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Ms Sue Holmes
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Regulatory Burdens – Primary Sector
Productivity Commission
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Dear Ms Holmes,

Ref No: C07/09535

Annual Review of Regulatory Burdens on Business: Primary Sector

Thank you for the opportunity to provide further comment on the Productivity Commission draft research report '*Annual Review of Regulatory Burdens on Business: Primary Sector*'. We have reviewed the draft responses made in the report and have a range of comments and clarifications which we would like to put forward. Attachment A outlines our comments in regard to the draft responses under the following sections of the report:

- Uranium-specific regulation
- Petroleum regulation
- Greenhouse Gas and energy
- Safety and Health

Attachment B provides some general comments in regard to the interaction between Commonwealth and State/Territory regulatory processes, particularly in terms of the mining sector.

We have also reviewed the minerals sector and petroleum sector value chains presented in tables 4.1 and 4.2 (pp. 118-123). We have a number of minor comments and clarifications in regard to these tables, and these are outlined in Attachment C.

Yours sincerely

[signed]

John Hartwell
Head of Division
Resources Division

October 2007

Attachment A

Comments on Draft Responses - Mining, Oil & Gas

Uranium specific regulation

Concern: Complexity of uranium regulations

DRAFT RESPONSE 4.1
Following three recent reviews of uranium regulation, reform is progressing to implementation. There appears to be little to gain from further examination of general uranium regulation at this stage.

Comment: DITR agrees with this response.

Concern: The scientific basis for including uranium mining as a national trigger under the Environment Protection and Biodiversity Conservation Act (EPBC Act) is not clear.

DRAFT RESPONSE 4.2
There should be a science based assessment of the risks involved in uranium mining. This should form the basis for evaluating whether uranium should continue to be an automatic trigger for national environmental assessments under the EPBC Act. This review should be conducted by the Chief Scientist of Australia, with the involvement of the Chief Medical Officer.

Comment: The nuclear trigger for the EPBC Act which includes uranium mining was an amendment which was added in the final stages of Parliamentary approval. It is not clear why this trigger is needed since any new uranium mines would most likely trigger the Act on one or more of the other matters of National Environmental Significance (NES). As to whether a review should be conducted by the Chief Scientist and the Chief Medical Officer, this is a matter for the respective portfolios. However, if such a review were to take place, then it would be useful to have the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), who have responsibility for radiation matters for the Commonwealth, involved.

Concern: Duplication in Export Permits

DRAFT RESPONSE 4.3
The assessment of environmental conditions for export permits should be consolidated into approvals under the EPBC Act, ensuring that approval from the Department of Environment and Water Resources is sufficient to satisfy any environmental requirements for export permits.

Comment: The current uranium mines were approved under the *Environment Protection (Impact of Proposals) Act 1974* (EPIP), with environmental requirements being attached to export permissions. However, under the current structure all new uranium mines will be assessed under the EPBC Act and any major expansions, intensification or modification to the operation of existing mines would likely trigger an assessment under the EPBC Act. As the Environment Minister will have responsibility for enforcing environmental requirements under the EPBC Act, there will be no need to attach the environmental requirements to export permissions for new mines. As current mines which were approved under the EPIP Act move to assessment under the EPBC Act, such as for an extension to an existing mine, then the environmental requirements will not need to be attached to the export permission once the new environmental approval is given.

Therefore, mines will have environmental requirements imposed under their export permission (in the case of those assessed under EPIP) OR imposed under the EPBC Act. Therefore, there can be no duplication as is stated in the last paragraph on page 133. In addition, there are no environmental conditions relating to the export of uranium as such. Under the EPIP Act, the only way the Commonwealth could impose environmental conditions on a project was to use other Commonwealth powers, which in the case of uranium mines, was through the export power. We understand that there no way legally to consolidate environmental conditions for mines approved under EPIP to EPBC, as the EPBC Act states that projects can not be reassessed once already approved (except of course where a mine is expanded or extends beyond the scope of the original assessment). We note that of the 4 currently approved uranium mines, at least 2 will be 'moved over' to EPBC in the near future. However, DITR in conjunction with the Department of Environment and Water Resources will seek advice on whether this may be possible, as part of the Uranium Industry Framework regulation work.

General Comments:

Immediate action recommendation to EPBC on page XIV: *"Through this study the Commission has identified a further set of actions which can be taken without delay, including: ... consolidating the assessment of environmental export approvals for uranium into the Environment Protection and Biodiversity Act"*

- This is linked to draft response 4.3.

States and Territories where uranium mining is allowed p 129, "... Currently uranium mining is only allowed in South Australia and the Northern Territory (the Australian Government owns the uranium resources within the northern Territory".

- It should be noted that it is also legal to mine uranium in Tasmania though there are currently no mines operating in that state.

References to Safeguards on pp 132-3

- Please refer to the comments by the Australian Safeguards and Non-proliferation Office (ASNO) on this issue.

Petroleum Regulation

Concern: Too many approvals, regulatory bodies and too much duplication.

DRAFT RESPONSE 4.4

A review of the whole Australian onshore and offshore petroleum regulatory framework, endorsed by the Council of Australian Governments, would provide the best mechanism for evaluating how regulations can be restructured to reduce compliance costs and for assessing the case for a national authority to oversee onshore and offshore petroleum regulation throughout Australia.

Comment: The Minister for Industry, Tourism and Resources is actively pursuing an expanded study of petroleum regulation across all jurisdictions. Specifically, he has sought the support of his state and territory colleagues in the Ministerial Council on Mineral & Petroleum Resources (MCMPR), asking that the Chair of MCMPR write to the Chair of COAG seeking endorsement at that level. While a terms of reference for such a study is yet to be defined, it is likely that it would include an assessment of the case for a national authority for on and offshore petroleum regulation.

Concern: Some transitions costs with moving from a prescriptive to objective-based regulation.

DRAFT RESPONSE 4.5
Reforms to offshore petroleum regulation have gone some way toward reducing compliance costs, but more needs to be done. The current Department of Industry, Tourism and Resources' consolidation exercise has the potential to streamline regulations and reduce duplication, but the necessary reforms should be implemented as soon as possible.

Concern: Inconsistent administration of regulation affecting petroleum.

DRAFT RESPONSE 4.6
In the absence of establishing one regulator, or alternative reforms based on a wide-ranging review, jurisdictions should extend the model established with the Environment Assessors Forum to other areas where concerns arise over inconsistent application of regulations affecting petroleum.

Concern: Long and uncertain approval time lines.

DRAFT RESPONSE 4.7
Petroleum regulators should commit to clear time frames for making decisions and this requirement should be reflected in relevant legislation.

General Comment: These responses are valid given the current complexity of petroleum regulation in Australia, and DITR's current project looking at consolidating and streamlining regulations under the P(SL)A/OPA aims to address these concerns. The draft consolidation report including over 50 recommendations was circulated for stakeholder comment (including to the Productivity Commission) on 28 September 2007.

Greenhouse gas and energy

Concern: Uncertainties regarding the proposed greenhouse gas emissions trading scheme.

DRAFT RESPONSE 4.17
Development of the Australian greenhouse gas emissions trading scheme has the capacity to address red tape and reduce unnecessary burdens provided that best practice policy design is applied. In particular, the new scheme should facilitate market transactions so that rights to emit greenhouse gases go to their highest value uses and any exemptions should be fully justified.

Comment: The Australian Government recently announced that it will review all existing greenhouse programs in 2008 to ensure that they are complementary to the emissions trading system (ETS) under development and with a view to phasing out less efficient abatement policies and any policies that will interfere with the carbon price signal arising from emissions trading. The Australian Government will also seek agreement with state and territory governments to streamline state-level programs and remove burdens on business. These actions, when combined with the introduction of an ETS, have the potential to reduce the regulatory burden for businesses. However, it will be impossible to phase out some schemes immediately and there is likely to be a transition phase in which potentially overlapping measures may operate.

The aim of the domestic ETS is to reduce greenhouse gas emissions at least cost to households, businesses and the economy. Whilst, generally, rights to emit greenhouse gases would go to their highest value uses, the introduction of an ETS will place an additional cost burden on some industrial activities that international competitors may not face. Without market intervention, such as the free allocation of emission permits, there is

a chance that these domestic industrial activities would soon become uncompetitive due to the additional costs of compliance with emissions targets. There is a risk that these activities, and the associated emissions, would move overseas, impacting on the economy without any reduction in global emissions. These circumstances could be considered in the report so that Australia's situation is put into context.

General Comment: In regard to sections 3.4 (pp43- 44) and 4.8 (pp.161–166) "Climate Change Policies" - Multiplicity of greenhouse gas and energy reporting requirements. These sections will soon be overtaken by events as the National Greenhouse and Energy Reporting Bill is currently before the Senate and should be passed soon. As such, these sections should reflect this development.

Safety and health

Concern: Slow progress in implementing the National Mine Safety Framework.

DRAFT RESPONSE 4.22

Despite in principle agreement between Ministers, reform in this area is taking too long. Governments should maintain a strong commitment to the implementation of the National Mine Safety Framework as soon as possible. Transparent, clear and staged timelines should be agreed and adhered to. Further, individual jurisdictions should not undertake initiatives which would have the effect of impeding the introduction of a national regime and authority.

Comment: The National Mine Safety Framework (NMSF) was initially endorsed by the Ministerial Council on Mineral and Petroleum Resources (MCMPR) in 2002. Its implementation was initially left to the Conference of the Chief Inspectors of Mines, a sub-group reporting to the MCMPR, which was not resourced to undertake this extensive task. The Framework was re-endorsed by the MCMPR in November 2005, and in May 2006 a tripartite Steering Group was established, comprising government, industry and employee representation. The Steering Group met for the first time in July 2006, and will meet for the fifth time on 12-13 September 2007.

In 14 months the Steering Group has developed three of the seven strategies comprising the NMSF, which includes the major strategy – a nationally consistent Legislative Framework. An extensive national consultation, comprising face to face meetings around the country and an on-line mechanism, was undertaken in June 2007 on the draft recommendations to finalise the three strategies. Final recommendations on the implementation of these Strategies will be provided out-of-session to the MCMPR in late 2007. The MCMPR has endorsed the Steering Group's recommendation that the remaining four strategies will take a further 12 months to develop to the recommendation stage.

The Steering Group set clear timelines at the beginning of the process, which are reviewed at each Steering Group meeting. These timelines have largely been adhered to.

Given the rigorous and comprehensive process required to develop a national regime, the Department of Industry, Tourism and Resources (which provides the Secretariat and Australian Government Representation for the Steering Group) is very pleased with the pace of development, measured from the first meeting of the Steering Group. As a comparison, a national safety regime in the offshore oil and gas sector – a much smaller and less diverse industry - took five years to develop.

The Department endorses the recommendation that jurisdictional reforms should complement a national regime.

Attachment B

Mining Sector - Regulation

The following comments are made on the draft version of the Australian Productivity Commission's **Annual Review of Regulatory Burdens on Business:** ***Primary Sector*** released on Wednesday 12 September 2007.

General Comments

The *Review* examines regulations and Australian Government instruments which mainly impact on the primary sector. This has included an examination of the Mining, Oil and Gas Sectors. The *Review* recognises the increased awareness of the need to reduce regulatory burdens and takes into account the effect of overly prescriptive regulations on the industry. The PC notes that while there is a lack of quantitative evidence (acknowledged in the overview of the *Review*) there is substantial qualitative evidence, gathered from research and from industry submissions that highlights the burdens of various regulations.

The chapter on *Mining, Oil and Gas* addresses 10 key issues for the industry where a regulatory burden is present. Tables 4.1 and 4.2 provide an outline of the mining life cycle and identify the key Australian and State and Territory government regulations that impact on each stage of the life cycle. The use of case studies facilitates a greater understanding of the key issues.

One key issue of importance which is not addressed by this review is the impact of State and the Northern Territory mining legislation on onshore mining operations. While the Commission is limited by its terms of reference to identifying specific areas of Australian Government regulation which duplicate regulatory activity in other jurisdictions, it is still important to explain the broader context of state and territory regulation on mining, and the way in which Australian Government regulation interacts with State and Territory regulation. Without an analysis of this context, it is not possible to obtain a comprehensive of the regulatory burden on the mining sector or understand whether the Commonwealth is a significant contributor to it.

For instance 4.4 *Access to Land* only addresses those regulatory systems for which the Australian Government has responsibility – Native Title and Aboriginal Cultural Heritage – and does not consider the State/Territory regulations responsible for granting exploration and mining tenements. Some jurisdictions have recently reviewed, or are reviewing, their legislative and regulatory instruments to identify areas where the burden on firms can be reduced. A more complete analysis of the regulatory burden on the mining sector should include an analysis of the State/Territory regulatory responsibilities and the interaction of State/Territory regulation and Australian Government regulation relevant to the resources sector.

We note also that mining legislation in Australia differs across jurisdictions and these differences can be a burden on firms who operate in more than one jurisdiction and in particular smaller firms.

The document could also benefit from a conclusion or summary of the key issues outlined within each chapter to draw the issues together and address ways forward.

The *Review* makes 22 recommendations on Mining, Oil and Gas. These recommendations are not numbered and make referencing a specific recommendation difficult.

Role of Australian Government (Page 124), in recent years the Australian Government has had a strong focus on the sustainable development of the industry and a focus on the three pillars of sustainable development: economic, social and environmental. While not explicit regulatory requirements the Government has in place initiatives to encourage the sustainable development of the industry. The Government encourages firms to be sustainable in their approach to mining by exercising leading practice principles addressing the three pillars.

Attachment C

Table 4.1 Minerals Sector Value chain and the impact of regulations

Comments: in regard to offshore minerals, references to 'delegated administration' should be removed, as this is incorrect. The administration in this area is undertaken jointly between the Australian and State/Territory governments.

Page 118, left –hand column, first box, first dot point. Replace text with the following:

- allocation of exploitation and production rights offshore under Australian Government jurisdiction in waters beyond the three nautical mile limit (jointly administered by the Australian and State/Territory governments).

Page 118, left hand column, second box, first dot point. Replace text with the following:

- access for exploration purposes offshore beyond three nautical miles (jointly administered by the Australian and State/Territory governments)

Page 118, left hand column, second box, 9th dot point. Add the following **bolded** words.

- mineral property right/allocation system under *Offshore Mineral Act 1994* (jointly administered by **the Australian and State Territory Governments**).

Page 119, left hand column, 3rd box. The first and 9th dot point are the same, delete the duplicate.

Page 119, right hand column, 3rd box. The first and 11th dot point are the same, delete the duplicate.

Table 4.2 Petroleum Sector value chain and the impact of regulations

Comments:

Page 121, middle column, heading, replace 'mining and mineral cycle' with 'petroleum cycle'.

Page 121, right hand column, 3rd box, 9th dot point. The reference to the PSLA refers to the PSLA 1982 which is a State Act, and should not be confused with the Commonwealth PSLA. As such, either replace with 'PSLA 1982' or 'State PSLA'.

Page 122, right hand column, first box, 9th dot point. See comment above.