is applied.

Bilateral Agreements

The Council of Australian Governments (COAG) in April 2012 supported reform of the EPBC Act under the theme of reducing “green tape”. The reform includes a commitment for Governments to work together to:

- fast-track the development of bilateral arrangements for accreditation of state assessment and approval processes, with the frameworks to be agreed by December 2012 and agreements finalised by March 2013;
- develop environmental risk- and outcomes-based standards with States and Territories by December 2012; and
- examine and facilitate removal of unnecessary duplication and reduce business costs for significant projects.

CME strongly supports the COAG reform agenda, and believes the delegation of responsibility by the Commonwealth to a state or territory through assessment and approval bilateral agreements would be the single most effective mechanism for removing duplication and unnecessary costs and delays under current Commonwealth and State approvals processes.

At the 6 December 2012 COAG meeting, the Federal Government backed away from the ‘green tape’ reform agenda citing the challenge of establishing a national set of accreditation requirements and negotiating bilateral agreements with each of the states and territories simultaneously.

Reversal of the ‘green tape’ reduction agenda by the Commonwealth represents a lost opportunity to significantly improve the efficiency of Commonwealth and state approvals processes without effecting the level of environmental protection or compromising the intent of the EPBC Act.

CME understands progress towards a delegated approval and assessment bilateral between Western Australia and the Commonwealth had been made prior to the December COAG meeting and notes the legislative environment in WA already meets many of the standards of accreditation established by the Commonwealth. CME encourages the Commonwealth to progress with bilateral agreement negotiations at the state level to ensure this opportunity can be realised.

Conclusion

As the resource sector continues to grow and competition from other regions increases it will be imperative that Australia maintain its position as an internationally attractive investment destination. An efficient and effective DAA processes that at the same time maintains a high standard of environmental and social integrity and transparency will become a vital element in maintaining the international competitiveness of the sector.

CME appreciates the opportunity to provide comment to the Productivity Commission Issues Paper on Major Project Development Assessment Processes. We hope the issues identified in our submission provide useful material for the development of the Discussion Paper.

CME would like to extend an invitation to the Commissioners presiding over this review to meet with CME's Approvals Working Group to discuss issues identified in the submission in further detail.

Yours sincerely

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