



**Aboriginal Areas
Protection Authority**
protecting sacred sites across the territory

Our Ref: 2013/205, 201315849

15 July 2013

Mineral and Energy Resource Exploration Draft Report
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

email: resourceexploration@pc.gov.au

Dear Sir/Madam,

**RE: RESPONSE TO DRAFT REPORT OF PRODUCTIVITY COMMISSION – MINERAL AND ENERGY
RESOURCE EXPLORATION**

Thank you for the opportunity to respond to the Productivity Commission's Draft report into Mineral and Energy Resource Exploration.

The Aboriginal Areas Protection Authority (AAPA) agrees with the Commission's recognition of the breadth and diversity of cultural heritage protection regimes across each jurisdiction. In the Northern Territory, the *Northern Territory Aboriginal Sacred Sites Act (the Sacred Sites Act)* continues to provide an independent scheme of sacred site protection which has proven to be highly functional and successful. The Act protects sacred sites and balances this with development initiatives and other use of land including for mineral and energy resource exploration.

The effectiveness of this scheme is based on the guiding principle of consultation with and advice from traditional Aboriginal custodians to define conditions (which can be negotiated as necessary) for the protection of sacred sites during mineral and resource exploration, or other works as the case may be. Conditions for the protection of sacred sites are defined in a legally indemnifying certificate which allows proponents to undertake proposed works on land in the knowledge that some areas of that land may be restricted for certain or all works or use on the basis of the existence of sacred sites. Proponents can undertake their proposed works or use in areas outside of those defined restrictions. The scheme under the Sacred Sites Act also provides for public access to non-restricted information about sacred sites.

This comment provides responses on certain recommendations and on some matters otherwise raised in the Draft Report, with the intent of assisting the Commission's final report.

Darwin
P: +61 (08) 8999 5511
F: +61 (08) 8999 4334
www.aapant.org.au
enquiries.aapa@nt.gov.au
4th Floor, R.C.G Centre,
47 Mitchell Street DARWIN NT
GPO Box 1890, Darwin NT 0801

Alice Springs
P: +61 (08) 8999 5511
F: +61 (08) 8952 2824
www.aapant.org.au
enquiries.aapa@nt.gov.au
Ground Floor, Belvedere House
Cnr Bath & Parsons Streets Alice Springs NT
All mail to Darwin GPO

The intent of Draft Recommendations 3.4 and 3.5 are supported in that a coordinated approach to approvals, encompassing environmental and heritage approvals should increase proponents' understanding and reduce delays. The management of expectations, including by publicly available target timeframes will also assist in the overall processes of approvals. The AAPA publishes its target timeframes (and performance) through its annual reporting obligations, and has informal arrangements with the NT Mineral Titles unit regarding the early provision of information regarding the obligations of mining and exploration proponents for the protection of sacred sites.

Draft Recommendation 5.1 is supported. The Evatt Review of the *ATSHP Act* (1996) and the Reeves Review of the *Aboriginal Land Rights (NT) Act* both indicated that the operations of the *Sacred Sites Act* met all the standards for accreditation that are likely to be proposed.

Draft Recommendation 5.2 is supported. The AAPA has the capacity to act as a central point of record for all sacred site related information in the NT. The AAPA currently maintains publicly accessible registers and records of all known sacred sites and of previously issued 'clearances' (Authority Certificates), and applies secrecy provisions to ensure that secret or sacred information and commercially sensitive information is excluded from those registers and records.

Draft Recommendation 5.3 is supported. The framework of the *Sacred Sites Act* entails a strong risk management model. Agreement making is undertaken using a number of methods, based around a requirement to consult with traditional Aboriginal custodians and facilitation of meetings and conferences between proponents and custodians to ensure clear understanding of both the project proposal and the sacred site protection requirements. This is a transparent and accountable model.

Other comments on the draft report include:

- It is AAPA's experience that directly negotiated agreements have not produced sacred site protection conditions of an acceptable standard, and that the independent but accountable model under the *Sacred Sites Act* provides for clear protection conditions which allow works, protect sites and maintains the responsibilities for proponents to lawfully comply with those conditions. (p 131 and p159-160)
- Explorers cannot apply for a permit to destroy sacred sites in the Northern Territory. (p142)
- The AAPA has actively undertaken investigations and prosecutions related to sacred site damage and offences under the sacred Sites Act (P 145). The source cited - Schnierer et al 20011, is inaccurate. Since the inception of the Act there have been approximately 36 prosecutions under the offence provisions of the Sacred Sites Act. On average the AAPA receives and investigates twenty incidents of damage to sacred sites, and prosecutes two matters per year under the offence provisions of the Sacred Sites Act. In 2011 the AAPA received 22 reports of damage to sacred sites, and commenced two prosecutions.

In conclusion, the Sacred Sites Act creates a scheme for the protection of sacred sites that also seeks to enable development to occur. The Act establishes a scheme that relies on mutual trust and respect for land and identified sacred sites, and gives the developer a great deal of autonomy in how

they shall undertake their use of an area. The Act contains a Ministerial Review provision, which has only been utilised twice in the thirty year period of the Act.

Yours Sincerely,

Dr ~~B~~en Scambary
Chief Executive Officer
Aboriginal Areas Protection Authority