

Dear Productivity Commission

I write on behalf of the Australian Uranium Association to make a submission to this inquiry.

The Association fully supports the role of development controls that serve the public interest by protecting against health, safety, environmental and other impacts that may arise in the course of project development. In the case of the Australian uranium industry, however, those laws and processes single the industry out for discriminatory treatment on grounds that are not clear, with the effect of elongating the environmental assessment and approval process for uranium projects.

There are two sources of extraordinary treatment of the uranium industry: the Environment Protection and Biodiversity Conservation Act; and the assessment processes conducted under that Act and under State environmental assessment laws.

Under the Environment Protection and Biodiversity Conservation Act, the underlying assumption is that 'uranium mining and milling' of themselves have a significant impact on the environment. This assumption has never been justified. It seems that the fact of mild radioactivity is justification in itself not requiring explanation.

The EPBC Act uniquely subjects uranium development to the processes of the EPBC Act in addition to the processes that have to be followed under State environmental laws. This guarantees duplication in the assessment process.

The Commission has, once before, drawn attention to the anomaly in the treatment of the uranium industry. In its *Annual Review of Regulatory Burdens on Business 2007*, the Commission concluded: 'The case for the continued treatment of uranium mining as a matter of national environmental significance — and therefore as a potential trigger for environmental assessments under the EPBC Act — should be reviewed.'

The Association submits that the discriminatory treatment of the uranium industry under the EPBC Act is not necessary to manage the mild radioactivity which is the unique feature of the uranium industry. What is necessary is that a 'best practice' regulatory framework is in place. Such a framework is in place. It comprises:

- The regulation of exploration for and mining of uranium under State and Commonwealth resources industry laws
- Environmental assessment and approval conducted under both State and Commonwealth environmental laws (While the Association does not support the discriminatory treatment of the industry under the EPBC Act and seeks the amendments that would remove the discriminatory treatment, the Act would continue to be available in cases where uranium projects impacted on matters of national environmental significance.)
- The regulation and management of radiation issues associated with uranium exploration and mining (and other industries) mainly by State laws derived from globally accepted evidence and principles under guidance from the codes promulgated by the Australian Radiation Protection and Nuclear Safety Agency
- State regulation of transport of uranium under radiation protection laws, ARPANSA's *Code of Practice for the Safe Transport of Radioactive Materials* and the Commonwealth *Safeguards Act*
- Public reporting of aspects of uranium industry operational performance, including under reporting requirements associated with environmental approval conditions

- The export of uranium only for peaceful purposes under Commonwealth longstanding policy and regulation.

Regarding the assessment processes themselves, the *Issues Paper* the Commission has published makes reference to a member of the Business Council of Australia whose assessment process took more than two years. In the uranium industry, three and a half years or more is the common experience.

One major project was declared a major development in September 2005 and the environmental impact guidelines were issued in February 2006. The project was approved in October 2011 with 100 Commonwealth-imposed conditions and 150 State-imposed conditions. A second project, much smaller in scope, was referred for assessment in October 2009, received State approval in October 2012 but was then delayed further until March 2013 by a Commonwealth ministerial decision.

Members of the Association have expressed the view that the uranium industry was being singled out for discriminatory treatment in project development. Members attribute the discriminatory treatment to the unnecessary degree of scrutiny being imposed because the product of our industry is mildly radioactive.

In light of examples and views such as these, the Association undertook a study of assessment and approval processes to identify the best practice in those processes. The study, which also formed part of a paper presented to the *Standing Committee on Energy and Resources* in December 2012, is attached.

The research identified some of the costs associated with poor assessment and approval processes and the Association drew attention to these in its submission to the Commission's inquiry into *Non-financial Barriers to Mineral and Energy Resource Exploration*. The costs include:

- Building delays into the assessment and approval process. Delays impose opportunity costs and inhibit capital raising activities. Impediments to capital raising are particularly critical for uranium exploration companies as they are highly dependent on capital raising for further development and sometimes for survival. In the current global financial environment, delays in assessment and approval put exploration companies at a severe competitive disadvantage.
- Poor practices also impose unnecessary costs and re-work costs. For example, requiring responses to unsubstantiated allegations by project opponents or requiring data and research beyond environmental requirements in the context of environmental assessment are costs companies bear even though they are marginal at best to the task of assessing environmental impact. Having to respond to last minute changes in views by authorities or to submit new documents because staff has turned over in authorities gives rise to re-work costs.

In summary, the 'best practices' in uranium assessment and approval on the basis of the research are as follows:

- Assessment and approval processes carried out through a single point of contact between the company and authorities and regardless of how many governments and authorities are involved. Authorities engage with the company as far as possible with a unified approach, notwithstanding the different legislative and political conditions under which they may operate

- Mere coordination is insufficient; whole-of-government decision-making requiring alignment of policy and practice between and within State authorities works best: between and within Commonwealth authorities and between the State/s and the Commonwealth
- Best practice is where, prior to the start of the assessment process, agreement to be reached between the proponent and the authorities collectively on the assessment process with authorities having the authority to commit to the agreement. This agreement would cover:
  - The assessment and approval pathway to be followed
  - Data requirements
  - Timing and scheduling
  - How departures from the pathway are to be dealt with
  - Mechanisms for resolving problems and issues that arise during the process
- Authorities work best when their role is to manage the technical assessment and approval process and provide advice to ministers on applications against the legislated and agreed criteria;
- Best practice is where authorities:
  - Employ sufficient technical expertise and other resources to enable them to meet the expectations established in agreements with proponents
  - Acquire requisite knowledge of the history and nature of the project under consideration
  - Have sufficient resources to assess uranium mining applications, including multiple and simultaneous applications, in accordance with agreed time scales
  - Clarify the decision-making particular authorities of officials and their relationships with authorities collectively
  - Equip themselves with the necessary expertise to assess the data provided by companies and enable them to frame requirements reflecting the specific properties of uranium in the context of the particular project under consideration. Beyond those arrangements, there will be no need to require of companies special obligations on account of the fact that the project concerns uranium.
- Best practice is where proponents:
  - Prepare thoroughly for the assessment and approval process
  - Make applications and present them for assessment against criteria in accordance with both the legislated process and the expectations established in the initial engagement with the approval organisation

- Thoroughly understand the economic, environmental and social impact of their projects before embarking on the assessment and approval process
  - Comprehensively assess risk (especially environmental risk) and provide sufficient information of an appropriate standard to demonstrate how risks are to be managed
  - Engage with stakeholder communities to build their social licence to operate during the development process
  - Provide data that is unique to uranium and expect to meet requirements that reflect the specific properties of uranium in the context of the particular project under consideration.
- Best practice occurs where companies and authorities establish dedicated teams with necessary expertise to work through the process
  - Best ministerial practice is to identify and operate in the public interest, make informed decisions on the basis of advice and then make decisions known to all stakeholders including the public
  - Best practice is where companies and the approval organisation continue to engage after the approval has been given and agree a process to consciously capture and share knowledge gained as a result of participation in the assessment and approval process; where there will be a 'no regrets' joint review after each application is decided; and where lessons learned are implemented.

**The Australian Uranium Association seeks two recommendations from the Commission's findings:**

- **A recommendation by the Commission, building on its 2007 recommendation, that the EPBC Act be amended to remove uranium mining and milling from the definition of 'nuclear actions' and therefore as an automatic trigger for environmental assessments under the EPBC Act. The basis for such a recommendation would be that the current treatment of the industry under the EPBC Act has not been justified, leads to duplication in the assessment process for uranium projects and is unnecessary given the 'best practice' regulatory framework already in place.**
- **A recommendation by the Commission that Commonwealth and State regulatory authorities adopt the 'best practices' identified in the Association's research.**

The Association would be pleased to elaborate on any aspects of the submission should the Commission wish.

Your sincerely

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