

8 November 2019

Resources Sector Regulation study Productivity Commission LB2, Collins Street East Melbourne Vic 8003

Via email: <a href="mailto:resources@pc.gov.au">resources@pc.gov.au</a>

**Dear Commissioner** 

### **Inquiry into Resources Sector Regulation**

The Northern Territory Chamber of Commerce and Industry (**Chamber**) welcomes the opportunity to respond to the Productivity Commissions' above inquiry.

Established in 1957, the Chamber is the largest employer association in the Northern Territory, representing over 1,200 businesses. The Chamber is an independent, not-for-profit and non-government body - our membership and offices span the Territory.

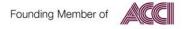
The Chamber provides members and the Northern Territory business community an effective platform for lobbying on the issues that impact upon business, whilst providing services and support in a number of key areas including industrial relations, training, employment, education and training advice, networking and premier business events.

We look forward to the Commission's consideration of our comments which are intended to illustrate the importance of the resources sector to the Northern Territory economy and the importance of streamlined regulatory practices that support business investment.

**Kind Regards** 

**Brian O'Gallagher**Deputy Chief Executive Officer
NT Chamber of Commerce

**Kevin Stephens**Partner
Ward Keller





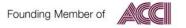
# **INTRODUCTION**

## Importance of the Resources Sector to the Territory

The resources sector is the largest sector of the Northern Territory (NT) economy:

- Minerals and energy accounts for 13% to 20% of NT GSP, compared to national average of 8%. It is the largest private economic sector in the NT and as a percentage of GSP is exceeded only by WA.
- Mining employment tends to be regional and not the greatest employer, gauged by employee numbers (3.1% of NT workforce).
- NT minerals exploration of \$111.8m in 2017/18 is down from \$250m in 2012, but up from \$100.8m in 2015/16. 33% of 2017/18 minerals exploration was on base metals, 24% on gold 10% on rare earths and 9% on Lithium.
- In 2010 60% of the NT land mass was subject to mineral exploration licences, at the start of 2019 13% of the NT was subject to mineral exploration licences.
- Although the Territory is more reliant on Commonwealth funding than other Australian jurisdictions, the Territory's Own Source Revenue forms an important component of total revenue. In 2018/2019 Territory taxes and royalties contributed \$1.06 billion of Territory Own Source Revenue, 17% of the NT's total revenue (confirm NT revenue)
- In 2018/2019 Royalties made up 40% of Territory Own Source Revenue.
- The NT economy continues to be in a precarious state, with a fiscal balance deficit of \$1.1 billion and a total net debt of \$6.2 billion in 2019/2020, fuelled in part by a contracting economy, including a 14% drop in Royalties from the preceding year.

NT Tax Type	2018/2019 Estimates (\$m)	2019/2020 Budget (\$m)	
Mining and Petroleum Royalties	425	366	
Payroll Tax (now 5.5% of total payroll above \$1.5 million)	253	238	
Stamp Duty (from 1.9% to 4.95% above \$525,000 and 5.75% above \$3m and 5.95% above \$5m from 1 July 2017)  Derelict and Vacant property Levy – 1% of unimproved capital for vacant buildings and 2% for vacant undeveloped land.	172	77	
Taxes on gaming and lotteries (various)	84	85	
Motor Vehicle Taxes	77	79	
Taxes on insurance	50	51	
Total	1061	896	



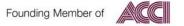


## **RESPONSE TO ISSUES**

	es (impediments to timing, nature and extent of
investment)	
Issue	Recommendation
<ul> <li>a) Additional regulatory approvals for project commencement and removal of one stop shop approvals for resource projects:         <ol> <li>i. Environment Protection Act 2019 (NT) requirement for environmental approval and approval on transfers.</li> <li>ii. Water Act 1992 (NT) requirement for water extraction licences and process to obtain</li> </ol> </li> </ul>	Create an effective one-stop shop for major project approvals that has the effect of streamlining the approvals processes and improving efficiency.  In each jurisdiction this responsibility should rest with the relevant agency for regulation of mining and petroleum otherwise the system runs the risk of becoming unworkable. In the NT the relevant agency is the Department of Primary Industry and Resources (DPIR).
b) Time taken to secure environmental approvals  The time taken to secure environmental approvals can take from 1 to 3 years and involve over \$1m in costs.	The time taken to secure environmental approvals is often not representative of the level of complexity involved in a project.  Certainty in the regulatory system and processes is critical in order for appropriate business planning and investment decisions to be undertaken.  Efficiencies must be considered to reduce approval timeframes to provide certainty and investor confidence in the Northern Territory resources sector.
<ul> <li>c) Process under Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) (ALRA) to access Aboriginal land (49% of NT):</li> <li>cost (\$40,000 per meeting);</li> <li>time (60 months to finalise ALRA exploration agreement and 9 months cf 9 months for EL grant on non-ALRA land);</li> <li>effect on completion (lack of turnover of ground on Aboriginal land – anticompetitive and out of step with other land tenure);</li> <li>duplication of regulation; and</li> <li>administrative burden.</li> </ul>	The Chamber considers that as mining and petroleum resources are the property of the Crown, commercial transactions relating to the exploration and extraction of these resources should be managed by the government for the benefit of all Australians.  Notwithstanding the above, the Chamber also acknowledges and respects Aboriginal cultural heritage and the rights afforded to Aboriginal land owners under the ALRA.  As such, the Chamber advocates:  1. consultations and negotiations between resources companies and traditional owners must be carried out expeditiously and in good faith to allow access to the Crowns' resources;  2. reasonable commercial benefits should be made available to Traditional Owners should a resources company gain commercial value from the resources; and  3. fees charged by Traditional Owners under permits, consent or agreements reached in accordance with the ALRA should be capped.



### (NTA) for production tenure: equally relevant to this issue. Fees charged by native title holders, native title cost (Land Council costs, meeting costs); claimants, Native Title Representative Bodies time; (NTRB's) or Prescribed Body Corporates (PBC') payments exceed entitlement under agreements reached in accordance with compensation (generation of economic the expedited procedures or RTN provisions of rents to native title holders and compare to the NTA should be capped. payment to pastoralists); · duplication of regulation; and administrative burden. Clarity is required around the approval processes e) Approval delays to avoid costly delays. The response to duty of care regulation under which resources companies submit management Increase capacity and capability of government proposals is incessant requests for information, a responsibility for assessing with management proposals and delegated officers lack of distillation and focus on the key issues and delay. through the introduction of minimum standards of professional competency. Formal training should be supported mandatory annual Continuing Professional Development (CPD) requirements which are linked to salary progression. f) Increasing requirement for independent Note comments above. experts to certify (increased cost, lack of expertise within department, coverage for when things go wrong). 2. NT issues with regulatory practices (reduction of complexity and duplication and improve transparency) Issue Recommendation a) Duplication of approvals Environmental Approvals should be in the form of a recommendation to the relevant Minister, In addition to submitting a Mining Management otherwise the Environment Minister effectively Plan (MMP) to obtain an Authorisation under the has a veto over all resource's projects in the NT. Mining Management Act, a company must Environmental Approvals should not be required obtain: for the transfer of existing mining/energy i. Environmental Approval for mining in operations absent a significant change in those advance of an MMP (and for any transfer); operations. ii. Water Extraction Licence; and iii. submit a certified Risk Management Plan under the Work Health and Safety (National Uniform Act) Regulations. Require public release of Regulatory Impact b) Lack of transparency Statements and/or the cost-benefit analysis on The NT Government prepared a Regulatory which the RIS is based. Impact Statement (RIS) for the Environment Protection Act after it prepared and circulated the The public should have benefit of the same draft Act (cf COAG guidelines). information about the costs of legislation as government when bills or regulations are tabled. The and other Chamber groups made submissions to the RIS but Government has refused to release the RIS.





Non le agreem Assess on past i. iii. iiv.	copy of registered agreements with consequent negative effect on investment and security.  T issues with environmental management and security.	effect of a mining register.  Review of government regulatory practices is required to ensure security of title and investor confidence in the registration system.  and compliance arrangements  Recommendation
Non le agreem Assess on past i. iii. iiv.	consequent negative effect on investment and security.	Review of government regulatory practices is required to ensure security of title and investor confidence in the registration system.
Non le agreem Assess on past i. iii. iiv.	Operation of the Mining Register and OPIR's current practice of not maintaining a	DPIR's current policy of not maintaining a copy of registered agreements is inconsistent with the provisions of the <i>Mineral Titles Act 2010</i> (NT) (MTA) and operates to defeat the purpose and
Non le agreem Assess on past i. ii.	NT Government attitude to risk and company size:  i. Does not focus on managing risk on the downside rather, seek to undertake lengthy reviews of applications and then imposes material conditions.  i. Focus on large companies and projects with consequent adverse effect on the economy and attempting to pick winners.	Investment activity in mineral and petroleum projects from major investors to entry level exploration companies should be actively encouraged and supported by government to drive ongoing interest and investment in the NT.
Non le agreem Assess on past	<ul> <li>i. Creates leverage in negotiations through delay.</li> <li>ii. Focus from the landholder ends up being compensation.</li> <li>v. Land Access Assessment Panel is viewed as biased by pastoralists and therefore does not contribute to positive view of the process.</li> </ul>	
	Access issues legislative (policy) requirement for access ment or determination by Land Access isment Panel before substantial disturbance storal land: i. Contrary to legislative provisions.	Access procedures and requirements must be governed by regulation which is underpinned by legislation and not by non-legislative policy that has not been subject to parliamentary scrutiny. Firm time limits must be established.
regi	ack of skills and industry experience in gulators (qualifications in department, ontara report).	As per 1(e) above, reduce delays in assessments and approvals through the introduction of minimum standard of professional competency for regulators responsible for approvals, assessments, recommendations and delegations. Formal training should be supported by mandatory annual CPD requirements which are linked to salary progression.

intensive

impacts.

assessment

less

impact

Founding Member of

iii. Time taken in assessment process,

including time taken to review and decide

a) Time and cost of environmental approvals:

of use of

provisions for smaller projects.

ii. Lack of focus in Terms of Reference.

i. Lack

environmental

Require use of public environment reports or focused Environmental Impact Statements for

smaller/less intensive projects or projects with

Terms of Reference should be standardised and

specific to identified potentially significant

limited potentially significant impacts.



on	Notice	of	Intent	(NOI);	issue	draft
Terms of Reference; review Reports; and						
to issue Assessment Report).						

iv. Quality of Assessment Reports (overlap with other legislative requirements, referral back to Environmental Protection Agency, requirement for independent expert reports, lack of specific requirements). Assessment Reports should be written as mitigation, monitoring, and reporting plans that can easily be incorporated into conditions of approval in Project permits and licenses.

### b) Increasing complexity

Response of substituting action with legislation by passing *Environment Protection Act* 2019 (303 sections over 156 pages, and same again for regulations) to replace *Environmental Assessment Act* (16 sections and 13 pages).

Environmental impact assessment should be the subject of stand-alone legislation.

The complexity is unnecessarily increased by tying all assessment (not just for the resource sector) to waste management and pollution control law.

### c) Water Act amendments:

- i. Application to mining and petroleum second set of approvals.
- ii. Conservative approach to resource.
- iii. Time taken to determine water allocation plans and deal with water extraction applications.
- iv. Increased process to obtain water extraction licence.
- v. Information requirements and consultant studies.
- vi. Creation of strategic indigenous reserves and economic rent.

The new amendments add increased complexity and cost to the mining and petroleum approvals processes.

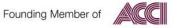
Government should take appropriate action to ensure requirements for approvals processes are clearly defined to minimise processing delays.

# d) Northern Territory Petroleum Reserved Block Policy:

- i. makes 49% of NT off limits to petroleum exploration and development (includes Aboriginal land under ALRA);
- Sites of Conservation Significance and Indigenous Protected Areas, introduced with stated purpose of notice of matters to be considered but with no legislative effect, now off limits for petroleum exploration (Legune and McArthur River).
- iii. NT Parks and Reserves legislation specifically contemplates petroleum exploration.
- iv. NT determining non-prospective blocks.
- Aboriginal land gives traditional owners veto rights (not enjoyed by any other citizen) when minerals are owned by the Crown.

Government policy reserving areas development should not be unnecessarily prescriptive suitability (i.e., of land for development should generally be on a case by case basis).

Policy should be consistent with existing legislation.





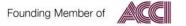
#### Use of moratoria: Periodic technical reporting requirements with e) moratoria to expire if timeframes not met. i. Seabed mining moratorium. ii. Hydraulic Fracturing Moratorium. 4. NT issues with expediting project approvals Issue Recommendation NT has Major Project Status: Responsibility for Major Projects should rest with a single department for consistency a) Variously administered by Department of Chief Minister and Department of Trade Policy Framework last updated in July 2015. Business and Industry. Industry has provided mixed views on usefulness and success. b) Does not change the approvals required but is designed to assist with approval Review of Policy Framework with industry engagement is recommended. identification, co-ordination and expediting c) Enter into a non-binding Project Facilitation Agreement to identify scope of Project, identify Project Control Group, commitments Local Industry Participation. 5. NT issues with broader impediments materially affecting investment Issue Recommendation Mineral royalty regime: a) The recent introduction of the requirement for gross royalty payments on top of the pre-existing i. Profits based (20% Net Value) combined profits-based elements has created an expensive with ad-valorem (2.5%) with no offset. mineral royalty regime which is a significant ii. Denying Operating Cost deductions to deterrent to investment in the NT resources seek to implement policy of NT residence sector. (increases effective royalty rate to 22% of Engagement with industry and review of the Net Value). royalty system is required. b) Effect of security: The current system governing the imposition and administration of mining securities in the NT i. \$38.2 million held in 2005, \$1.34 billion requires 100% of the calculated rehabilitation now held in security (cash or bank liability to be held as security, with an additional guarantees) for NT mining and 1% environmental levy imposed. Cf WA and Qld. exploration industry, represents capital The system as it currently operates in the NT is tied and duplication when up rehabilitation works underway. ineffective, lacks transparency, restricts industry growth contradicts the NT and and ii. 1% environmental levy on security, to Commonwealth government policy of promoting fund rehabilitation of mines subject of mining as a critical industry. Government regulatory failure. Issues with equity, use and transparency of such A comprehensive review of the current funds. security system is required, together with more effective procedures governing a longterm fund for ongoing rehabilitation requirements. The requirement for, and the value of security should be assessed on a case by case basis. method of calculating estimated rehabilitation liabilities and residual risks should be publically available.



		Higher levels of security should be required from unsatisfactory or high-risk operators, with discounts available for low risk operators.
		Only 33% of the current environmental levy is required to go into MRF. Transparency required on where the 67% balance is directed and for what purpose.
		Introduction of independent advisory panel to provide advice on MRF proposals. Panel membership should include industry representation and professional/technical expertise.
c)	Proposal for mining activities to be regulated by Environment Department and NT EPA.	Regulation of mining activities should remain with DPIR.
d)	<ul> <li>Infrastructure challenges: <ol> <li>i. High electricity costs.</li> <li>Gas (limited network and gas availability).</li> <li>ii. Water (generally too much of it).</li> <li>iii. Road transport (upgrades required – eg Tanami Road).</li> <li>iv. Rail transport (regulated monopoly and access fee based on replacement cost not acquisition cost).</li> </ol> </li> <li>v. Ports (potential new ports issue with proposal for intertidal zone to be Aboriginal land – 90% of NT coastline and NT cannot compulsorily acquire).</li> </ul>	Development of infrastructure should support, stimulate and enhance economic productivity, reduce commercial costs for business and provide ongoing social benefits.  Expedited permitting for energy projects is required.  Re-direct road transportation funding to regional projects necessary for transport of extracted resources. A fit for purpose road network contributes to economic productivity by enabling heavy vehicle road usage, improving access to infrastructure and providing linkages between mining operations, improving road safety and reducing the risk of seasonal road closures.
e)	Functioning of Northern Australia Infrastructure Facility (NAIF).	Better strategic use by the NT Government of the NAIF for regional infrastructure projects.
f) Failure of Government to champion mining in the NT  There is a gap between the NT's overseas investment strategy, Critical Minerals Strategy and Investment Territory (which refers to 10 key investment sectors including minerals) and the failure to promote the NT as a place to invest and management of development.		Aspirations of NT and Commonwealth governments to promote mining as a critical industry is not supported by current regulatory environment.
		The NT requires consistent and progressive policy settings supported by a sound regulatory framework that attracts investment, increases competitiveness and facilitates economic growth of the resources sector.



6. NT issues with community engagement ar			Recommendation		
۵)	Α				
a)		rise in activism associated with Iraulic fracturing.	Regulatory review required to ensure the industry can properly function.		
		was Moratorium and Inquiry (good idea nse given oil & gas prices at the time).			
addit acce	tional	was lots of recommendations on regulation which Government fully so the industry is being strangled by			
b)		of NT population is indigenous (cf or Australia).  Additional complexities and duplication requirements under ALRA and NTA add to complex its complexities.			
provi (sect	isions	ironment Protection Act has specific targeting indigenous engagement 43) imposing a general duty of s to:	and timeframes for approvals.		
	i.	consult Aboriginal communities;			
	ii.	seek and document traditional knowledge and understanding of the natural and cultural values of an area; and			
	iii.	address the rights and interests of Aboriginal communities in relation to areas that may be impacted.			
c)		der ALRA and NTA resources projects erally have agreements that provide	No issues with requirement to negotiate agreements in general however there are some concerns about distribution of benefits within		
	i.	Employment, training and business commitments	community and effect of payments on the community.		
	ii.	Environment commitments	Financial payments can be excessive and there is no industry standard. An agreed capped fee		
	iii.	Sacred site protection processes	schedule should be introduced to avoid		
	iv.	Cultural inductions	unreasonable fees being charged and to expedite negotiations.		
	٧.	Liaison Committee			
	vi.	Provision of Information			
	vii.	Financial Benefits including up-front payments, annual area based payments, percentage of project capital payments, royalty payments and administration payments – total cost is between 1.5 and 4.5% of project revenue.			
d)	20%	es in the NT average between 15% to 6 indigenous employment. NT public viced has 10% indigenous employment.	Apply equitable principles in requirement for Indigenous employment across the Territory.		





# 7. Proposed key regulatory settings for life cycle of resources project

# **Exploration evaluation**

- i. Land access
- ii. Swift approvals (given low impact)
- iii. Minimal conditions (general duties stated)

### **Development**

- i. Studies confined to identified key issues
- ii. Efficient and timely approvals process
- iii. Appropriate and confined conditions

# **Production and processing**

- i. Appropriate royalty regime
- ii. Monitoring and ongoing licencing regime

### Rehabilitation

i. Effective security regime

