

15 July 2013



Mr Mike Woods
Presiding Commissioner
Resource Exploration
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Email: resourceexploration@pc.gov.au

Dear Commissioner

Non-Financial Barriers to Mineral and Energy Resource Exploration

The Chamber of Minerals and Energy of Western Australia (CME) welcomes the opportunity to provide comments in relation to the Productivity Commission's draft report and recommendations of the Inquiry into the Non-Financial Barriers to Mineral and Energy Resource Exploration.

CME and the WA resources industry

CME is the peak resources sector representative body in Western Australia funded by its member companies who generate 95% of the value of all mineral and energy production and employ 80% of the resources sector workforce in the state.

The Western Australian resources sector is diverse and complex covering exploration, processing, downstream value adding and refining of over 50 different types of mineral and energy resources.

In 2011/12, the value of Western Australia's mineral and petroleum production was \$106 billion, accounting for 91% of Western Australia's total merchandise exports and thus representing the majority of Western Australia's 46% contribution to Australian merchandise exports. Mining royalty payments to the state government totalled \$5.3 billion in 2011/12.

Background

The situation in Western Australia for mineral and resource exploration has changed markedly since the Productivity Commission commenced the Inquiry into the Non-Financial Barriers to Mineral and Resource Exploration.

CME's June quarterly economic report highlights the March 2013 quarter saw total mineral and petroleum exploration decline by 22% to \$1.14 billion from the previous quarter. After falling by 4% in the December quarter, total mineral exploration expenditure fell by another 10% in the March quarter to \$422 million. This is the third consecutive quarter mineral exploration has declined. Compared to the corresponding quarter a year ago, mineral exploration is now 14% lower. This consistent loss of growth is of concern to the sector.

According to the Fraser Institute (2012/13) Survey of Mining Companies Report only 46% of respondents plan to increase their exploration budgets in 2013; down from 68% in 2012 and 82% in 2011. In addition, the 2010 report from Metals Economic Group showed an almost halving of Australia's share of world exploration expenditures during the period 1996-2010 from 21% to 12%.

It is now critical the barriers to exploration are identified and strategies implemented to ensure the longevity of the resources sector for the benefit of all Australians.

CME is disappointed the narrow terms of reference for the inquiry restricted debate on the key issues obstructing new exploration activities; i.e. fiscal and taxation policy and issues surrounding native title.

The Chamber of Minerals & Energy of Western Australia Level 10, 2 Mill Street, Perth WA 6000

Locked Bag N984, Perth WA 6844 **p** (61 8) 9325 2955 **f** (61 8) 9221 3701 **e** chamber@cmewa.com **w** cmewa.com

A significant contribution to resources exploration comes from the “small cap” sector and this is likely to continue, albeit with lessening expenditure. While the key issues outlined below increase costs, complexity and timeframes for the whole industry, they have a disproportionate impact on those explorers with small market capitalisation because of difficulties in accessing capital, and often higher financing costs. These factors materially impact exploration spend and can mean the difference between being able to undertake a drill program, or not.

Fiscal and taxation policy

The Fraser Institute (2012/13) Survey of Mining Companies Report ranks the Australian taxation regime as a ‘mild to strong deterrent to investment’. CME has been calling for incentives similar to the Canadian flow-through share scheme, such as a minerals exploration tax credit, to attract more exploration investment in Australia.

The WA government is focussed on boosting exploration activity through its Exploration Incentive Scheme – a program welcomed by the resources sector and one that will deliver a significant return to the people of Western Australia.

CME strongly supports policy settings and initiatives that remove barriers to investment in the industry and our state. It is important Australia’s AAA credit rating is maintained to ensure the optimum environment for potential investors and to maintain Australia’s reputation as a favoured country for mineral exploration.

Most important though is the need for a consistent, stable fiscal policy. Australia’s reputation as a competitive place to do business has been tarnished in recent years due to declines in productivity and the high cost of doing business.

The current global climate has already increased the difficulty in accessing capital and the Australian Government must ensure all is done to help curb the increasing cost of doing business. These costs result from:

- Imposed business costs including the uncertainty of the timing and settings of the introduction of new and changing taxation imposts such as Mineral Resources Rent Tax and the carbon pricing mechanism;
- Lengthy project approval processes, duplication, time delays and complexity;
- Increasing energy demand and rising costs for resources projects.

Native Title

Native title remains a significant barrier to exploration. Native title negotiations contain considerable challenges for explorers in terms of access, availability and clarity of native title groups. In Western Australia the rate of resolution of claims has slowed considerably adding to this problem. Distance, cost and engaging with the traditional decision making process causes further delays to projects.

The initial Western Australian Government submission to the inquiry (April 2013) showed native title and Aboriginal heritage to be substantive aspects of the exploration approval process, producing stark graphical evidence highlighting the direct impact of the Native Title Act 1993 (Cth) on approval timelines for mining tenements applications.

Not investigating the links between native title and exploration has limited the effectiveness of this inquiry to date, and therefore limits opportunities for recommendations to remove one of the most significant barriers to exploration activities.

PC Inquiry

CME appreciates the Productivity Commission’s efforts to consult with industry prior to releasing the draft report, and values the opportunity to provide further comments on the draft recommendations.

CME supports the following draft recommendations without additional comment:

- 3.3 requiring reasons to be given with a decision regarding an exploration licence;
- 4.1 on the use of evidence-based analysis when declaring new national parks or conservation reserves and assessing exploration activities according to risk and proposed impact; and

- 5.1 referring to the retention of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 and amending it to allow state and territory regimes to be accredited if Commonwealth standards are met.

A number of recommendations are unobjectionable in nature and CME will not seek to comment further on them.

However, comment and clarification is made on the following draft recommendations:

Draft recommendation 3.2 concerning deferred release of exploration tenements until tenements of appropriate size and shape can be issued.

CME considers greater clarity should be provided to the definitions of 'small' and 'irregular'. A further consideration might be given to the consolidation of tenure as this would have significant benefits for a typical project. Instead of having multiple separate leases to contend with there might be one or two, reducing a layer of complexity, duplication and administrative overheads for both proponent and regulator.

Draft recommendation 3.4 relating to the role of lead agencies responsible for exploration to ensure coordination of exploration licensing and related approvals.

CME considers this recommendation does not address limitations evident in the Lead Agency Framework structure already in place in WA. The WA Lead Agency framework only provides a government coordination and facilitation role for large and complex projects and does little to remove duplication between agencies for exploration projects.

Draft recommendation 3.5 to ensure regulators publish target timeframes for approval processes, including exploration licensing and related approvals.

CME supports this recommendation in principle, but urges transparency and certainty be explicitly required in the setting of timeframes for approvals processes.

The 'stop the clock' provision means regulator targets are no indication of the total time taken for the various elements of the approvals process to be completed.

CME recommends timeframes factor in multi-agency targets, including clarification periods and the actual date of approval.

The ability to track approval applications throughout regulator processes and measure agency performance in adhering to statutory timeframes is important to deliver accountability of timeframes. Without this information it is not possible to identify bottlenecks in the process and make further efficiency gains.

Draft recommendation 4.3 ensuring the development of coal seam gas exploration regulation is evidence-based and is appropriate to the level of risk.

CME supports the recommendation and considers it needs to be broadened to cover onshore conventional, shale and tight gas activities.

Draft recommendation 5.2 referring to heritage surveys.

CME supports the recommendation in principle, but notes it is silent on how companies navigate the confidentiality issues imposed by Aboriginal parties and how sensitive information would be handled.

Draft recommendation 5.3 referring to the management of Indigenous heritage on a risk assessment basis.

CME supports in principle, but the recommendation needs greater refinement and consideration at an operational level. A key point to make is on significance. Sites of significance to archaeologists may not be of significance to traditional owners. Consultation on the heritage significance should be undertaken with the traditional owners.

Draft recommendation 6.1 referring to The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) undertaking environmental assessments and approvals under the Environment Protection and Biodiversity Conservation (EPBC) Act for petroleum activities in Commonwealth waters.

CME supports this recommendation in principle for petroleum exploration activities in commonwealth waters, provided a clear case can be demonstrated this will reduce duplication and timelines. CME does not support NOPSEMA undertaking environmental assessments and approvals under the EPBC Act for petroleum development projects or production activities. CME considers these projects would be best administered under the EPBC Act through establishment of assessment and approval bilateral agreements between the federal government and state and territories governments.

Draft recommendation 6.2 recommending improvement of the efficiency of environmental assessment and approval processes under the EPBC Act by strengthening bilateral arrangements with the states and territories

CME strongly urges full assessment and approval bilateral agreements under the EPBC Act be initiated between the federal government and states and territories governments. This would remove the need for involvement of the federal government in approvals on a project by project basis, while still meeting international obligations for biodiversity conservation in a coordinated, strategic and transparent manner.

CME notes the legislative context in WA already meets most of the federal government's standards of accreditation for bilateral agreements.

Draft recommendation 6.3 recommending state and territory governments reconsider the option of conferring their existing petroleum-related regulatory powers in state and territory waters seaward of the low tide mark, including islands within those waters, to NOPSEMA.

CME does not support this recommendation. As a preference the federal government should accredit the state to undertake EPBC Act assessment and approval wherever practicable.

CME questions if any duplication would be removed in the circumstance which state and territory waters were to be conferred to NOPSEMA. For example, major project developments which include onshore processing facilities would still require state based approvals, resulting in no removal of duplication. CME's preference is for the establishment of assessment and approval bilateral agreements under the EPBC Act between the federal government and states and territories governments.

Draft recommendation 6.7 to ensure a single internet location provides environment-related guidance on the range of approvals that may be required.

CME supports this recommendation which will assist to improve transparency and accessibility of approval requirements and processes and importantly would highlight where duplication exists. In addition, it is recommended that for this internet-based resource to be truly valuable, it should include federal, state and local government input.

Draft recommendation 6.8 to ensure governments' archived industry data on environmental impact statements is made publicly available on the internet.

CME agrees in principle with the recommendation but notes any move to publically release industry data will require close consultation with industry. Clarity is needed on what data is to be included. Given the range of data from various sources, benchmarks will need to be established to ensure quality control, consistency and integrity. A coordinated and well-planned approach will be needed.

Commercial confidentiality and other issues such as security (i.e. information surrounding offshore pipeline inspections) need to be considered, as does ensuring this does not become an additional reporting requirement on industry.

Draft recommendation 7.1 recommending consideration of broader application of the New South Wales' cost recovery funding approach to the provision of pre-competitive geoscience information being adopted by the New South Wales Government.

CME does not support the introduction of cost-recovery models and levies by government agencies, particularly if cost-recovery shifts existing government appropriations onto industry without any tangible improvements. Before any cost-recovery will be considered by the resource sector, government must demonstrate a clear link to improved service delivery.

Workforce issues

While the report makes no recommendations relating to workforce issues, CME is concerned data referenced in the report is outdated.

Additional data on skills can be accessed through Australian Workforce and Productivity Agency 2012 *Resources Sector Skill Needs* report and a more representative picture of the industry's commitment to training is provided in the recent MCA report *Training and Education Activity in the minerals sector* published in March 2013.

CME would also like to comment on the following areas where the report is silent:

Technology and innovation

Technological advancement in exploration, production and processing has supported Australia's reputation as an internationally competitive resources market. Issues of improved productivity, labour market constraints, OH&S, and access to resources that increasingly present significant technical, environmental and social challenges are front-of-mind for all industry participants.

Technological innovation is helping to address these challenges and it is important innovation is encouraged and incentives provided to ensure Australia's mining industry keeps pace competitively. It is also important industry has access to quality skills development to realise productivity gains that may be generated by advances in technology and innovation.

Expertise

CME remains concerned by inadequate resourcing and variable skills sets across government agencies charged with administering approvals and regulatory regimes covering the resources sector. CME has long supported the development of a comprehensive government training program focused on clarifying accountabilities, responsibilities and process application of the environmental approval process to improve understanding across agency staff, proponents and consultants.

We look forward to continued consultation with the Productivity Commission.

Please do not hesitate in contacting Katherine Flower if you have any further queries.

Yours sincerely,

Nicole Roocke
Acting Chief Executive