

From: [Michael Angwin](#)
To: [resource exploration](#)
Subject: Non-financial Barriers to Mineral and Energy Resource Exploration: Inquiry
Date: Tuesday, 12 March 2013 2:12:56 PM
Attachments: [ATTACHMENT 1.docx](#)
[Final report SCER.docx](#)
[resource-exploration-cover-sheet.docx](#)

Dear Productivity Commission

On behalf of the Australian Uranium Association, I write to make a submission to this Inquiry.

In the Association's experience, the non-financial barriers to minerals and energy resource exploration fall into two categories: there are policy barriers to exploration and there are process barriers arising from the project assessment and approval process.

Regarding the latter, if one lays a template of the Commonwealth and State environmental resource project assessment and approval process over *Figure 1* in the Commission's *Issues Paper*, it will become apparent that the assessment and approval process coincides with the exploration stage of minerals project development. The development stage, commencing with minesite construction, cannot begin until project approval is given by the relevant authorities.

In other words, the exploration stage of a project is conducted in the context of environmental assessment and approval processes. It is in those processes – and not only the regulation of access to exploration and of its conduct - that give rise to non-financial barriers to uranium exploration. The task given to the Commission is to 'examine the non-financial barriers to...exploration' which is further defined as assessing the effectiveness and efficiency of exploration approval systems and processes and examining the costs associated with regulation of exploration activities. Our submission will focus on effectiveness and efficiency issues and the costs associated with ineffectiveness and inefficiency.

Policy barriers

The Victorian Nuclear Activities (Prohibitions) Act 1983

A major non-financial barrier to uranium exploration in Australia is the legislative prohibition on uranium exploration in Victoria.

Victoria's *Nuclear Activities (Prohibitions) Act 1983* (NAPA) prohibits exploration for and mining of uranium in Victoria. The Victorian Government has indicated to the Association that it has no plans either to review or consult on the legislation despite the fact that the legislation has never been reviewed in its 28 year lifetime.

There are no prohibitions on uranium exploration anywhere else in the country.

The objects of the NAPA are 'to protect the health, welfare and safety of the people of Victoria and to limit deterioration of the environment in which they dwell by prohibiting the establishment of nuclear activities and by regulating the possession of certain nuclear materials, in a manner consistent with and conducive to assisting the Commonwealth of Australia in meeting its international nuclear non-proliferation objectives.'

One of the assumptions in the objects of NAPA is that a prohibition on uranium exploration would help meet the Commonwealth's non-proliferation objectives. It was an erroneous assumption in 1983 and remains so today. When the NAPA was enacted, Australian national uranium policy permitted exploration for and export of uranium. Australia's 'international nuclear non-proliferation objectives' were addressed by a policy of selective and conditional export of uranium; not by a policy of prohibition of exploration. As there is today clear national bipartisan support for uranium exploration, and as it is still the case that Australia's 'international nuclear non-proliferation objectives' are being addressed by a policy of selective and conditional export of uranium, the NAPA assumption remains false.

Even if one accepted in full the remaining assumptions in the Act's objects, it is not necessary to prohibit uranium exploration (or mining and milling for that matter) to give effect to those objects.

There are at least six pieces of State and Commonwealth legislation that, together, achieve the objects of the Act including:

- The Commonwealth Environmental Protection and Biodiversity Conservation Act (EPBC Act)
- The Commonwealth Australian Radiation Protection and Nuclear Safety Act (ARPANS Act)
- The Commonwealth Safeguards Act
- The Commonwealth Customs Act
- The Victorian Radiation Act
- The Victorian Mineral Resources (Sustainable Development) Act.

This legislation is a comprehensive package for addressing the concerns that underpin the NAPA.

The Association submits that the NAPA would also fail a test of 'best practice regulation' and that the failure even to review the legislation is contrary to the principles of 'best practice regulation', to which the Victorian Government says it is committed. **Attachment 1** to this submission details the Association's views on why the NAPA is not 'best practice' regulation.

There are few data indicating the extent of Victoria's uranium endowment. The absence of a clear picture of the Victorian endowment is not a reason for maintaining the prohibition. The opportunity to explore for any mineral anywhere else in the country does not depend on the endowment of that mineral; and should not be the case for uranium. Indeed, it is hard to see the case for making the size of the endowment a criterion for allowing exploration when it is exploration itself that leads to understanding of the endowment.

The Association urges the Inquiry to recommend the removal of the Victorian prohibition on uranium exploration.

State political party opposition to the uranium industry

A second non-financial barrier is the policy position of some State political parties in WA, Queensland and New South Wales to uranium development. Like the current Victorian attitude, those political parties have adopted policies that would prohibit uranium

development if those parties were in power. While those parties are currently in opposition, on election to government the implementation of their policies opposed to uranium mining would reduce the incentive to invest in exploration, even if only a policy opposed to mining were implemented.

The remaining political opposition to uranium development – starting with exploration – is contrary to the emerging national uranium policy of conducting uranium development within a ‘best practice’ framework with exports in Australia's national interest to help build international relationships. The Prime Minister’s announcement last year of the Australian Government’s willingness to negotiate a treaty for uranium exports to India is the prime example of the latter.

The Association urges the Inquiry to recommend that policies favouring bans on uranium mining be removed in order to remove a non-financial disincentive to uranium exploration and create better alignment better Commonwealth and State uranium policies.

Barriers in the assessment and approval process

In order to better understand the barriers to uranium development, the Association has examined the practices in the environmental assessment and approval process. The research was conducted as a case study review among Association Members. The draft report was discussed with Commonwealth and State authorities and amended following discussion. The final research report was presented to the December meeting of the *Standing Council on Energy and Resources* as part of a presentation on behalf of the Uranium Council, a joint Commonwealth/State/industry body established by the Commonwealth. The report is attached as **Final Report SCER**.

The focus of the Association was to identify ‘best practice’ in the assessment and approval process. In order to do this, however, the research also had to identify poor practice as a way of giving meaning to ‘best practice’. As the Commission’s focus is on barriers to exploration and their costs, we record below some of the poor practices the research identified:

- Failure to meet timetables
- The lack of specific assessment guidelines for a project
- ‘Last minute changes’ and additional requirements late in the process
- Timetabling that suits authorities with no consideration for the proponent’s commercial and financial position
- Authorities not raising issues at the earliest possible time, even given the opportunity
- Lack of a unified view among authorities
- Requirement to submit revised documents and revisions of them as staff changed within authorities
- Having to supply data and meet tests that were outside environmental assessment; for example, economic benefit
- Late involvement by authorities prompted by lack of prior preparation by them rather than by needs related to insufficient project information
- Lack of coordination between agencies not all of whom have direct involvement in environmental assessment but see their work as connected to it
- Requiring responses to unsubstantiated allegations by opponents of a project or to issues that are not material.

The Association also conducted a more limited canvass of AUA Member views for the purposes of this submission and identified additional barriers including:

- The emerging ministerial practice of delaying project approval decisions at the last possible moment to require further information from a project proponent including where the information had already been provided in a different form
- Bureaucratic fear about the political consequences of approving uranium projects, leading to slower than necessary and more demanding than necessary approval processes
- Unreasonable demands for consultation as part of assessment, including requiring consultation beyond environmental issues
- Gold-plated review and appeal processes
- Poor communication between authorities
- Unfamiliarity of assessing officers with the physical environment they are assessing
- A lack of any understanding about the industry-wide and company-specific implications of delays in the assessment process; for example, lack of understanding that departures from decision-making schedules inhibit finance raising activities that are crucial for emerging businesses
- Lengthy timelines for the grant of an exploration licence with great differences between States
- Variation in native title processes in regard to grant of exploration tenures between States.

Association Members have also raised a number of issues concerning Aboriginal heritage assessment including complexity in the State-based Aboriginal heritage assessment process with the double jeopardy that a project proponent can also be taken into the federal heritage regime.

Impact of poor practice

The effects of poor practices are to build 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 give rise to re-work costs.

Best practice

While there are significant examples of poor practice, the Association believes it is more productive to concentrate on what constitutes best practice as that is the route to the effectiveness and efficiency the Commission is seeking to identify. The research report identifies what both authorities and project proponents could do better. The report also identifies 'best practice' in the assessment of uranium projects 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 is 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 is a 'no regrets' joint review after each application is decided; and where lessons learned are implemented.

Recommendations

The Australian Uranium Association seeks three recommendations from the Commission's inquiry:

- **A recommendation by the Commission for the repeal of those parts of the Victorian *Nuclear Activities (Prohibitions) Act 1983* that prevent uranium exploration**
- **A recommendation by the Commission that State political parties align their uranium policies with the Commonwealth's policies**
- **A recommendation by the Commission, based on the Association's research, about the 'best practice' assessment and approval processes that should be applied to uranium development**

The Association would be happy to meet the Commission to elaborate on these views.

Yours sincerely

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