

## **CCI SUBMISSION TO THE PRODUCTIVITY COMMISSION ISSUES PAPER: MAJOR PROJECT DEVELOPMENT ASSESSMENT PROCESSES**

### **Introduction and Economic context**

Major project approvals are a key element of WA's, and Australia's, continuing economic success.

Western Australia has seen significant increases in business investment projects over the last decade – the project pipeline has increased from \$79 billion in 2002 to \$288 billion in 2012. Driven by the resources sector, this investment surge occurred as commodity prices were rising, terms of trade improving, and demand for our commodities overseas remained strong. It occurred despite serious problems with our project approvals systems.

WA's ability to continue to benefit to the same extent is not guaranteed. While demand for our resources is expected to increase, competitors are developing their own resources, often with lower costs, larger reserves, and simpler approval processes. The International Energy Agency predicts a number of new and existing competitors (Russia, East African nations, the United States) will increase gas exports in direct competition with a number of major projects on the horizon for WA.<sup>1</sup> Increasing political stability is driving major mining companies to consider and develop projects in Africa and Latin America. We can no longer rely on our stable political environment as our investment winning comparative advantage.

It is also increasingly difficult to compete on project costs, even against advanced "high cost" nations in the EU and North America. Numerous senior executives from major project proponents in WA, including Rio Tinto, BHP Billiton and Chevron have all stated their concerns with rising costs, noting WA is often the most expensive market to develop major projects.<sup>2</sup>

The Fraser Institute Annual Survey of Mining Companies<sup>3</sup> provides some useful indications of Australian approvals processes relative to those in many jurisdictions. The 2012-13 survey found:

- uncertainty about environmental regulation in Western Australia (incorporating federal and state based regulation) was a deterrent to investment for 32 per cent of businesses surveyed; and
- regulatory duplication and inconsistency (incorporating federal and state based regulation) were a deterrent to investment for 30 per cent of businesses surveyed.

These results place Western Australia behind key competitors including many Canadian provinces, states in the United States and European countries where regulatory standards are often more stringent. Uncertainty, duplication and inconsistency are driving investor concerns and making them think twice about investing in Australia.

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<sup>1</sup> International Energy Agency. 2012. *World Energy Outlook 2012*.

<sup>2</sup> See for example [http://www.riotintoironore.com/ENG/media/38\\_presentations\\_2739.asp](http://www.riotintoironore.com/ENG/media/38_presentations_2739.asp), [www.uwainthezone.com.au/wp-content/uploads/2012/11/S2.docx](http://www.uwainthezone.com.au/wp-content/uploads/2012/11/S2.docx)

<sup>3</sup> Fraser Institute. 2013. *Annual Survey of Mining Companies 2012/13*.

While businesses are doing all they can to minimise costs, project approvals are a key area where government can help improve our competitiveness and lower costs, while maintaining or even improving regulatory standards.

This submission briefly outlines the current major project approval process in WA and some of the key issues raised by CCI members. It then considers government responses to date before considering appropriate markets on which to benchmark Australian performance.

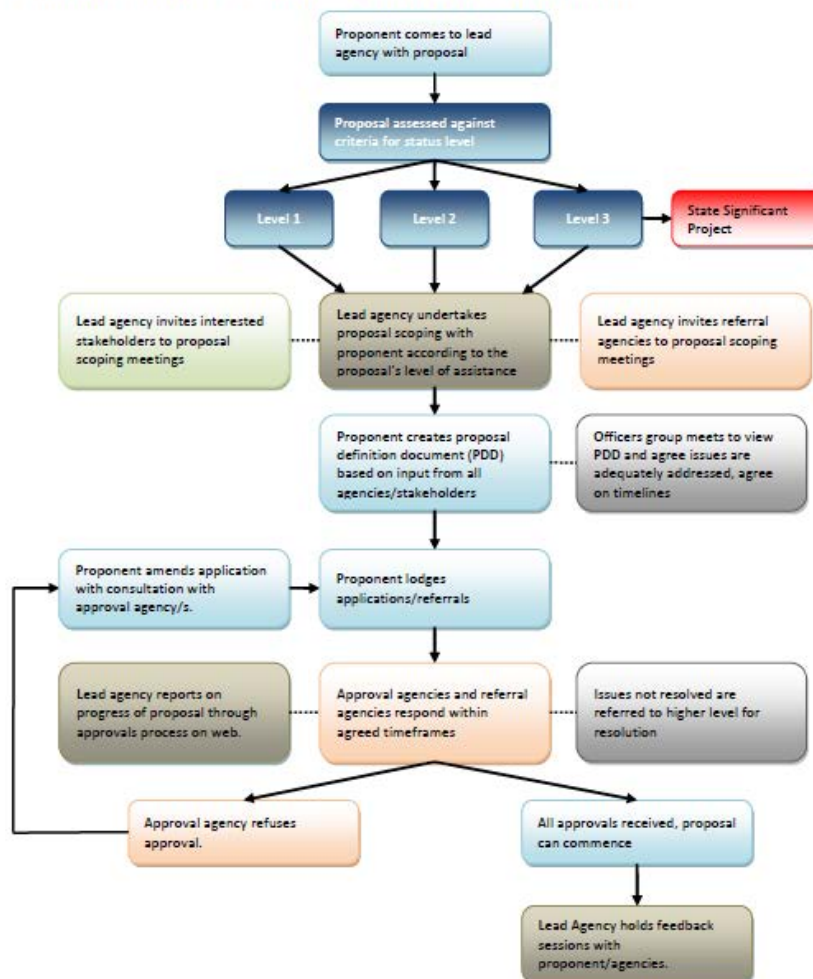
### Current project approvals

Current approvals processes are complex and time consuming. Some businesses in Western Australia report their projects require hundreds of approvals from numerous agencies at the federal, state and local levels.

Figure 1 below provides an overview of the process at the state level as outlined by the Government of Western Australia. But this diagram does not reflect the true complexity of the process. A major project is likely to require approval from the Environmental Protection Authority, Department of Environment and Conservation, Department of Indigenous Affairs, Department of Water, Department of State Development, Department of Planning, Western Australian Planning Commission, Department of Transport and Department of Health.

Figure 2

Diagram 4: Coordination of approvals under lead agency framework.



Source: Department of Premier and Cabinet. *Lead Agency Framework: a guidance note for implementation*.  
[http://www.dmp.wa.gov.au/documents/Lead\\_Agency\\_Guidance\\_Document\\_March\\_2011.pdf](http://www.dmp.wa.gov.au/documents/Lead_Agency_Guidance_Document_March_2011.pdf)

In working through these approvals, a business may have to comply with a dozen or more pieces of state legislation (see Table 1), each of which have countless specific regulations need to be considered in major project approvals.

**Table 1: Selection of WA agencies and legislation dealing with project approvals**

Agency	Relevant legislation
Department of State Development	State Agreements
Department of Mines and Petroleum	<i>Mining Act 1978</i> <i>Offshore Minerals Act 2003</i>
Department of Planning	<i>Planning and Development Act 2005</i>
Western Australian Planning Commission	<i>Planning and Development Act 2005</i>
Environmental Protection Authority	<i>Environmental Protection Act 1986, Part IV</i>
Department of Environment and Conservation	<i>Environmental Protection Act 1986 (EP Act)</i> <i>Conservation and Land Management Act 1984</i> <i>Contaminated Sites Act 2003</i> <i>Waste Avoidance and Resource Recovery Act 2007</i> <i>Reserves (National Parks, Conservation Parkes, Nature Reserves and Other Reserves) Act 2004.</i>
Department of Indigenous Affairs	<i>Aboriginal Heritage Act 1972</i>
Department of Water	<i>Rights in Water and Irrigation Act 1914</i>
Department of Health	<i>Health Act 1911</i>

Furthermore, many projects will require federal approval, particularly under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), and / or local government rules and regulation.

**Understanding the burden of these multiple legal instruments and approvals processes relative to other jurisdictions should be a key outcome of the Productivity Commission's work.**

## Key issues

In our discussions with members a number of specific concerns with the approvals process have been raised. Issues with the Commonwealth *EPBC Act 1999* and the *WA Environmental Protection Act 1986* are a particular and regular concern.

### *Overlaps, duplication and inconsistency*

Overlaps, duplication and inconsistency drive up the costs of project approvals, without providing additional protection to the environment or the local community. CCI members point to a range of areas where overlaps, duplication and inconsistency occur.

- **State Legislation Overlaps.** Numerous duplications exist in state based approval authorities. For example, the EPA and DMP have environmental approval responsibilities, while the EPA and Department of Indigenous Affairs have aboriginal heritage responsibilities.
- **Environmental offsets.** Within a project a single environmental impact can require two separate, sometimes conflicting, actions as an offset. For example, Federal procedures could require a direct offset of offsite habitat protection, while the state might mandate scientific research in response to the same impact, effectively double counting the impact and its costs to the business.
- **Water.** Amendments to the EPBC Act which require Commonwealth assessment and approval of the water impacts of coal seam gas and coal mine projects directly duplicate existing state assessments and approvals.
- **Analysis and reports.** Tailored reports are required for both state and federal environmental approvals and for monitoring and compliance of projects after approvals have been granted, but cannot be shared between approval authorities.
- **Greenhouse gas approvals.** Many state project approvals in Western Australia include mandatory reporting of greenhouse gas emissions, in direct duplication with the Commonwealth National Greenhouse and Energy Reporting Scheme.

**As a starting point, benchmarking Australian approaches to cross-jurisdictional issues to other markets with similar issues should be a priority for the Productivity Commission.**

**The Commonwealth and WA State Government must conclude a long awaited bilateral agreement to enable environmental approvals to be undertaken by state agencies.**

**Opportunities for parallel processing across agencies (within states and across state and Commonwealth responsibilities) should be further explored.**

**Specific elements of duplication should be removed (for example collaborative approaches to offsets should be agreed).**

**Greater use of strategic assessments where they can genuinely reduce the approvals burdens faced by individual businesses.**

## *Timeliness*

Major projects can often take a significant time to develop and construct. Research from the University of Western Australia<sup>4</sup> shows that resource projects can take up to 10 years to complete. The research also notes that speeding up this process could double the number of projects proceeding to construction at any one point in time.

While numerous issues affect the timeframes for major projects, improving approvals to make the process more efficient is one way to significantly improve timeframes for major projects and reduce opportunity costs.

The Department of Mines and Petroleum suggests mining projects in WA take on average 28 months to complete the environmental assessment process of the Department of Mines and Petroleum and the EPA,<sup>5</sup> though timeframes can be significantly longer and projects can incur significant opportunity costs.

Where statutory or targeted timelines exist, they can be lengthy and performance relative to targets is highly varied. In WA's EPA, 20 per cent of assessments did not meet agreed timeframes in 2011-12.<sup>6</sup>

A more specific example of inefficient processes leading to long delays concerns basic raw materials (BRM) approvals (cement, sand and other materials for construction which are usually quarried near urban areas). Various sites for the extraction of BRM are classified as Priority Resource locations in the state's Statement of Planning Policy 2.4. These are "locations of regionally significant resources which should be recognised for future basic raw materials extraction and not be constrained by incompatible uses or development". However, there are numerous instances where applications to extract these defined resources have been held up in approvals processes despite their classification, in some cases taking four or five years to resolve.

At the federal level, statutory timeframes under the EPBC Act can in effect be ignored with powers given to the Minister under section 130 of the Act. As just one example, the statutory timeframe for the approval of one mine in WA in 2013 was extended on three occasions by the Minister with no specific actions required of the project proponent, amounting to an additional 90 days over the original statutory timeframes.<sup>7</sup>

Finally, timeframes are usually arbitrary and have no basis in comparison with other jurisdictions.

**Providing benchmarks for the timeframes for approval should form a key component of the Productivity Commission's work.**

**There should also be increased use of statutory timeframes which incorporate mechanisms to encourage compliance and limit opportunities to extend timeframes.**

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<sup>4</sup> Kenneth W Clements and Jiawei Si. 2011. "The investment project pipeline: cost escalation, lead time, success, failure and speed", *Australian Journal of Management*. 36(3): 317-348

<sup>5</sup> Department of Mines and Petroleum. 2012. *How long does it take to get a mine approved in Western Australia?* [http://www.dmp.wa.gov.au/documents/WA\\_Mine\\_Approval\\_Timelines.pdf](http://www.dmp.wa.gov.au/documents/WA_Mine_Approval_Timelines.pdf)

<sup>6</sup> Environmental Protection Authority. 2012. *Annual Report 2011-12*.

<sup>7</sup> <http://www.environment.gov.au/epbc/notices/assessments/2009/5174/2009-5174-extension-notice.pdf>

### *Procedural fairness*

A fair and transparent approvals process also remains an ongoing concern for many project proponents in Western Australia. While some recent changes have been enacted to the Environmental Protection Authority's guidelines for environmental impact assessment to improve procedural fairness, CCI still has ongoing concerns.

For example, the WA Minister for Mines and Petroleum recently enacted a blanket ban on coal mines in the Margaret River region without any strategic assessment of the region. The decision followed an impact assessment and appeal for one project in the region under which other existing and potential investors had no indication it would form the basis of a more wide ranging decision. The option of a strategic environmental assessment, and with it the benefits of transparency and wide ranging consultation, was in effect ignored.

There are also limited opportunities to weigh the costs and benefits of major projects in approvals processes. Environmental assessments often form the primary vehicle for governments to engage the public on major projects. As occurred in the case noted above, environmental assessments therefore often consider wider cultural and strategic development issues, outside the relevant acts (in this case cultural and economic issues). A more integrated process could provide an opportunity for the costs and benefits of projects to be weighed against one another. It would also provide greater transparency of the basis on which decisions are made.

**The Productivity Commission should consider how Australian major project approvals processes can be more transparent and appropriately integrate fair procedures.**

**Transparent and unbiased decision making procedures should be published and adhered to by governments and regulators.**

### **Responses to date**

In response to the problems outlined above, four significant government reviews of project approvals processes have been undertaken in WA.

- Independent Review Committee, *Review of the Project Development Approvals System*, 2002.
- Auditor General, *Improving Resource Project Approvals*, 2008.
- Red Tape Reduction Group, *Reducing the Burden*, 2009.
- Department of Mines and Petroleum Industry Working Group – *Review of Approvals Processes*, 2009.

In addition, Infrastructure Australia's *Building Australia's Future: A Review of Approval Processes for Major Infrastructure*, pointed to various reforms needed across federal, state and local government.

While each of these reviews has focused on different elements of the approvals process, all have pointed to the need to streamline and / or consolidate approvals processes in the state

and with the federal government. However, in response we have seen only limited actions from state and federal governments.

The Western Australian Government has initiated a lead agency framework and other initiatives that have helped better define responsibilities for approvals. The lead agency has provided a benefit particularly to large state wide significant projects that can be driven through the approvals process by the Premier or individual Ministers. But it falls far short of a “one-stop-shop” called for in many of the reviews noted above. Most projects still find themselves wading through bureaucracy at a number of agencies.

Cooperation also exists between the Department of Mines and Petroleum and Environmental Protection Authority, helping to ensure that exploration activities for shale gas will be predominantly regulated by the DMP.

The online *Environmental Assessment and Regulatory System (EARS)* at the Department of Mines and Petroleum has also improved transparency and information sharing. This system will now be expanded across a wider range of agencies.

But much more is needed. In particular many of the reviews noted above have called for a single agency to be responsible for project approvals in WA. However, this has not been developed.

Cooperation across jurisdictions has also not progressed. Overlaps and duplication put at risk our competitiveness, especially as similar jurisdictions like Canada embark on cooperative approaches across their federation. The Council of Australian Governments, following the advice of the Business Advisory Forum of which CCI is a member, has committed to reducing duplication, but no concrete actions have eventuated. Furthermore, a potential bilateral agreement between the Commonwealth and Western Australia has not proceeded. This lack of progress is to the detriment of investment in Australia just as the global market becomes more competitive.

### **Potential and existing comparisons**

In this environment it is vital that the Productivity Commission make as wide a comparison as possible. Competitors for investment span the globe from developed markets in North America and Europe to emerging markets in Africa, Asia and Latin America.

Project approval processes in Canada and in individual Canadian provinces will serve as strong examples. Under reforms initiated in 2012, the Canadian federal government is instituting statutory timeframes of between 12 and 24 months for environmental assessments. And most importantly, they are also initiating a “one project, one review” system where federal environmental assessments can be undertaken by provincial authorities.<sup>8</sup>

The Productivity Commission should also include key emerging markets in its analysis. Many markets in the developing world have to deal with similar regulatory challenges to Australia including native title and indigenous heritage, and pristine natural environments. These markets are key competitors, often have higher regulatory standards than are assumed and should therefore not be ignored.

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<sup>8</sup> Government of Canada. 2012. *Canada's Economic Action Plan*.  
<http://www.actionplan.gc.ca/en/backgrounder/r2d-dr2/strengthening-environmental-protection>

## **Conclusion**

CCI welcomes the Productivity Commission's efforts to benchmark Australia's major project approvals processes. This issue has been a long term concern of CCI and the business community in WA, but despite numerous reviews pointing to unnecessarily complex procedures, very little has been done to actually improve processes.

In particular, CCI members highlight the need to reduce overlaps, duplication and inconsistency in processes within and between state and federal approvals; the need to improve the timeliness of approvals processes and reduce opportunity costs; and the need to improve transparency and procedural fairness. Understanding and benchmarking the approaches of other markets to these and other issues should help us to improve our processes so that we can remain competitive in the long term.