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Resource Exploration Inquiry
Productivity Commission
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RE: Mineral and Energy Resource Exploration Productivity Commission Draft Report

Dear Commissioners,

Thank you for the opportunity to provide comment on the draft report and submissions received in relation to the inquiry into non-financial barriers to mineral and energy resource exploration.

The Australian Association of Consulting Archaeologists Inc. (AACAI) is an organisation representing professionals working in all fields of contract and public archaeology. The association is a peer reviewed organisation currently with a membership of 180 full and associate members. AACAI aims to uphold and promote the discipline of archaeology and to advance the welfare of members. AACAI has a Constitution, a Code of Ethics and a 'Consulting with Aboriginal Communities Policy Document'. It is affiliated with the Australian Archaeological Association Inc. and is a Foundation Member of the Council for the Humanities, Arts and Social Sciences.

Below are AACAI's comments on the draft recommendations relating to cultural heritage.

DRAFT RECOMMENDATION 5.1

Until concerns with state and territory legislation have been fully addressed, the Commonwealth should retain the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSIHP Act) and amend it to allow state and territory regimes to be accredited if Commonwealth standards are met. Once all jurisdictional regimes are operating satisfactorily to Commonwealth standards, the Commonwealth should repeal the ATSIHP Act.

While we agree that ATSIHP should be retained, AACAI is of the opinion that it is not logical that ATSIHP should be repealed once the state and territory regimes are pulled into line. ATSIHP should be maintained because the powers do not completely overlap and ATSIHP should maintain the potential to deal with issues of national rather than state significance and provide for management of heritage across inter-state native title claim areas or inter-state provinces of heritage value.

DRAFT RECOMMENDATION 5.2

Governments should ensure that their heritage authorities:

- require that resource explorers or other parties lodge all heritage surveys with that authority***
- maintain registers which map and list all known Indigenous heritage***
- adopt measures to ensure that sensitive information collected by a survey is only provided to approved parties (and only as necessary for the purposes of their activities), on the basis of agreed protocols.***

AACAI would be interested to know what the agreed protocols for restriction of sensitive information will be, who will have input to these and who will be able to comment on the proposed protocols. It is also noted that current restriction to sensitive information is dealt with very differently by each state and territory, and that consequently it will be very difficult to determine a set of blanket protocols that satisfy criteria in each state.

Indigenous privacy concerns are legitimate but this is not adequately accounted for in discussion of provision of reporting regarding heritage sites to mineral explorers.

Since site significance changes over time, re-survey and re-assessment may be necessary and thus registered significance and the nature of sensitive information need to be dynamic.

DRAFT RECOMMENDATION 5.3

State and territory governments should manage Indigenous heritage on a risk assessment basis.

- Where there is a low likelihood of heritage significance in a tenement and the exploration activity is low risk, a streamlined 'duty of care' or 'due diligence' process should be adopted.***
- Where there is a high likelihood of heritage significance and the exploration activity is higher risk, models of agreement making should be adopted rather than a government authorisation system.***
- When negotiated agreements cannot be reached, governments should make decisions about heritage protection based on clear criteria, transparency and consultation with all parties that have a direct interest.***

AACAI agrees that a risk based assessment is a suitable working framework. However, we are concerned about how 'low risk' and 'low likelihood of heritage significance' will be determined. For example in 'unexplored' territory heritage risk cannot be ascertained without initial specialist heritage values assessments.

While agreements are an integral part of the Native Title process, which often includes heritage protocols, AACAI is of the opinion that having no government authorised systems is of significant concern as it can create an environment of confusion and cross-purpose outcomes. The idea that Traditional Owners and resources sector proponents manage heritage issues without government oversight is not practicable given that the government is vested with the protection of heritage for the good of the state, nation and commonwealth by way of their laws. In our opinion the potential risk of corruption of this process is large. Such a process could see a single Traditional Owner benefit from the destruction of cultural heritage while there are no checks and balances by government. While AACAI agrees that the permitting system processes in most states is too lengthy and currently not transparent (for both clients, Traditional Owners and heritage consultants), agreements are not

the solution to this problem. Permitting systems should remain but need to have clear and transparent regulation around timeframes and requirements in all states and territories of Australia.

General Concerns

There are some general concerns that have been raised by our members in relation to the Productivity Commission's draft response to the non-financial barriers to mineral and energy resource exploration.

On page 14 of the document there is a proposal for a 'lead agency', a centralised body with some authority for monitoring regulatory agencies. What power would this body have and how does this provide for diversity of heritage situations? A generalised regulatory body will have the same difficulties most states currently have when deciding on environmental factors, and specialisations such as heritage will require input from trained heritage professionals.

There is much in the draft report that implies a lack of recognition for heritage value or professionals trained in its management. The tone of the report suggests that there is something amiss in there being archaeologists, anthropologists and lawyers regularly involved in the approvals process on a professional basis (i.e. "heritage industry"). From AACAI's perspective, the archaeological heritage of this country is irreplaceable, is of great antiquity and is poorly understood. Moreover, it AACAI's opinion that is the duty of all those who will impact heritage sites and material to ensure that they are recorded by professionals, to the highest standards. We would suggest that a more useful approach would be regulation of heritage professionals to ensure that high standards are maintained and that there is evolution of best practice to ensure that heritage work is done efficiently and to the highest standards.

AACAI also has concerns regarding some of the submissions made to the productivity commission and we have provided a number of comments on the Western Australian Government's submission as an attachment to this letter.

Yours Sincerely,

Fiona Hook
AACAI President

Concerns regarding state government responses to the inquiry

Of the state government responses to the initial inquiry, QLD and NSW did not find heritage a barrier to exploration. NT mentions the *Aboriginal Land Rights Act 1976* as causing delays to project timing and SA Mines found that there was uncertainty regarding timing and effectiveness around heritage consultation and clearances. Of most concern to AACAI was the response by the West Australian Government (WAG) and a discussion of this is provided below.

Section 2, Figure 1 of the WAG submission shows that exploration, mining and prospecting tenement licenses are awarded in roughly the same amount of time now as they were in 1982, and thus indicating that, despite the vastly increased amount of exploration and mining, the awarding of licenses is same for today's explorers as it was for their predecessors 30 years ago. We are unsure as to how the WAG can claim that the introduction of Native Title in mid-1990s has affected this. The submission admits there is no difference but claims costs have risen sharply. However, no context or analysis of any rise of costs is provided. The WAG submission notes mining expenditure in WA has increased exponentially since the 1960s, but that this increase is not a fair indicator of increased mining activity (Figure 2). However following recognition of Native Title, expenditure did not increase. It increases, and decreases, on an 8 to 10 year cycle suggesting that mining activity strongly correlates to global economic cycles, irrespective of any local red tape. It increases markedly, doubling from 2008 to 2012. However, during this period there is no new native title or heritage issue discussed in the submission.

The submission then claims that there is a declining trend of new exploration license applications (Figure 3). However, examination of the data shows that, apart from a general increase in applications, none of the values for each quarter from 2009 to 2012 is significantly different from one another, except for the last quarter of 2012. In September 2012 two major mining companies, BHP Billiton and FMG, made abrupt changes to their business plans in response to declines in iron ore prices. The attribution in the WAG submission of a recent drop in exploration activity to a single factor (Native Title/heritage) when clearly economic factors such as declining iron ore (2012) and gold (2013) prices suggests a misreading of the fundamentals of exploration.

The WAG submission states that petroleum exploration has decreased in the last three years again as a result of native title/heritage. However, native title and heritage processes have not changed during that period. The majority of petroleum exploration expenditure is largely attributable to offshore costs and is not affected by native title or heritage.

AACAI is therefore of the opinion that none of statistics supplied in section 2 of the WAG submission supports the case that Native Title, Aboriginal heritage and related matters, are causing any impediment to mining and exploration.

Costs are outlined in Section 5. On page 12, the submission lists financial costs and procedural constraints to do with negotiations. Like the claim on page 7, the combination of all of these costs and constraints together could be significant. However, the submission states that explorers experience these costs to varying degrees, and lacking hard evidence once again, it seems possible that these lists represent a range of possible issues, only some of which may be encountered by an explorer at any one time.

On page 12 the WAG states that heritage survey costs are escalating. AACAI is of the opinion that Aboriginal heritage survey fees for individuals have remained static for several years, and heritage consultants in WA

charge significantly less than their counterparts on other Australian states and less than other professionals generally. On page 13 the submission presents a single case study of heritage survey costs. While the costs in this case study appear very high, the size and cultural significance of the area affected in the exploration proposal are not presented making it very difficult to ascertain the real costs. AACAI suggests that the potential for a range of costs associated with heritage assessments in Western Australia is the result of a lack of accreditation of heritage professionals and clear guidelines from the State Government. If these were put in place then explorers would have more certainty in the associated costs and time frames associated with heritage identification and protection.

The WAG submission concludes with three recommendations with only one referring to native title and heritage. AACAI supports that recommendation that the funding and development requirements of NTRBs and PBCs should be reviewed with a view to making them more sustainable, and the PC should be considering all of the ramifications of Native Title and that best practice heritage assessments are for the good of all parties.