MINERALS COUNCIL OF AUSTRALIA

PRODUCTIVITY COMMISSION STUDY ON RESOURCES SECTOR REGULATION

---

31 OCTOBER 2019

TABLE OF CONTENTS

EXECUTIVE SUMMARY

The Productivity Commission's study of resources sector regulation is a positive first step to advance the COAG strategic reform agenda for resources, but it needs to result in fewer and better regulations and better performance by regulators and governments.

Federal and state resources ministers agreed to six actions in December 2018, the first of which was to 'establish a framework for the regular benchmarking of policies and regulation which will assess current settings and highlight best-practice across Australia and internationally.' If the Productivity Commission is to achieve this objective, then its study must assess the cumulative effect of federal and state policies, regulations and regulatory practices on the international competitiveness of Australian mining.

Australia is underperforming competitor nations in critical areas. Business taxation is high. Federal and state environmental regulations are inefficient, prescriptive and uncoordinated. Statutory timeframes for approvals are often not met. Approved projects are subject to unmeritorious legal challenges. Energy costs are unduly high. Restrictive workplace relations rules hinder productivity. A comparative analysis of regulatory processes within Australia, as well as benchmarking Australia against other mining regions, is necessary to guide a new wave of reform across jurisdictions.

The stakes for streamlining resources regulation are high. Australia's resources sector generates more export revenue than all other industries combined (i.e. 58 per cent), pays the highest average earnings ($140,000) and directly employs approximately 240,000 highly skilled workers, predominantly in remote and regional Australia. The minerals industry paid $18.6 billion in company tax in 2017-18 alone, accounting for 22 per cent of all company tax paid that year.

Modern mining environmental practice is highly regulated, better implemented and more accountable than ever before. The minerals industry upholds high standards of environmental protection based on the use of sound science and robust risk-based approaches. The industry pursues continuous improvement in the areas of land use and mine rehabilitation, water use and biodiversity conservation. Companies may also offset significant residual environmental impacts and undertake voluntary conservation initiatives that go beyond regulatory compliance.

Government policy and regulatory settings vary significantly across Australian states – reflected in the Fraser Institute's annual *Survey of Mining Companies* that rates mining regions on their public policies and mineral potential to assess their overall investment attractiveness. While Western Australia, South Australia and Queensland usually rate strongly for perceptions of public policy when compared to other mining jurisdictions around the world, perceptions of other states have deteriorated in recent years.

For example, only 14 per cent of respondents stated that environmental regulations in New South Wales either encouraged investment or were not a deterrent to investment. This ranks New South Wales 76th out of 83 rated jurisdictions - only one position higher than Venezuela (77th) and lower than Bolivia (66th). In comparison, five Canadian provinces are ranked inside the top 20.

The MCA urges federal and state governments to pursue important and overdue opportunities for regulatory reform, notably by streamlining environmental regulation while maintaining high standards of conservation, modernising workplace relations rules so managers can innovate and redesign jobs, and ensuring energy markets deliver affordable and reliable energy with lower emissions.

Australia's complex and duplicative processes for approving major projects are generating unnecessary delays and uncertainty. Companies, workers and regional communities have been frustrated by long delays for projects such as Adani Carmichael (Queensland, eight years), Wallarah 2 (NSW, 16 years) and Cameco Yeelirrie (WA, five years).

The minerals industry appreciates that each project should be judged on its merits and should satisfy the rigorous requirements of federal and state jurisdictions. But what is highly concerning – and

discouraging to international investors – is the excessive number of project approval conditions, their highly prescriptive nature, the inconsistency and overlap between jurisdictions, and the fundamental uncertainty of process. This damaging approach results in significant compliance costs and delays in wealth creation for little or no environmental gain.

When regulator performance is neither monitored nor measured, it is difficult to benchmark performance against timeframes, engagement effectiveness and the consistency with which the regulation has been applied. While statutory timeframes exist for approval decisions – including under the *Environment Protection and Biodiversity Conservation Act 1999* – a range of mechanisms which provide opportunities to seek further information or require additional assessment, effectively 'stop the clock', often late in the process. These mechanisms are used by anti-development interests to block or delay regulators and projects, often combined with unmeritorious litigation.

More broadly, governments are increasingly taking a cursory and superficial approach to consultation, engaging stakeholders too late in the process or giving them too little time to understand proposed changes and provide meaningful input. Governments are also increasingly resorting to regulation in an attempt to quell public concerns, without first considering if other options would be more fit-for-purpose options, such as non-regulatory or co-regulatory approaches.

Australia is a world leader in providing precompetitive data through state geological surveys and Geoscience Australia, yet more must be done to retain this comparative advantage. Government funding for these programs has not been adequate, despite the growing tax and royalty revenue being generated by the mining industry.

Australia's rising energy costs and supply risks are affecting the commercial viability of new mining and mineral processing projects in Australia. The key principle underpinning energy policy should be technology neutrality. This means avoiding providing subsidies, quotas or other non-market-oriented interventions to favour specific technologies.

A genuinely technology neutral approach should be applied to all low emissions energy sources – including renewables, gas, nuclear, advanced coal technologies (such as high-efficiency, low-emissions coal power), coal with carbon capture and storage (CCS) and bio-energy with CCS.

Australia's openness to trade and investment continues to drive income and job creation across Australia. International investment is vital to the mining sector, facilitating transfers of technology, skills and capabilities, and access to global supply chains and export markets. Government policies must continue to support international investment flowing to Australia as domestic savings are not sufficient to meet the needs on capital intensive industries.

The minerals industry approach to community engagement has evolved over past decades. The sector has developed innovative approaches to engagement and is supporting multi-party dialogues and partnerships with local communities. The industry is increasingly focused on long-term community partnerships and strategic investment to support community priorities and aspirations for sustainable long-term development outcomes.

The Australian minerals industry recognises and respects the rights and interests of Indigenous Australians and proudly partners with Aboriginal and Torres Strait Islander groups and communities, including Traditional Owner groups, on exploration and development of minerals projects across Australia.

There is a role for government in improving community understanding of minerals development assessment and approvals processes. Government policy settings and efforts should seek to complement industry investment, enabling local communities to achieve their aspirations and provide for long-term community resilience.

Recommendations

- Governments should make resources sector regulation more efficient and effective by:
  - Adhering to COAG principles of best practice regulation; that is minimum effective regulation that is enforceable, consistently administered and not unduly prescriptive
  - Improving coordination, integration and consistency between federal and state/territory project environmental approval processes
  - Adequately resourcing regulatory agencies to deliver assessments within required timeframes
  - Making decision-makers accountable for meeting statutory timeframes for approvals.
- The federal government should address broader impediments to resources investment by:
  - Increasing public investment in precompetitive geological data by extending and expanding Geoscience Australia's Exploring for the Future program
  - Making Australia's business tax system more internationally competitive
  - Extending the duration of greenfields agreements to cover the life of projects
  - Developing and implementing an energy policy that delivers a reliable, lowest cost dispatchable energy supply that is available 24/7, while reducing CO_2 emissions.
- The MCA recommends that the government maintain policy settings that support trade and deeper regional economic integration, including the continued expansion of Australia's network of bilateral, regional and plurilateral free trade agreements (FTAs).
- Investment policy settings need to ensure the foreign investment and foreign influence review process does not needlessly create political tensions, and provide clarity and transparency for foreign investors seeking to invest in Australia.
- The government should ensure that Foreign Investment Review Board (FIRB) screening requirements are the same for all private investors, irrespective of their country of origin. Screening thresholds in non-sensitive sectors should be raised from $261 million to $1.13 billion for non-FTA nations, consistent with the level that applies to Australia's FTA partners.
- To deliver best practice benefit sharing, government policy settings and efforts should seek to complement industry investment, enabling local communities to achieve their aspirations and provide for long term community resilience.

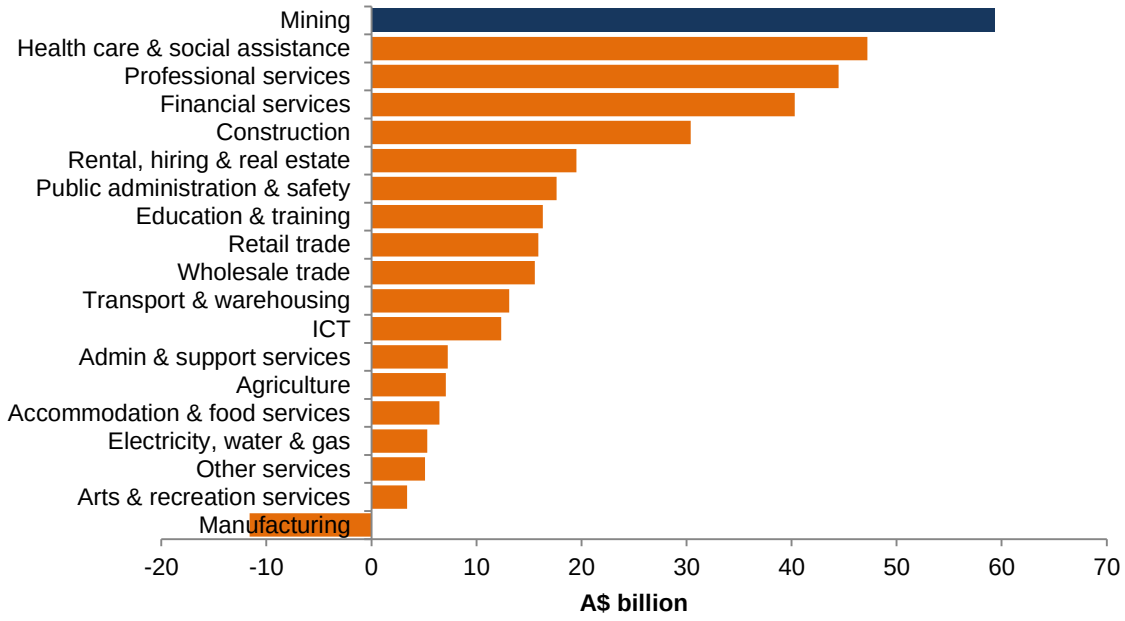
1. OVERVIEW OF THE AUSTRALIAN MINING INDUSTRY

- The resources sector has underpinned rising incomes across Australia and will continue to fuel national prosperity. Mining is Australia's largest source of export revenue, provides highly paid, highly skilled jobs for thousands of people and pays billions of dollars to governments each year in taxes and royalties.
- Mining is subject to more regulatory requirements than any other Australian industry. Regulatory requirements cover all stages of industry activity – from grant of tenure, exploration, extraction, processing, transport and mine closure through to relinquishment of tenure.
- Regulatory practices and procedures that unnecessarily delay project approvals, add compliance costs and discourage investors must be reformed to maximise Australia's future mining investment potential.
- The Productivity Commission's study of resources sector regulation should incorporate the insights and recommendations of previous government inquiries as well as take account of the barriers to implementing reforms

Mining's contribution to the Australian economy

The resources sector (including oil and gas) has been the largest contributor to economic growth in Australia over the 10 years to 2017-18 (Chart 1). As a result of the growth, the share of resources in Australia's Gross Domestic Product (GDP) increased from 5.7 per cent in 2002-03 to 7.6 per cent in 2017-18.[1]

Chart 1: Contribution to GDP growth, 2007-08 to 2017-18



Source: Australian Bureau of Statistics, *Australia System of National Accounts, 2017-18*, ABS cat. no. 5204, released 26 October 2018.

[1] Australian Bureau of Statistics, *Australia System of National Accounts, 2017-18*, ABS cat. no. 5204, released 26 October 2018.

Average earnings in the resources sector are around $140,000 a year, more than 60 per cent higher than the average for all industries. The distribution of wages in the sector reflects its high average weekly earnings, with mining workers in every percentile earning above the national average. Further, the share of permanent employees in the resources sector is high compared to other industries (84 per cent) and 96 per cent of workers in resources are employed full-time.[2]

International investment is vital to the mining sector, facilitating transfers of technology, skills and capabilities, and access to global supply chains and export markets. Australia is usually a net importer of capital, requiring international investment to fill the gap between domestic saving and investment. International investment has met this capital shortfall, delivering on average 4 per cent of GDP over the past 40 years.[3]

The value of foreign direct investment (FDI) in Australia's resources sector increased eight-fold between 2001 and 2018, from $36.8 billion to $365.5 billion.[4] Over the same period, the number of Australians employed directly in the resources sector grew from around 80,000 to 240,000.[5] When indirect employment is considered, mining and its supply chains support 1.1 million jobs in Australia, which is 10 per cent of the workforce.

The value created by FDI in minerals is overwhelmingly retained in Australia - 77 per cent of revenues earned by the nation's major iron ore producers stays in Australia as payments to suppliers or taxes and royalties to governments.[6]

The Australia minerals industry paid $18.6 billion in company tax in 2017-18 alone, accounting for 22 per cent of all company tax paid that year despite comprising less than 1 per cent of all companies. In addition, the industry paid $12 billion in royalties to state governments, helping to fund essential services and infrastructure.[7]

The economic benefits the mining industry delivers for all Australians are not guaranteed. The mining industry requires a constant flow of investment to sustain existing operations and is competing with many other minerals producing jurisdictions for a fixed pool of capital that funds exploration and the development of new mines. Industry regulation is a key factor affecting Australia's competitiveness as an investment destination, influencing investors' perceptions of Australia as a place to do business and in most cases leading to higher operating costs for mining projects.

Study scope

Mining is subject to more regulatory requirements than any other Australian industry. Regulatory requirements cover all stages of industry activity – from grant of tenure, exploration, extraction, processing, transport and mine closure through to relinquishment of tenure. This stems in part from the nature and location of mining, and its potential social and environmental impacts. Yet it also reflects the legacy of previous decisions by governments at all levels in Australia, taken in many cases without regard to clear policy principles or good process.

The regulatory practices and procedures that are causing delays to project approvals and additional compliance costs must be reformed into order to maximise Australia's future mining investment potential. The Productivity Commission's study is a positive first step to advance the COAG strategic

[2] Australian Bureau of Statistics, *Average Weekly Earnings, Australia, May 2019,* ABS cat. no. 6302, released 15 August 2019; *Labour Force, Australia, Detailed, Quarterly, Aug 2019*, ABS cat. no. 6291.0.55.003, released 26 September 2019; *Characteristics of Employment, Australia, August 2018*, ABS cat. no. 6333, released 29 November 2018.
[3] Adam McKissack and Jessica Xu, *Foreign investment into Australia*, Treasury Working Paper, January 2016, released on 18 February 2016.
[4] Australian Bureau of Statistics, *International Investment Position, Australia: Supplementary Statistics, 2018,* ABS cat. no. 5352.0 released 8 May 2019.
[5] Australian Bureau of Statistics, *Labour Force, Australia, Detailed, Quarterly, Feb 2018,* ABS cat. no. 6291.0.55.003, released 29 Mar 2018.
[6] Port Jackson Partners, *Iron ore: the bigger picture*, policy paper commissioned by the Minerals Council of Australia, 7 July 2015, p. 22.
[7] Deloitte Access Economics, *Estimates of royalties and company tax accrued in 2017-18,* report commissioned by the Minerals Council of Australia, 26 March 2019.

reform agenda for resources, but it needs to result in fewer and better regulations and better performance by regulators and governments.

Federal and state resources ministers agreed to six actions in December 2018, the first of which was to 'establish a framework for the regular benchmarking of policies and regulation which will assess current settings and highlight best-practice across Australia and internationally.'[8] If the Productivity Commission is to achieve this objective, then its study must assess the cumulative effect of federal and state policies, regulations and regulatory practices on the international competitiveness of Australian mining.

Australia is underperforming competitor nations in critical areas. Business taxation is high. Federal and state environmental regulations are inefficient, prescriptive and uncoordinated. Statutory timeframes for approvals are often not met. Approved projects are subject to unmeritorious legal challenges. Energy costs are unduly high. Restrictive workplace relations rules hinder productivity. A comparative analysis of regulatory processes within Australia, as well as benchmarking Australia against other mining regions, is necessary to guide a new wave of reform across jurisdictions.

As noted in the Productivity Commission's issues paper, there are a number of regulatory reviews by other agencies underway. There have also been numerous inquiries and reports that have unfortunately resulted in few practical changes. The Productivity Commission's study of resources sector regulation should incorporate the insights and recommendations of previous government inquiries as well as take account of the barriers to implementing reforms.[9] A more thorough understanding of the barriers to reform will enhance the likelihood that this study will lead to productive changes for the benefit of all Australians, regional communities in particular.

[8] Council of Australian Governments Energy Council, *Resources Communique – Resources Roundtable,* 18 December 2018.
[9] For example, Productivity Commission, *Major Project Development Assessment Processes: Research Report,* Canberra, November 2019, released 10 December 2013; *Workplace Relations Framework Inquiry,* Canberra, 21 December 2015; and National Commission of Audit, *Towards Responsible Government,* March 2014.

2. PROBLEMS WITH REGULATORY DESIGN AND PRACTICE

- Government consultation processes in Australia fall well short of best practice. It is now common for consultation to be a way of briefing industries and communities on policy, legislation and regulation changes, rather than seeking expert input to properly inform government decisions and avoid unintended adverse consequences.
- Regulation and policies for project assessment are often overly prescriptive and may limit options available to both the regulator and the project proponent in developing a fit-for-purpose response.
- Inefficient regulations that set unjustifiable standards, along with poor implementation of processes, discourage mining investment. Mining companies are competing for a limited pool of global capital to develop new projects in Australia and inefficient regulation that increases costs without benefit can severely affect a project's commercial viability.
- To improve regulatory design and practice governments should focus on implementing the Council of Australian Governments' (COAG) existing principles of best practice regulation.

Mining regulation in Australia

Mining projects are subject to approvals from all levels of government in Australia. State governments have the primary role in assessing applications for mining licences in accordance with state law, the federal government assesses matters that are covered by the Environment Protection and Biodiversity Conservation Act (EPBC Act) and local governments can be required to provide planning approvals for the construction of buildings and infrastructure. With so many approvals required to develop a mining project, government processes need to occur in a coordinated manner.

Effective regulation is essential for supporting competition and the community by promoting growth in productivity and living standards. Good regulation is also important to protect heritage, biodiversity and other environmental values by instilling community confidence in state/territory and federal governance. Yet regulatory processes are increasingly failing to meet these goals in an efficient and effective manner.

The Australian minerals industry supports environmental regulation that is both efficient in its operation and effective in achieving the desired outcomes. It is important to note that the industry does not seek to remove or diminish environmental standards or community safeguards. Rather, the minerals industry seeks to create a more efficient process in meeting regulatory objectives through the removal of unnecessary prescription and processes.

It should also be appreciated that it is not only legislation and regulation that are important to the sector. There are a plethora of policies and standards that all strongly influence governance in the minerals industry.

In focusing on potential reforms to mining approvals, the MCA's approach is guided by the Council of Australian Governments' (COAG) principles of best practice regulation that stress:

- Clear intent based on an established case for action
- Flexibility in instruments, including self-regulatory, co-regulatory and non-regulatory approaches
- Avoiding restrictions on competition
- Clear guidance on compliance requirements
- Reviews of regulation to ensure they remain relevant and effective

- Consultation with stakeholders
- Consistency, transparency and proportionality in the exercise of bureaucratic discretion.

In addition to these criteria, all state and federal government priorities should embody minimum effective regulation that is not unduly prescriptive, but is enforceable and can be consistently administered.

Regulation that falls short of these criteria is likely to fail in its objectives, impose unnecessary costs, impede innovation and create barriers to efficiency and productivity. It may also cause a loss of community trust and faith in the regulatory process.

Approaches to consultation are not consistent with best practices

In 2013 the MCA commissioned consultants URS to undertake a comprehensive audit of mining regulations in Australia.[10] The report identified the COAG principles of best practice regulation were not being systematically applied by governments in Australia.

For example, with respect to Principle 1 'establishing a case for action before addressing a problem', many situations were identified where regulatory change had been made without clearly specifying the 'problem' and the 'case' that the proposed change represented the best approach. With respect to consultation (COAG principle 7), while consultation efforts by governments were often undertaken in 'good faith', tight timeframes and the large number of reviews undertaken meant the mining industry (including associations) had limited capacity to respond meaningfully in a number of cases.

There is also substantial evidence from the mining industry that regulatory practices have not improved in the six years since this report was commissioned.

While consultation with stakeholders may be built in to policy and regulatory development processes, tight timeframes and delays can result in a 'tick the box' approach to consultation, where stakeholders are engaged too late in the process or given too little time to understand the reform and provide meaningful input. Such an approach inhibits sound policy and regulatory development.

Many regulations are subsequently not based on evidence but preconceived or sometimes politically motivated decisions in response to electoral sentiment, or the need to act in haste in an attempt to quell protest. Such regulations do not deliver optimal environmental, community or economic outcomes for Australians.

The minerals industry understands the importance of providing input into government consultation, a process which can require significant time and resources. However, industry is rarely advised on how that input has been considered and influenced changes to the policy/regulation.

There are many examples of this breakdown in best practice regulatory design processes at both the state and national levels.

In June 2019 the Victorian Government announced a new gold royalty in its budget without any industry consultation. Its Regulatory Impact Statement was released after the announcement and demonstrated a highly flawed understanding of an industry that has significant growth potential but faces challenges in attracting sufficient investor capital.

Had the government engaged with the industry in an honest and transparent manner, this analysis could have been improved based on genuine expert advice and an efficient royalty system could have been designed with industry input that simultaneously maximises government revenue while providing incentives to investment in new gold mines.

Similar proposals to increase royalties without proper industry consultation have occurred in Western Australian in 2017 – where a proposal to raise gold royalty rates was also first announced in the State Budget – and in the Northern Territory in 2018.

[10] URS, *Update of national audit of regulations influencing mining exploration and project approvals processes*, prepared for the MCA, Canberra, 31 May 2013.

In June 2018 the federal government announced a new biosecurity import levy to be imposed on sea containers and non-containerised cargo from 1 July 2019 (later postponed to 1 September 2019). The levy was estimated to raise more than $100 million each year and was intended to apply on top of the biosecurity vessel inspection charge, which for bulk carriers is already around A$1,200 per vessel for a standard inspection. The announcement was not accompanied by a biosecurity risk assessment or regulation impact statement. Following criticism from a range of industries, the government formed an industry steering committee in February 2019 to provide input into the design of the levy. The government subsequently deferred the levy so it could consider the committee's recommendations.

In 2015 the Northern Territory Government prepared and released a 65 page document on guidelines for mine closure plans with a deadline for comments from the industry of three weeks. The document was prepared without prior industry consultation and lacked an evidence base for many of the proposed approaches to mine closure. This inadequate process combined with the poor quality of the guidelines resulted in the withdrawal of the proposal. Since that time, no further progress has been made.

In the development of the Northern Territory's *Environment Protection Act 2019*, the relevant department met with the industry on a number of occasions, however when the draft bill and regulations were released, they contained consequential provisions not discussed with industry. Furthermore, critical information on how the Act would operate was not provided in the bill or regulations. The draft regulations were subsequently withdrawn and the Bill passed, despite little information about how the Act would operate.

Consultation on changes to the National Environmental Protection Measure for Ambient Air Quality was undertaken in mid-2019. A cost-benefit analysis (CBA) was developed to support the proposed changes which if adopted, may have a significant impact on the minerals operations. Despite cost data being a critical input into the CBA, at no point was industry engaged to confirm or validate these costs.

Regulatory objectives are not clearly defined

There has over recent years been a range of regulation and associated processes introduced in an attempt to reduce political pressure or in response to public perception. The growth of independent panels and processes and the introduction of assessment and approval 'triggers' that target specific industries – and not the impact of activities by those industries – are cause for concern.

The 2013, URS report on mining regulation commissioned by the MCA found the problem the regulations aimed to address was often poorly defined and it was therefore unclear whether a regulatory response was appropriate.[11]

One example is the introduction of the EPBC Act 'water trigger' for coal seam gas and large coal mine developments in 2013. The trigger was introduced without a regulatory impact statement as part of a political deal and introduced a range of new requirements for coal mining, despite other activities having similar environmental effects and the regulation of water being already undertaken by state regulators. The regulatory outcomes sought by the trigger – to improve environmental outcomes and enhance community confidence – were poorly defined, being broad and difficult to measure.

As regulatory objectives are not clearly defined from the outset, regulators and independent panels are left to interpret requirements inconsistently and potentially change scope and expectations for the regulated entity.

For example, most recently, the New South Wales Independent Planning Commission (IPC) included approval conditions on the United Wambo coal project include trade-related provisions which are not in the scope of any state regulations.

[11] URS, *Update of national audit of regulations influencing mining exploration and project approvals processes*, prepared for the MCA, Canberra, 31 May 2013

Regulatory creep

Regulatory creep is an ongoing concern in the regulation of the minerals sector and an area that receives little attention in reviewing the effectiveness of regulation. Regulation has been increasingly used to resolve public concerns, without consideration of other potentially more fit-for-purpose options such as co-regulatory approaches.

Examples of this regulatory creep are provided below:

- The water trigger for coal seam gas and large coal mining developments under the EPBC Act was introduced in 2013 despite state governments having constitutional responsibility for water. As the Productivity Commission has previously noted, the water trigger amendment 'imposes an extra layer of regulation on affected proponents' in a situation where 'it is not obvious that existing laws are deficient or that the particular legislative amendment adopted by the Australian Government is the best approach to deal with any identified gap in the regulatory framework'[12]
- The nuclear trigger under the EPBC Act was established to enable the federal government to enact its international obligations under the Nuclear Non-Proliferation Treaty. However, uranium mining, milling and decommissioning activities, while not linked to the international treaty, were included as a matter of 'high level public concern'. The trigger wholly duplicates comprehensive state-based approvals and its design is leading to increasing capture of non-uranium projects, including base metals (copper) and mineral sand projects (despite mineral sands being specifically excluded under the EPBC Act)
- Environmental impact assessment (EIA) requirements have proliferated over recent decades as governments (state and federal) are taking an increasingly risk-averse approach to EIA. Increasing EIA information requirements are resulting in wide-ranging assessments of all impacts, regardless of materiality/level of risk, and unnecessarily increasing assessment timeframes. Examples include:
    - EIA documents for the Macarthur River Mining (MRM) brownfields mine extension project in the Northern Territory consisted of approximately 8,500 pages and weighed more than 43 kilograms.
    - EIA documents for the Arafura Resources mine, a mid-sized mining development in the Northern Territory consisted of more than 3,080 pages with a printed weight of almost 14 kilograms. A supplementary EIA document was more than 900 pages in length.
- In New South Wales, recent project approval conditions have included specific provisions for climate change and trade
- Reporting of land and water entitlement held by companies to a national register to address concerns over foreign ownership, despite such information being held by state bodies.

In addition to the above, regulatory creep, outside the policy responsibility of states is increasingly occurring both through independent bodies and court appeals. These include:

- Draft greenhouse gas assessment guidance, including control and offsetting of direct emission released by the Western Australian Environment Protection Authority for consultation in March 2019 (noting a new consultation is currently underway)[13]
- The New South Wales Land and Environment Court judgement in early 2019 on the Rocky Hill mine which cited climate change as one of the reasons for rejecting the proponent's appeal.

[12] Productivity Commission, *Major Project Development Assessment Processes: Research Report*, Canberra, November 2019, released 10 December 2013, p. 149.
[13] Environment Protection Authority Western Australia, *EPA releases revised guidance for proponents on greenhouse gas emissions*, media release, 7 March 2019

Regulation is overly prescriptive

Regulation and policies for project assessment are often overly prescriptive and may unnecessarily restrict options available to both the regulator and the project in developing a fit-for-purpose response. A plethora of guidelines also exist to support these assessments which while useful are often used prescriptively, rather than as intended guidance. This prescription results in a focus on process rather than the outcomes sought by the regulation or policy.

Project approval conditions on minerals projects have become increasingly numerous and prescriptive. The number of prescriptive conditions imposed upon a project has been increasingly and wrongly used as a benchmark for sound regulatory process. This is of particular concern where such conditions are not risk-based, resulting in significant compliance effort for little environmental gain.

For example, since 2010 Adani's Carmichael coal mine in Queensland has required various approvals under seven different federal government and Queensland Acts. Adani holds more than 42 environmental and planning approvals for the Carmichael coal mine, rail, port and supporting infrastructure projects, with more than 1800 strict environmental conditions.

Similarly, the New Acland Stage 3 project in Queensland has 842 conditions attached to its approval.

Furthermore, the complexity of project assessment continues to increase in part as a result of multiple technical/administrative changes that seek to make minor adjustments to the law, regulatory processes, fees and charges.

Regulations are not subjected to effective review processes

While regulation, policies and standards governing minerals development are periodically reviewed, these tend to focus on process and future reform, not whether the existing framework has achieved its intended objectives. Specifically, it is unclear whether the regulation has resolved the problem sought to be addressed. These reviews also rarely have the aim of reducing unnecessary and burdensome regulation.

A number of third party reviews of regulation have been undertaken over recent years. These reviews have been completed by third parties such as independent assessors and organisations including the Productivity Commission.

Despite these reviews being extensive and involving considerable effort by stakeholders, once completed the review outcomes are rarely implemented. Examples of these include:

- 2009 Independent (Hawke) Review of EPBC Act - A review report contained 71 reform recommendations, many of which were eventually accepted by the government of the day.[14]
- 2013 Productivity Commission inquiry into Mineral and Energy Resource exploration which contained a broad range of recommendations on improving the regulatory and licensing arrangements for mineral exploration[15]
- 2013 Productivity Commission review of major development assessment processes. The comprehensive review of major project development assessment processes focused on identifying critical elements of development approval and benchmarking processes against international and domestic best practice[16]
- The 2017 Senate Select Committee on Red Tape, which found that: 'delays in environmental assessment and approval processes are having adverse economic outcomes' and recommended that 'the Australian, state and territory governments recommit to the one-stop shop initiative'.

[14] Department of the Environment, Water, Heritage and the Arts, *Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, Australian Government, Canberra, October 2009.
[15] Productivity Commission, *Mineral and Energy Resource Exploration Inquiry report, No. 65*, Canberra, 27 September 2013
[16] Productivity Commission, *Major Project Development Assessment Processes: Research Report*, Canberra, November 2019, released 10 December 2013.

Some regulatory reviews are more process-oriented than an attempt to deliver meaningful outcomes. This is particularly the case where the objects of the regulation are ambiguous, making it challenging to measure success.

For example, the 2017 independent review of the EPBC Act water trigger found the additional regulatory costs to business were significant (estimated at $46.8 million annually).[17] The review concluded that the cost to industry was acceptable, despite not being able to ascertain whether the water trigger has achieved any of its aims – either improved environmental outcomes or enhanced community confidence. The review also suggests duplication of regulation between the federal and state governments created by the water trigger was not a significant issue given it was managed through administrative arrangements.

The claim that regulators are managing the legislation as well as they can to reduce duplication should not be used to justify this conclusion. Regulatory activity should not be a measure of the regulatory outcome, particularly where costs are borne by the proponent.

Impacts of poor regulatory design

Inefficient regulations that set unjustifiable standards along with poor implementation of processes discourage mining investment by creating high additional costs and increasing investor uncertainty which requires higher risk premiums to be paid in order to attract new capital.

Unnecessary regulatory 'burden' occurs where ineffective, inefficient regulation relative to minimum effective regulation increases the compliance costs to industry and undermines productivity without tangible benefit. These costs represent a loss to the affected industry, the community and the economy as a whole.

Mining companies are competing for a limited pool of global capital to develop new projects in Australia. Inefficient regulation that unnecessarily increases costs can severely impact a project's commercial viability – particularly in planning stages where junior mining companies are not generating cash flow and must constantly source funds from investors to spend on studies and assessments required under regulatory processes.

[17] Hunter. S, *Independent review of the water trigger legislation*, prepared for the Australian Government, tabled in Parliament on 19 June 2017.

3. APPROACHES TO REGULATOR GOVERNANCE

- In principle, federal and state environmental approval processes are responsible for different but related environmental values. These processes are rarely synchronised. Different triggers, timeframes, additional reviews and requests for further information and a lack of efficient inter-agency coordination all contribute to delays.
- A lack of regulator capacity and in some cases competency is a key driver of delays in project approvals. The federal Department of Environment and Energy has for a long period been under-resourced resulting in longer than necessary delays in assessment and approvals processes. In addition, assessment officers at federal and state level may be junior with little experience – especially in the industry they regulate – resulting in reliance upon independent panels and outsourcing of assessment components to third parties including consultants.
- While statutory timeframes exist for approval decisions including under the EPBC Act, there are a range of mechanisms which provide opportunities to seek further information or require additional assessment. These mechanisms effectively 'stop the clock' on assessments and often occur late in the approval process. Such mechanisms allow regulators to delay projects for extended periods without implication to the regulating body.
- Simplification of the approvals process for minerals projects and the underlying regulatory framework in order to reduce uncertainties and delays - this might involve the process being driven by a coordinating agency.

Regulatory overlap and duplication

Mining developments are subject to local, state and federal government regulation and planning regimes. This can result in many different approvals being required for an individual development. The overlap between federal and state/territory regulation is an ongoing issue for project approvals for minerals development, as legislation and regulations have grown significantly with a rising level of overlap.

Consistency of national, state and local government regulations and approval processes avoids uncertainty, duplication of effort and costly negotiation time all of which can be critical to the viability of a particular minerals project. Also the approval processes in some states would benefit from greater coordination and streamlining. A lead agency would help projects to navigate the necessary approval processes in a more timely and efficient manner.

A study by consultancy firm URS in 2013 identified a substantial increase in state and federal regulation affecting mining approvals over the six years between 2006 and 2012. These included:

- Six new pieces of legislation
- Six replacement Acts
- More than 60 sets of amendments to primary legislation governing approval processes and more than 50 sets of amendments to subordinate legislation.

Despite the impost placed on project proponents, there was little evidence these additional processes changed environmental outcomes or improved community confidence. The complexity of project assessment has increased in part as a result of multiple technical/administrative changes that seek to make minor adjustments to the law, regulatory processes, fees and charges.

These changes may be the result of political expediency, regardless of the needs identified through thoroughly examining existing regulations. The consequence is additional duplication and regulations with poorly-defined objectives and outcomes. For example, the EPBC Act 'water trigger' for coal seam

gas and large coal mining developments, which is highly duplicative of state processes, was introduced without a Regulation Impact Statement.

In principle, federal and state environmental approval processes are responsible for different but related environmental values. While states are responsible for regulating the broad range of intra-state environmental matters associated with a development, the EPBC Act focusses on nine 'triggers' or matters of National Environmental Significance (MNES).

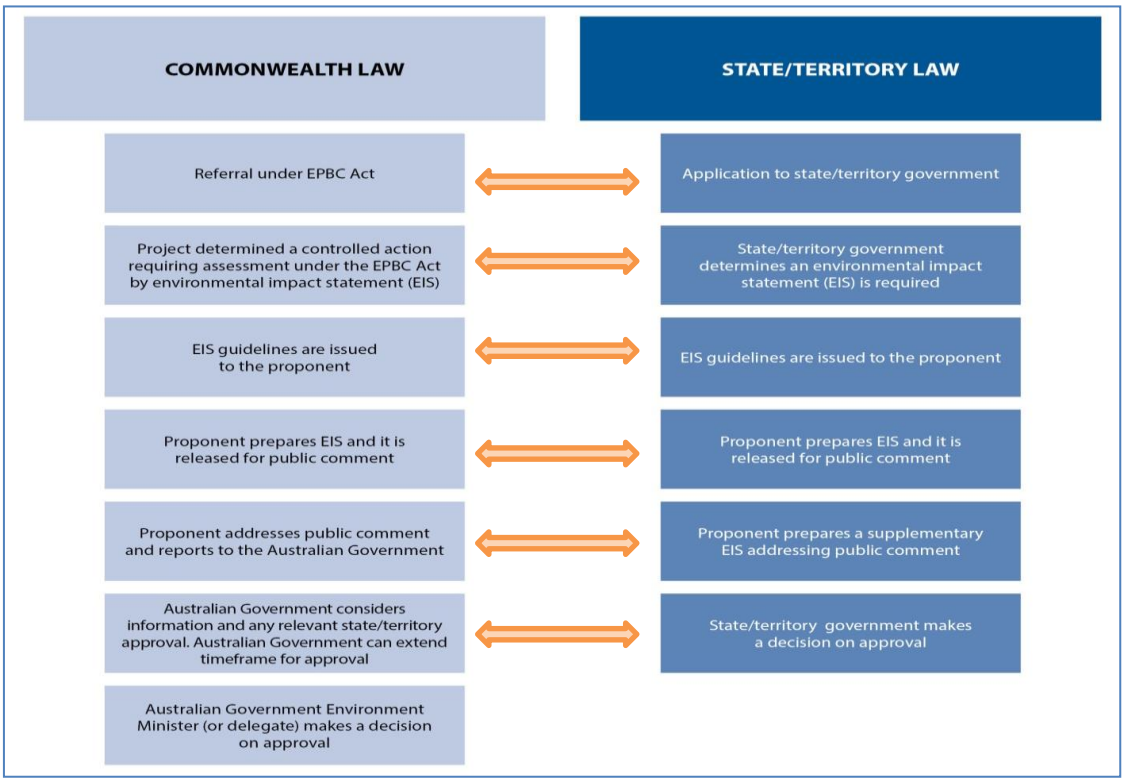
There are several areas where federal and state assessment and approval overlap. For example, federal and state environmental approvals can cover similar or related matters (e.g. species or habitat). This overlap will become more commonplace as a single assessment method for threatened species is implemented across Australia, further harmonising what is protected between jurisdictions.[18]

While regulatory overlap varies depending on the nature of the MNES, two of these triggers largely or wholly duplicate state assessments. These are:

- A water resource, in relation to coal seam gas and large coal mining development. Introduced in 2013, the water trigger duplicates state-based assessment and approvals for water. Both state and federal government assessments rely upon the same expert advice in making decisions (also known as the 'water trigger')
- Nuclear actions – activities related to nuclear energy, including uranium mining. The nuclear trigger captures uranium mining, milling, rehabilitation and decommissioning, requiring an assessment of 'whole of environment' impacts and duplicating state assessments.

While federal and state assessments and approvals deal with many but not all of the same matters, these processes are generally equivalent (see Figure 1).

Figure 1: Federal and state/territory assessment and approval processes



Source: Department of the Environment, *Regulatory Cost savings under the one-stop shop*, September 2014 (arrow notations added)

[18] Department of Environment and Energy, *Common Assessment Method*, , viewed 30 June 2017.

While ideally these processes would be synchronised, this is usually not the case. Different triggers, timeframes, additional reviews and requests for further information and a lack of efficient inter-agency coordination all contribute to delays (Box 1).

Failure by the federal and state regulators to coordinate and align approaches result in inconsistencies in:

- Separate federal and state assessment and approval requirements
- Misaligned information requirements, resulting in multiple submissions of identical data in different formats
- Setting of duplicative and/or contradictory conditions
- Misaligned timeframes for assessment and approval
- Duplicated/misaligned monitoring and reporting timeframes and requirements.

Given the overlap identified above and commonalities between state, territory and federal government process, there is a clear opportunity for improving coordination, integration and consistency between federal and state/territory project environmental approval processes. This could be addressed through fully recognising state processes that satisfy Commonwealth requirements, regular and coordinated engagement between state and federal regulators and with the proponent to encourage greater consistency and align expectations. Strategic assessments under the EPBC Act are another important tool that when implemented effectively can reduce delays to future projects.

The complexity of state processes can be a significant cause of delays. Minerals developments are subject to multiple state/territory level approvals requiring interactions and oversight by a range of different agencies, including but not limited to those responsible for planning, environment, water and mining. Managing the myriad approvals and licencing processes can and does lead to additional confusion, costs and delays.

A coordinating or lead agency approach can address this complexity for the project proponent. This could be supported by systems to improve the communication of project assessment and approval processes to both the proponent and other stakeholders.

Box 1: case study - an example of duplicative and inconsistent processes

An MCA member company was required to refer its project to the Western Australian Government and the federal government for approval under the EPBC Act. The assessment was carried out under a bilateral assessment agreement, whereby the Western Australian process was accredited by the federal government.

Despite both state and federal agencies being involved in the assessment process, the then federal minister extended the timeframe for decision three times, requiring additional information on matters already addressed and conditioned by the state in its approval of the project. In response, the company was required to rewrite documents provided in the original environmental assessment for submission to the federal government.

One aspect of the project involved designing a tailings storage facility and final landform, the proposal for which was approved by the WA Environmental Protection Authority and other competent authorities. The federal government raised concerns about the design and requested further information, despite those same concerns already being addressed in the WA-approved proposal (which was concurrently assessed by both governments). The federal government then recommended another review of the design and proposed an alternative design option which was inconsistent with Australian design standards and counter to the wishes of the local community.

After rewriting and re-submission of material the federal government accepted the original WA-approved proposal on the condition that another review be conducted by a federal government approved expert, ignoring both independent advice already provided and the role of the Western Australia regulator. This process resulted in an eight-month delay after the WA Government had completed its assessment and approved the project at significant cost to the proponent.

A key factor in this case was the failure of the federal government to recognise the requirements of the WA regulatory regime. Specifically, during the federal government's eight-month delay in consideration of approval, recommendations for project conditions were made that duplicated and even contradicted WA approval conditions aimed at addressing the same issues. This occurred despite these concerns being raised by the WA Government and the proponent.

Governance: regulator competency, culture, capacity and resourcing

Regulator competency, culture, capacity and resourcing are critical issues for project approvals. These important factors significantly impact on the project assessment and approval timeframes, yet are often overlooked when considering regulatory performance.

Assessment officers may be junior with little experience, especially in the industry they are responsible for regulating, resulting in reliance upon independent panels and outsourcing of assessment components to third parties including consultants.

Staffing turnover is also a key issue, affecting the consistency in which the way regulation and policy is interpreted and applied. This is particularly problematic for the long assessment processes typical of minerals projects and can result in constant re-learning by assessment officers and repeated requests for further information over the course of an assessment.

These issues are compounded by regulator resourcing. Insufficient resourcing can lead to stretched teams and contribute to staffing turnover, all of which affects timeframes for delivery and regulatory consistency.

Regulator culture is another factor which can significantly affect regulatory performance. This manifests itself in poor communication and unwillingness to engage with the proponent and a lack of responsiveness to inquiries and updates. Poor regulatory culture, which regards minerals developments as something to be minimised or halted, rather than sustainably developed, constrains the ability of the project to be assessed upon its merits in an efficient manner.

All these factors can have a significant influence on service delivery in terms of timeframes and costs and may lead to simple error. For example, in 2016, Northern Territory Department of Primary Industries and Resources advised proponents planning to establish a rare earth mine and processing facility that waste rock with a low level of radioactivity needed to be disposed of in line with a set of environmental guidelines it provided to the proponent.

The proponents recognised that guideline values were not consistent with industry practice and upon further scrutiny the proponents discovered that the department had in fact provided guidelines for the disposal of radioactive medical waste.

The MCA considers that regulator capacity could be enhanced through sharing of information, training and approaches between jurisdictions (e.g. under the auspices of COAG resources ministers forum). There is also benefit in regulators periodically engaging with the industry, including undertaking site visits, to build understanding of the various sectors outside of specific projects under assessment.

Decision makers need to be accountable

Despite considerable management reforms in the Australian Public Service (APS) on the management of resources, from compliance to performance focused on goals and outcomes, there is ample room to improve the quality of services, particularly on environmental regulatory reform. There is little incentive to deliver an assessment within a specified timeframe. While statutory timeframes exist for approval decisions, including under the EPBC Act, there are a range of mechanisms which provide opportunities to seek further information or require additional assessment, effectively 'stopping the clock' often late in the process. Such mechanisms allow regulators to delay projects for extended periods without penalty for the regulating body.

Regulator performance is often not monitored and measured. It is therefore difficult to benchmark performance against timeframes, engagement effectiveness and the consistency in which the regulation has been applied. COAG resource ministers should determine an evaluation strategy for regulatory performance. A lack of oversight may result in the implementation of regulation or policy inconsistent with its intent. For example, in 2013, the Northern Territory Department of Primary Industries and Resources introduced a one per cent levy on all rehabilitation security bonds lodged with the government upon approval for mineral developments.

While the objective of the levy was to fund the on-ground remediation of historic legacy mines, it was later discovered that as much as half of the funds were appropriated to the department. Since this issue was identified by industry, the funds have been transferred back.

The fund is yet to be appropriately and transparently acquitted and reports on how the fund has been used have not been published, providing no transparency on whether the levy is achieving its stated objective.

Box 2: Case study - the long road to extending an existing mine

The New Acland open cut coal mine has been a major employer and economic spur to the Darling Downs region for over 15 years. It provides direct jobs for more than 300 locals, 160 contractors, and contributes to 2300 more indirect jobs in the community.

New Acland is a substantial and loyal supporter of local businesses and suppliers, injecting more than $110 million into the Darling Downs economy each year and more than $300 million into the broader south-east Queensland economy each year.

New Hope Group has been planning stage three of the New Acland mine to extend its operating life. The approval process for this extension, which occurs on the same tenement as the existing mine, has taken more than 12 years. As at October 2019, the project remains unapproved.

The project has been substantially redesigned over this period to reduce the size and impact of the mine in response to community and government feedback. This saw the exclusion of the Acland town area, Tom Doherty Park, the Acland War Memorial and the Acland No 2 Colliery from the mining lease, relocating the train load out facility from Jondaryan to an area on the mining lease, avoiding diversion of Lagoon Creek, and ensuring that the closest point of mining was 10km away from the township of Oakey (which is further than current mining operations).

Despite adhering to all government requirements stipulated in approval guidelines and being declared a significant project by the Coordinator-General, legal proceedings through the Queensland Land Court have halted development. The Supreme Court of Queensland has since overturned these rulings, yet final government approval has not been provided.

As a consequence of the unnecessary and costly delays to approving stage three of the New Acland mine, 150 workers were made redundant at the start of September 2019 as the existing mine (stage two) has begun to exhaust its coal reserves.

Impact of project approval delays

Delays and uncertainty in project approval processes pose a significant risk to the industry's global competitiveness, as the costs of delays for projects can be substantial. For example, industry and Productivity Commission estimates suggest a one year delay to a large greenfields project (of $3 to 4 billion) can reduce the Net Present Value (NPV) of a mining project by between 10 and 13 per cent. For large projects, this could result in an NPV loss of at least $30 million each month.

Additionally, there are the costs for keeping engineering contractors, consultants, internal resources, and procurement in a 'holding pattern' while delays are being addressed. For a large project these costs can be up to $16 million per month.

In total, delays can increase costs by up to $46 million per month for a major greenfields mining project in Australia.

Capital investment is mobile. Delays and uncertainty in regulatory processes increases business risk, making Australia less attractive for investment. For the minerals sector, this diverts investment offshore, impacting the broader economy through reduced national output over the long term.

Australian mining companies are increasingly shifting their investment focus overseas with growing regulatory barriers one reason often cited. In the last twelve months, several of Australia's highly successful mid-tier gold companies have expanded by acquiring existing mine sites overseas rather than invest in developing new greenfield sites in Australia.

4. INTERNATIONAL COMPARISONS OF MINING REGULATION

- In the Fraser Institute's annual survey of mining company executives, Western Australia consistently ranks as one of the most attractive mining jurisdictions in the world for its regulatory policies that support investment. However, other states are ranked much lower due to negative perceptions of regulations.
- The 2018 survey shows investors rate most Australian states considerably lower than other international mining regions for uncertainty in relation to environmental regulation as well as regulatory duplication and inconsistencies.
- Despite some of these lower rankings of Australia states' policy settings, the Fraser Institute survey results still rate Australia favourably overall to many mining jurisdictions but lower than other key regions such as Canada and US states like Nevada.

Perceptions of Australia's resources sector policy

The Canada-based Fraser Institute conducts an annual survey of mining company executives on their perceptions of different mining regions around the world, rating the overall investment attractiveness of a region based on its geological attractiveness and perceptions of government policies that influence exploration investment.

Policy factors examined include uncertainty concerning the administration of current regulations, environmental regulations, regulatory duplication, the legal system and taxation regime, uncertainty concerning protected areas and disputed land claims, infrastructure, socioeconomic and community development conditions, trade barriers, political stability, labour regulations, quality of the geological database, security, and labour and skills availability.

Overall, Australian states tend to rate highly as investment destinations in the Fraser Institute's survey, although there is considerable variability between states (see Table 1 below). Western Australia has consistently rated highly in the annual surveys and in the latest report for 2018 ranked second on mineral potential, fifth on policy and second overall. In comparison, New South Wales ranked 41 on mineral potential, 47 on policy and 42 overall.

Table 1: Fraser Institute rankings, 2018

	Overall Investment Attractiveness	Policy Perception	Mineral potential
Western Australia	2	5	2
Queensland	13	31	12
Northern Territory	23	41	19
South Australia	24	22	29
New South Wales	42	47	41
Victoria	54	43	66
Tasmania	55	32	71

Source: A. Stedman and K. P. Green, *Survey of mining companies 2018*, Fraser Institute, released 28 February 2019.

The policy perception ranking by the Fraser Institute is underpinned by survey responses on several different policy areas such as uncertainty over environmental regulation, taxation, infrastructure and security. In the 2018 survey most Australian states improved their overall policy perception scores and international rankings; however, this was mainly the result of improvements in their security, trade barriers and infrastructure survey scores. In some states, the quality of geological databases has also delivered improved policy ratings.

The results from the 2018 survey highlight many of the issues raised on regulatory uncertainty in this submission. For example, as shown in Table 2 below, only 14 per cent of respondents stated that environmental regulations in New South Wales either encouraged investment or was not a deterrent to investment. This ranks New South Wales 76th out of 83 rated jurisdictions - only one position higher than Venezuela (77th) and lower than Bolivia (66th). In comparison, five Canadian provinces are ranked inside the top 20 reflecting the more positive investor sentiment towards Canadian mining policies. Western Australia (5th) and South Australia (17th) were the only Australian states in the top 20.

Table 2: Share of Fraser Institute survey respondents who believe uncertainty over environmental regulation either encourages or is not a deterrent to investment

	Encourages investment	Not a deterrent	Total	World Ranking (of 83)
New South Wales	5%	10%	14%	76
Victoria	5%	20%	25%	70
Northern Territory	10%	25%	35%	58
Tasmania	9%	27%	36%	56
Queensland	12%	32%	44%	49
South Australia	22%	48%	70%	17
Western Australia	28%	57%	85%	5

Source: Ashley Stedman and Kenneth P. Green, *Survey of mining companies 2018*, Fraser Institute, released 28 February 2019.

The survey responses on regulatory duplication and inconsistencies are also negative for several states with Western Australia again the notable standout (see Table 3). New South Wales and Victoria again rated the lowest among Australian states on this criterion with their rankings of 70 and 69, respectively, placing them lower than Papua New Guinea (68), Zimbabwe (66) and Washington State (63). On this category mining jurisdictions in Canada tended to rate highly with five provinces rated in the top twenty and except two (British Columbia and Nunavut) rated in the top half.

Table 3: Share of Fraser Institute survey respondents who believe regulatory duplication and inconsistencies either encourages or is not a deterrent to investment

	Encourages investment	Not a deterrent	Total	World Ranking (out of 83)
New South Wales	5%	21%	26%	70
Victoria	5%	24%	29%	69
Queensland	9%	35%	44%	48
Northern Territory	15%	30%	45%	44
Tasmania	9%	45%	55%	36
South Australia	21%	39%	61%	27
Western Australia	33%	48%	81%	6

Source: Ashley Stedman and Kenneth P. Green, *Survey of mining companies 2018*, Fraser Institute, released 28 February 2019.

Despite some of these lower rankings of Australia states' policy settings the Fraser Institute survey results still rate Australia favourably overall compared to other mining jurisdictions. This is mainly the result of states' positive ratings in most other survey areas including security (where 100 per cent of responses rate security in Australia as either encouraging or not deterring investment), trade barriers, political stability and quality of infrastructure.

Nevertheless, Australia's appeal as an investment destination could be significantly enhanced through reforms to regulations and approval processes.

Canadian provinces again rated highly on regulations and approvals processes with six of the twelve rated regions ranked in the top twenty. Most of these regions were also ranked highly for environmental regulations supporting investment. This rating has started to be reflected in the investment decisions of several prominent Australian gold mining companies who have recently purchased assets in Canada rather than develop new mines in Australia.

5. BROADER IMPEDIMENTS TO INVESTMENT

- Australia is a world leader in providing precompetitive data through state geological surveys and Geoscience Australia. However, more must be done to retain this source of advantage. Government funding for these programs has not been adequate despite growing tax and royalty revenue being generated by the mining industry.
- A competitive tax system is critical to stimulating additional investment in the Australian minerals industry. Australia's high company tax rate should be reduced. Consideration should be given to other measures that reduce the tax burden on new investment, such as accelerated depreciation.
- Extending the duration of greenfields agreements to cover the life of projects is a positive first step in workplace relations reform. Additional improvements to the Fair Work Act should be pursued to encourage productivity growth at the workplace.
- International investment is vital to the mining sector, facilitating transfers of technology, skills and capabilities, and access to global supply chains and export markets. The government should ensure that Foreign Investment Review Board and foreign influence screening requirements in non-sensitive sectors are the same for all private investors, irrespective of their country of origin.

Precompetitive data is a source of competitive advantage

Government investment in precompetitive data is an important public good that builds a better understanding of Australia's geology for all potential exploration investors and signals that a government is committed to fostering greater mining investment.

Such data is vital for narrowing down the search areas for more advanced exploration activities that are costly and better suited to smaller target areas.

Australia is a world leader in providing precompetitive data through state geological surveys and Geoscience Australia. However, more must be done to retain this source of advantage. Government funding for these programs has not been adequate despite growing tax and royalty revenue being generated by the mining industry.

Government-funded precompetitive data and exploration incentive programs are proven to deliver substantial economic benefits. For example, a review of South Australia's Plan for Accelerating Exploration found the $56 million invested by the state delivered an additional $700 million in private sector exploration and raised state mining revenues by $2.4 billion over the period 2004 to 2013.[19]

The government should continue and expand Geoscience Australia's Exploring for the Future program as an investment in Australia's mineral future. This program is essential or developing the next wave of mining projects in Australia that will supply the world's growing demand for copper, critical minerals and base metals.

Competitive company tax and royalties will improve growth prospects

A competitive tax system is critical for the Australian minerals industry, which employs complex production techniques and highly skilled labour to transform natural endowments into valuable exports.

The industry is highly capital intensive and characterised by high-risk exploration outlays, large upfront capital commitments (with high sunk costs), long-life assets, cutting-edge technologies and

[19] Economics Consulting Services, *The evaluation of the Plan for Accelerating Exploration (PACE): prospectivity, programs, promotion and people*, 2014, report for the Department for Manufacturing, Innovation, Trade, Resources and Energy.

long lead times to profitability. Australia faces fierce competition from other resource-rich economies to capture resource development opportunities.

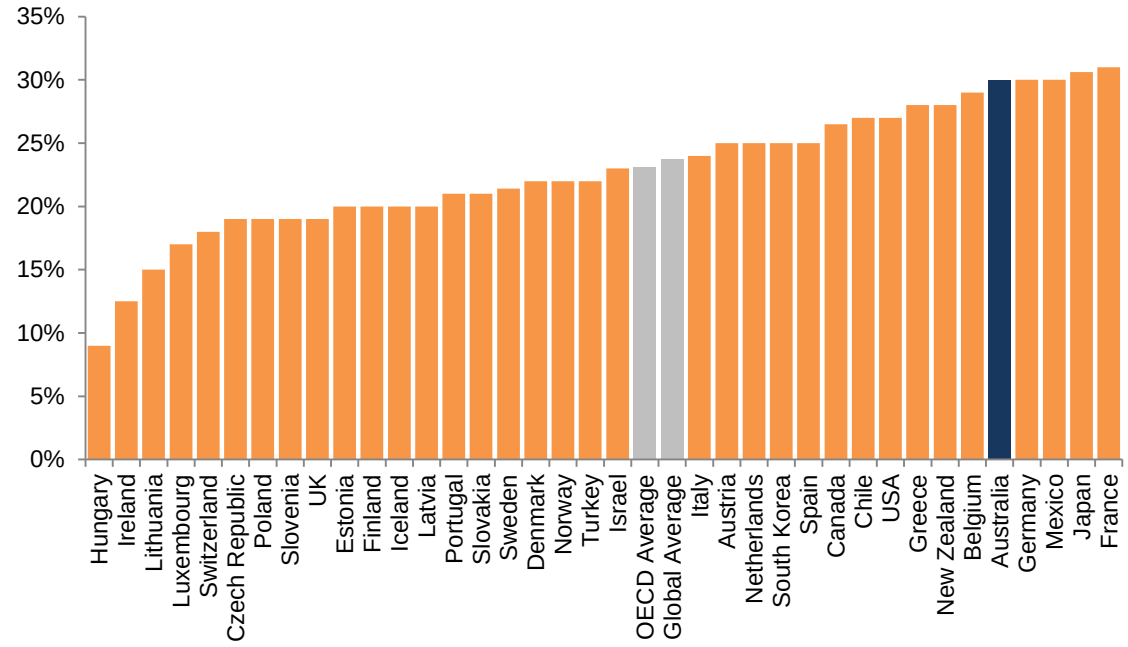
Australia's 30 per cent company tax rate is too high for a capital-hungry country. While other countries have lowered company tax burdens, Australia's headline corporate tax rate has been frozen at 30 per cent since 2000 when it was last lowered to be in line with the then OECD average (30.8 per cent).

Since 2005, Australia has slipped from having the 14th highest company tax rate to the equal third-highest in 2019 in the OECD (see Chart 2 overleaf). The combination of a high company tax rate and a broad base in the absence of investment allowances or accelerated depreciation of investment costs delivers Australia a high and uncompetitive effective company tax rate.[20]

Consideration should be given to other measures that reduce the tax burden on new investment, such as accelerated depreciation. The latter will reduce the effective company tax rate for capital intensive industries and encourage new capital investment. It is important that there are limited exclusions from accelerated depreciation (typically only passenger motor vehicles and office buildings) and that it be consistent with current depreciation tax treatment, which would reduce complexity and compliance costs.

Australia cannot continue to impose such a high tax burden on new investment while expecting to be a competitive location for globally mobile capital to increase investment, jobs and wages.

Chart 2: OECD company tax rates, 2019



Source: KPMG, Corporate Tax Rate Tables.

Mineral royalty rates and systems vary between states in Australia and the mining industry recognises the need to pay royalties for the minerals it extracts. Royalties are a cost of doing business and excessively high rates can impact on the commercial viability of a project.

Arbitrary government actions to vary royalty rates post project development reduces expected financial returns on investments. While existing mines have little choice but to pay the higher royalty, such changes destabilise investor confidence in a jurisdiction.

[20] See Philip Bazel and Jack Mintz, *Corporate tax reform Australia watches the train go by*, policy paper commissioned by the Minerals Council of Australia, 18 March 2019.

As previously noted in this submission, it is also now common practice for royalty rate changes to be announced by governments without proper industry consultation which would enable an assessment of the impact of such changes on both existing mines and proposed developments. This is reflected in investor sentiment about individual jurisdictions. COAG resource ministers should address transparency of royalty regimes and appropriate consultation with industry.

Workplace relations

Successive federal governments have recognised that flexible workplace relations, underpinned by a strong safety net, are critical to a dynamic economy and future growth in living standards.

In mining, workforce flexibility and choice have delivered greater productivity, more jobs, higher wages, and greater capacity to adapt and compete in world markets.

The ability to modernise the workplace will remain vital to the efficiency and competitiveness of the Australian minerals industry. Mining investments increasingly embrace new tools such as data analytics, automation, robotics and artificial intelligence, which will boost the productivity of the future minerals workforce. A report prepared by EY for the MCA indicates that productivity gains of up to 23 per cent are achievable through combined investment in a skilled workforce and digital innovation.

Separate reviews by the Fair Work Act Review Panel (2012) and the Productivity Commission (2015) have identified a number of areas in which the *Fair Work Act 2009* could be improved.

The Productivity Commission estimated in 2017 that implementing its reform proposals would add $850 million a year to the Australian economy. The Federal Government's decision to review elements of Australia's workplace relations system and pursue incremental reforms is a positive development.

The MCA supports the reform option proposed by the Attorney-General and Minister for Industrial Relations (and previously recommended by the Productivity Commission) to extend the nominal expiry date of greenfields enterprise agreements to cover the life of major projects.

A degree of certainty about the industrial environment – including employment conditions and projected labour costs – over the life of a complex and lengthy construction project is vital to providing investors with confidence and making Australia an attractive destination for new capital investment.

The Fair Work Act removed options previously available to employers seeking a greenfields agreement, notably the ability to negotiate employer-only agreements or to offer individual statutory agreements at greenfield sites.

Under the current regulatory framework, a greenfields agreement may be made prior to project commencement with one or more trade unions who are able to represent the majority of employees to be covered by the agreement.

A 2015 amendment to the Act introduced a new process for negotiating single-enterprise greenfields agreements. The amendment provided an optional six-month negotiation timeframe for the parties to reach agreement. If this negotiation period passes without agreement being reached, the employer may ask the Fair Work Commission to approve the agreement, subject to existing approval tests under the Fair Work Act and an additional requirement that the agreement is consistent with the prevailing pay and conditions within that industry for equivalent work.

The limited suite of options that are available to employers seeking a greenfields agreement is compounded by the fact that greenfields agreements cannot extend more than four years after the date of approval by the Fair Work Commission. The current duration of greenfields agreements is out of step with the realities of major project work, which often extends beyond four years.

After a greenfields agreement has passed its nominal expiry date, industrial action may be taken. This means that employers may be subject to significant uncertainty and additional costs at a critical time of project construction when the greenfields agreement passes its nominal expiry date. Extending the

duration of greenfields agreements to match the life of projects would increase industrial certainty for employers and investors and encourage additional employment.

Energy affordability

Energy is a significant cost for the mining industry, accounting for 14 per cent of Australia's total electricity consumption.

Australia's rising energy costs and supply risks are affecting the commercial viability of new mining and mineral processing projects in Australia.

Existing mining operations are also challenged by energy market conditions with several east coast companies experiencing difficulty sourcing long-term energy contracts with generators and often required to pay significantly higher rates in order to secure electricity supplies.

In 2017 one east coast gold mine operator reported that its contracted electricity price increased 90 per cent as a result of tight market conditions.

Australia has lost its competitive advantage of low cost energy. Over the past decade, Australia has moved from having some of the lowest energy costs to some of the highest in the developed world. Reliable and affordable energy is central to Australia's economy and prosperity. That is why the MCA supports efforts to ensure adequate supplies of low-cost, reliable power that meets the needs of Australian industry.

The National Electricity Market (NEM) in Australia is facing serious challenges including the erosion of baseload generation capacity which is already adversely impacting Australia's industrial sector and households.

Australian manufacturing, minerals processing and other energy intensive activities are increasingly finding themselves priced out of international markets. Any policy approach should aim to reduce energy costs in Australia and retain a focus on securing reliable lowest cost dispatchable energy supply that is available 24/7.

A competitive energy market is the best way to deliver affordable, reliable and lower emissions energy. However, policy interventions by successive federal and state governments have distorted market signals and led to increased prices and reduced reliability.

The key principle underpinning energy policy should be technology neutrality. This means avoiding providing subsidies, quotas or other non-market-oriented interventions to favour specific technologies. A genuinely technology neutral approach should be applied to all low emissions energy sources – including renewables, gas, nuclear, advanced coal technologies (such as high-efficiency, low-emissions coal power), coal with carbon capture and storage (CCS) and bio-energy with CCS.

Free trade and open investment

Australia's openness to trade and investment continues to drive income and job creation across Australia. One in five Australian jobs are trade-related and exporting firms generally employ more people and pay higher wages than firms that focus on domestic markets.[21]

International investment is vital to the mining sector, facilitating transfers of technology, skills and capabilities, and access to global supply chains and export markets. Australia is usually a net importer of capital, requiring international investment to fill the gap between domestic saving and investment. International investment has met this capital shortfall, delivering on average 4 per cent of GDP over the past 40 years.[22]

[21] Commonwealth of Australia, *2017 Foreign Policy White Paper*, p. 14.
[22] Adam McKissack and Jessica Xu, *Foreign investment into Australia*, Treasury Working Paper, January 2016, released on 18 February 2016.

The value created by international investment in minerals is overwhelmingly retained in Australia and 77 per cent of the revenue generated by the nation's major iron ore producers remains in Australia as payments to suppliers or taxes and royalties to governments.[23]

The MCA recommends that the government maintain policy settings that support trade and deeper regional economic integration, including the continued expansion of Australia's network of bilateral, regional and plurilateral free trade agreements (FTAs).

In addition, investment policy settings need to support Australia's attractiveness as a destination for international investment, ensure the foreign investment and foreign influence review process does not needlessly create political tensions, and provide clarity and transparency for foreign investors seeking to invest in Australia. This will also help make sure that Australian businesses investing overseas are supported through open and clear investment rules and our trade agreements.

The government should ensure that Foreign Investment Review Board (FIRB) screening requirements are the same for all private investors, irrespective of their country of origin. Screening thresholds in non-sensitive sectors should be raised from $261 million to $1.13 billion for non-FTA nations, consistent with the level that applies to Australia's FTA partners.

[23] Port Jackson Partners, *Iron ore: the bigger picture,* policy paper commissioned by the Minerals Council of Australia, 7 July 2015, p. 22.

6. BEST-PRACTICE COMMUNITY ENGAGEMENT AND BENEFIT SHARING

- The minerals industry approach to community engagement has evolved over past decades. The sector has developed innovative approaches to engagement and is supporting multi-party dialogues and partnerships with local communities.
- The industry is increasingly focused on long-term community partnerships and strategic investment to support community priorities and aspirations for sustainable long-term development outcomes.
- There is a role for government in improving community understanding of minerals development assessment and approvals processes. Government policy settings and efforts should seek to complement industry investment, enabling local communities to achieve their aspirations and provide for long-term community resilience.
- The Australian minerals industry recognises and respects the rights and interests of Indigenous Australians and proudly partners with Aboriginal and Torres Strait Islander groups and communities, including Traditional Owner groups, on exploration and development of minerals projects across Australia.

Effective community engagement

Effective community engagement underpins the acceptance of the mining industry across regional and remote Australia. Industry engagement with regional communities has evolved over past decades, in line with improved understanding and the development of innovative approaches.

The industry partners with leading institutions in the development of new approaches to give a greater voice to communities and enhance participation through both individual and multi-stakeholder approaches.

For example, Rio Tinto has engaged with CSIRO to develop the Local Voices initiative in the Pilbara.[24] The program coordinated by CSIRO enables communities to share views of the company's activities on a regular basis, analysing the data and making this feedback available to Rio Tinto.

Rio Tinto has committed to demonstrating how these insights inform the decision making process and uses local channels to respond to the community. All community members are encouraged to be part of the program.

The MCA has worked closely with government and other stakeholders to develop leading practice guidance to support companies to engage and partner with their local communities. The MCA has supported the development of the *Community Engagement and Development* guidebook for the *Leading Practice Sustainable Development Program for the Mining Industry* managed by the federal Department of Industry, Innovation and Science.[25]

The MCA also facilitates leading practice community engagement though peer-to-peer learning at workshops and events.

State-based industry associations have also played an important role in the establishment of multi-company dialogues with communities. One example is the successful *Upper Hunter Dialogue*.[26] Established in 2010 by companies operating in the region and in coordination with the NSW Minerals Council, the dialogue aims to address concerns over pressure on infrastructure and services, housing and environmental aspects. The dialogue is a collaborative effort by all parties working to improve

[24] CSIRO, *Local Voices*, viewed 20 October 2019.
[25] Department of Industry, Innovation and Science, *Community Engagement and Development*, Australian Government, Canberra, September 2016.
[26] Upper Hunter Dialogue, *About the Upper Hunter Dialogue*, NSW Mining, viewed 15 October 2019.

communication and fostering a better understanding of the industry and ensuring community voices are heard.

Outside of industry efforts, the MCA considers gaps exist in the way the government engages with communities, particularly as part of building community understanding of minerals development assessment and approvals processes.

Access to land is intrinsic to a state's ability to exercise its right to minerals for the benefit of the community. Land access can be achieved through open and respectful engagement with landholders and fair compensation arrangements where necessary. Transparent processes and access to information are central to empower landholders in negotiations and avoid potential conflict.

Benefit sharing with communities

The minerals industry has long recognised its responsibility to support the socio-economic development of the communities and regions in which it operates. The industry strongly supports the development of diverse regional economies enabled through the coexistence of different land uses.

Companies seek to ensure shared benefit from minerals development from both direct involvement (e.g. local employment, training and procurement) and voluntary social investment to support broader community development.

The minerals industry and agriculture have a long history of coexistence. In addition to formal conduct and compensation arrangements with landholders, agreements with farmers to manage non-mining land owned or managed by companies are becoming commonplace and an important income stream. Skill transfer between agriculture and mining will also become increasingly important.

In its study report on *Transitioning Regional Economies*, the Productivity Commission concluded that the mining boom – despite some transitional pressures – has made regions in Australia 'substantially better off in the short term and over the long term'.[27] The Productivity Commission also observed that:

- Mining regions have generally had the highest rates of employment growth and mining employment is more than double what it was prior to the mining investment boom
- Incomes in mining regions grew rapidly during the investment phase of the mining boom and average personal income remains higher in mining regions than in non-mining areas
- The expansion of Australia's mining industry has led to higher average incomes, larger profits and increased revenues for federal and state governments.[28]

Over time, the industry's approach to social investment has expanded from sponsorships and donations for community events and infrastructure to long-term partnerships and strategic investment to support community priorities and aspirations.

Such approaches focus on building long-term capability and resilience and addressing key barriers to sustainable economic growth. Common aspects of these partnerships include:

- Local employment programs to maximise local recruitment and encourage people to live and work in host communities
- Dedicated procurement programs to increase supply and procurement from local and regional businesses
- Partnering with local councils and community, sporting and other groups on initiatives that contribute to liveability and inclusion
- Supporting events and initiatives to develop and expand other industries, such as tourism and agriculture

[27] Productivity Commission, *Transitioning Regional Economics: Study Report*, 15 December 2017, p. 2.
[28] ibid., pp. 79, 82, 85, 88, 94, 138.

- Participating in regional forums such as the *Hedland Collective* which bring together businesses, non-government organisations and governments to maximise collective impact
- Supporting local schools and education providers to build awareness of mining career opportunities, and encourage students to develop an interest in science, technology, engineering and maths.

The industry joins with host communities to support economic development and is finding new ways to support local priorities and enhance long-term community resilience. This extends beyond the mine, as skills and experience at work are transferable to other community endeavours.

Companies are increasingly applying the Sustainable Development Goals (SDGs) to the way they operate, integrating social and business outcomes. Using this approach, companies are able to better target investment to achieve shared value for the business and the community.

For example, Mandalay Resources is supporting community-driven priorities to make Heathcote a more vibrant and attractive place to live and work and increase employment and economic opportunities. This includes supporting a local community organisation to secure community access to children's and family services.[29]

The industry is continuously adapting the way it engages and partners with communities to facilitate improved and lasting social outcomes. In recent years there has been an increasing focus on multi-party and cross sectoral approaches to help coordinate efforts and deliver outcomes in line with community needs and aspirations.

For example, the Hedland Collective is a group of more than 50 organisations seeking to work collectively to strengthen employment, training and business development, coordinate social services to provide support for residents and support Port Hedland's vibrant community.

Focused on collective impact, it was initially instigated by BHP. This initiative includes Indigenous organisations and extends to local government, non-government organisations, community services providers and resources companies.[30]

Partnerships with Indigenous Australians

The minerals industry recognises and respects the rights and interests of Aboriginal and Torres Strait Islander peoples, the First Peoples of Australia. It is committed to working in partnership to support beneficial outcomes for Traditional Owners and Indigenous communities.

The Australian minerals industry recognises and respects the rights and interests of Indigenous Australians and proudly partners with Aboriginal and Torres Strait Islander groups and communities, including Traditional Owner groups, on exploration and development of minerals projects across Australia.

Much on the land on which the minerals industry operates across Northern Australia is covered by native title or the *Aboriginal Land Rights Act (Northern Territory) 1976*. These frameworks and broader social, economic and business change transformed engagement between the minerals industry and Traditional Owners.

The last two decades have seen thousands of land use agreements between Indigenous peoples and the mining industry delivering economic and social benefits and supporting the protection of cultural and environmental heritage.[31] Partnerships are increasingly focused on supporting Indigenous Australians to preserve, strengthen and share culture within community and across generations.

Education and training is often a shared priority, with many mining companies investing in employment and training programs to support employment of Indigenous peoples, particularly in

[29] Cardno, *Sustainability in Action*, produced for the Minerals Council of Australia, October 2018.
[30] BHP, *Hedland Collective: A collaborative focus on community enhancement*, BHP, viewed 20 October 2019.
[31] Marcia Langton, 'No one has done more for indigenous Australians than the mining industry', *The Australian,* 26 July 2017.

regional and remote communities. As a result, the minerals sector now directly employs around 6,600 Indigenous Australians – 2.5 times more than in 2006 and significantly greater than the 1.5 times growth in non-Indigenous employment.[32] Approximately 20 per cent of Indigenous mining employees are women.[33]

The minerals industry's longstanding focus on Indigenous business engagement has been integral to the growth of the Indigenous business sector, reflected in the significant growth of Indigenous business diversity and incomes during the mining investment phase.[34]

Company commitments to preferential Indigenous procurement programs precede the federal government's Indigenous Procurement Policy, in many instances by decades. As a result, Indigenous businesses are critical part of the mining supply chain and provide opportunities broader than a single project.

Dialogue and sharing are critical to improving on-ground outcomes in the regions in which the industry operates. To facilitate this, the MCA has partnered with the National Native Title Council to establish a new 'Community of Practice' (CoP) initiative. The CoP aims to maximise the outcomes from the implementation of minerals-related agreements and partnerships between the minerals industry and Indigenous Australians by enhancing collective knowledge and advancing specific priorities.

The CoP brings together Aboriginal and Torres Strait Islander peoples, including Traditional Owners, groups and organisations, the minerals industry, government and other groups to share lessons, leading practice and insights from new research.

The CoP centres on leading practice approaches to the implementation of land use agreements, opportunities and lessons to ensure an enabling operating environment and the collective impact through leveraging resourcing to enhance cultural, economic and environmental outcomes.

While much progress has been made, more could be done to fully realise the benefits of minerals related development. Government actions to support this could include:

- Improved coordination between local, state/territory and federal governments while working in partnership with Traditional Owners and businesses to maximise economic development opportunities
- Support for forums that enable Traditional Owners from across Northern Australia to guide policy direction, development and implementation, including the Northern Australia Indigenous Reference Group and the Regional Implementation Committee of the Pilbara
- Stable and sufficient funding for native title representative bodies and services providers, recognising the diverse needs and logistical realities associated with serving communities across vast regions
- Stable and sufficient funding for Prescribed Bodies Corporate (PBCs) to discharge statutory duties and meet increasing expectations for these entities to drive and support economic development activities
- Continued support for tailored governance and management training and resources for PBCs with a focus on enabling personnel to learn from other PBCs and develop peer-to-peer and collaborative networks
- Practical improvements to the operation of the *Native Title Act 1993* as contained in the Native Title Legislation Amendment Bill 2019 currently before Parliament.

[32] Department of Prime Minister and Cabinet, *Closing the Gap Report,* Australian Government, Canberra, 2018, p.78.
[33] Australian Bureau of Statistics, *2016 Census – Employment, Income and Education, Indigenous Status (INGP) by industry of employment (INDP)*.
[34] Department of Prime Minister and Cabinet, *Indigenous Business Sector Strategy*, Australian Government, Canberra, December 2018, p. 22.