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8 July 2013

Resource Exploration Inquiry
Productivity Commission

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Submission to the Commission

Thank you for the opportunity to provide our views on the content of the issues paper dated 14 December 2012 relating to the Productivity Commission's inquiry into *Mineral and Energy Resource Exploration*.

The objective of exploration is for the State to identify and quantify the existence of resources that have and will continue to underpin the quality of life that the community has come to expect. It is also for the State to decide if, when and under what conditions those resources can be extracted for use. That subsequent decision should not dictate when the exploration for the resources can occur.

The State needs to implement systems that facilitate an efficient exploration industry that can achieve the objectives without unnecessary restriction and control, but sufficient to manage the impacts on alternative land uses specific to the exploration activities themselves.

We provide the following comments on some of the key aspects of the draft report for your consideration.

Land Access

A key principle that must be considered on the issue of land access is that the resources in the ground are the property of the State, and the State retains the right to access and extract those resources for the benefit of its people, an element of its sovereign rights.

Access to private land for the purpose of exploration needs to be based upon mutual respect for the rights of the landowner and the state to define its resources and those rights need to be framed in the context of the impact of the exploration activities (not any subsequent development impacts). Compensation may be payable to the landholder for the interruption to its quiet enjoyment of the land posed by the impact and duration of exploration activities.

In effect, those who conduct exploration for resources and those who conduct extraction of resources on land do so as an agent of the State, in return for which the latter have the opportunity to make a profit but regardless pay a royalty to the State. The royalty payable is intended to reflect the in situ value of the resource.

The land access provisions must be consistent with the rights of the State (through the Explorer) to conduct these activities subject to payment of fair compensation. For exploration activities, the right of access to explore should be a statutory right subject to compliance with mandatory arrangements, including fixed compensation amounts for certain activities and criteria that must be met to reduce interruption to a reasonable degree (like the Land Access Code) but without the need for negotiation with the landholder which can become protracted through lack of alignment and transparency. If the explorer wishes to conduct its activities in a

way that is not consistent with the mandatory arrangements then negotiation would be required and additional compensation may be payable. In effect, a default right of access (with due notice to the landholder), default terms and conditions of access and default compensation would be in effect.

Land Priority

In relation to exploration, there should be no presumption that an area of land cannot be explored, including in areas currently designated as strategic cropping land or similar. There should be no presumption that agriculture is to be preferred over resources in any part of the State. It is for the State to determine on a case-by-case basis in consideration of the commercial, strategic and amenity value of the land and its resources, as to if and when the resources can be developed and under what conditions.

It should be remembered that the proportion of the State's area that contains resources that can be extracted by surface techniques is very low compared to the area suitable for efficient agricultural production. The community needs food, prefers locally produced food, but also needs and demands the things that are made from the resources extracted from the earth both minerals and energy. This co-existence needs to be recognized and upheld by the State and Commonwealth.

Generally, exploration activities have temporary and generally low impact on the land, can often be located in a position that avoids or minimizes interference with other activities on the land, and the surface disturbance heals over time. In most cases, the passage of a short period of time (a year or so) allows the land to return to its pre-explored condition if the drilling activity and subsequent rehabilitation of the area explored is conducted properly. The exploration for coal seam gas may have a longer lasting effect on the land if the well is subsequently used for production purposes, but even then for a limited period (typically 20 years or so).

Whether or not the resources should be developed, and if so under what conditions, or when such development can occur, is a separate matter, and a matter that will be considered as circumstances change. The need for the resources, change or substitution of land use, technology improvements to achieve less intrusive extraction and processing etc may allow for the extraction of resources in an area currently considered quarantined from such activity.

Geological Survey

We support efforts to increase the knowledge of the State's resources by privately-funded exploration but also by State-funded high level exploration activity. The mapping of such geological data should be available to the public, and we believe such data enhances the value of exploration rights that can be granted by the State. The better such data the more that the State can expect to receive from the sale of exploration rights through a cash-bidding process.

Whether or not the cost for the State to conduct its own high-level exploration (that is not restricted to tenement sub-blocks like the exploration by private entities is) can be recovered through the sale of exploration rights is a matter for subsequent consideration, but those areas that have not yet been explored sufficiently would benefit greatly by the State's involvement in the exploration activity.

Such work by the State is not necessarily urgent. It could be conducted at times when the exploration industry is operating at low levels of activity during market downturns, not only to maintain the pool of talent in the State but also to keep the cost of doing such work to an acceptable level.

Tenure processes

There is no reason why the process to obtain the grant of exploration rights need be so difficult with the level of technology that exists today. The grant of an exploration right should be automatic if the applicant satisfies certain criteria.

An individual or company should be able to access a State website, find out where available exploration areas are located for the resource they are interested in, find out what information exists about the area (including geological, hydrological, land ownership, native title and cultural heritage, land exclusions, rights granted for other resources etc), and submit a bid to acquire the exploration right. As exploration blocks are relinquished, they should remain in quarantine for a short period of time but available for searching and assessment, and then enter a bidding period of no more than one month.

At the end of the bidding period, the highest bidder is granted the right, subject to compliance with relevant criteria as specified by regulation, including the payment of a suitable bond to the State, expenditure commitments and standard environmental conditions.

The person bidding for the exploration right would need to be pre-approved by the State as a person of suitable character, which may be satisfied by being a compliant holder of other exploration rights at the time, to enable the automatic grant of the tenement.

It is in the interests of the State for exploration rights to be held by an entity that has the commitment to exercise that right most actively, and that is likely to be an entity that can maximize the potential of resources that may exist in the area. Presumably that commitment will be reflected in the bid that entity is prepared to make as compared to other interested parties. Having been granted the exploration right, the holder will need to satisfy the commitments made in its application otherwise risk that right being relinquished by operation of regulation

In order to meet its obligations, the explorer needs certainty with regard to all of the matters outlined above. Unnecessary, onerous or unpredictable regulation from a timeliness perspective will inevitably affect the ability of the explorer to deliver the committed exploration programmes, significantly increase the cost and delay potential development. These matters need to be taken into account in setting tenure regulation and requirements and in assessing compliance against that regulation. This requires that a sensible level of discretion is applied.

Thank you again for the opportunity to comment on the issues paper.

Yours sincerely

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