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**Ref:** RH141019

31 October 2019

Resources Sector Regulation  
Productivity Commission  
Locked Bag 2, Collins St East  
Melbourne VIC 8003

via email: <https://www.pc.gov.au/inquiries/current/resources/make-submission#lodge>

Dear Sir/Madam

**Re: PRODUCTIVITY COMMISSION'S EXAMINATION OF REGULATION AFFECTING THE RESOURCES SECTOR**

Roy Hill hereby provide this submission to the Productivity Commission into their examination of regulation affecting the resources sector.

Roy Hill welcomes the Productivity Commission's inquiry though request that it is noted there is an attachment to our submission that contains commercially sensitive information and therefore request that this attachment remains confidential.

We would be pleased to discuss these matters in further detail with the Commission if required. Please contact Pippa McIntosh, Manager Government Relations and Corporate Communication 08 6242 1760 should you have further queries.

Yours sincerely

Julian Hill  
General Manager Environment, Government Relations and External Affairs  
**Roy Hill**

## About Roy Hill

Roy Hill is an independent world-class integrated iron ore mining, rail and port operation in the Pilbara region with Western Australian majority ownership, chaired by Mrs Gina Rinehart.

The operation consists of:

- Mine, incorporating:
  - Conventional open pit, bulk mining operation from multiple production benches
  - 60 million tonne per annum (Mtpa) wet processing plant;
- 344 kilometre single line, heavy haul railway;
- Purpose built, dedicated two berth iron ore port facility at Port Hedland, capable of receiving, stockpiling, screening and exporting 60Mtpa (wet) of direct shipped iron ore as lump and fines; and
- Perth Headquarters and Remote Operating Centre.

Roy Hill has a defined mineralisation of approximately 2bt of +50% Fe iron ore of which 1bt forms the current +55% Fe mineral resource, enough to sustain a base case mine life of more than 11 years. Mining commenced in 2014, and current tonnages take into account mining depletion. With integrated mine, rail and port facilities, which have the current capacity to deliver 60 Mtpa – Roy Hill is one of the world's major resource based operations, which will deliver enormous benefits to the broader community for years to come.

Roy Hill loaded its first shipment of ore for export on 10 December 2015 and has since loaded multiple shipments to its key markets in Japan, Korea, China and Taiwan.

## Context

Our Chairman, Mrs Gina Rinehart's mining entrepreneurial drive and passion has successfully unlocked economic opportunities to the benefit of thousands of West Australians both directly and indirectly. Her vision to leverage Australia's unique mining assets to benefit the future prosperity of all Australians can only be realised through the Australian Government's creation of mining policies that are free of red tape, encourages investment, business growth and jobs.

Roy Hill welcomes the opportunity to provide a submission to the Productivity Commission (the Commission) on their examination of regulation affecting the resources sector. Roy Hill is well placed to provide insight into red tape impacting the resources sector, having recently successfully completed the fastest ramp up to nameplate capacity of 55Mtpa in the Pilbara. Since then, Roy Hill has gone on to receive government approval to increase iron ore shipping to 60Mtpa – enabling us to provide insight to the Commission on not only recently commencing a mining operation but expanding our operation.

Roy Hill's first shipment of iron ore departed Port Hedland on 10 December 2015 and has since loaded multiple shipments to its key markets in Japan, Korea, China and Taiwan. Roy Hill has achieved many firsts, including the largest mainland resource debt funding in the world, from 19 of the world's largest banks, and five Export Credit Agencies.

Roy Hill directly employs approximately 2,500 people, with the majority of our mine and port workforce on even time fly-in fly-out (FIFO) rosters. Our Port and Rail management and their families live in the town of Port Hedland and are active members of this community. Further, our mine



indirectly supports the employment of thousands of local and Perth based businesses engaged to support the ongoing operational activities of Roy Hill.

## **Roy Hill is an actively engaged on the need to cut red tape**

A strong and prosperous resources sector is critical to Australia's economic future, and all tiers of Government working together to streamline approvals and improve regulation will go a long way to support investment, industry growth and opportunities.

Major projects within Australia are subject to significant, complex and, in some cases, duplicated government approval processes, and Roy Hill has been vocal about its associated costs. Roy Hill has previously reported on the more than 4,000 approvals required to achieve the pre-construction phase of our project, with more required for actual construction. Roy Hill also experiences ongoing compliance red tape as part of our day-to-day operations.

For this reason, Roy Hill is an active participant in the West Australian Government's 'Streamline WA' initiative. We aim for our contribution to result in making it easier to do business in WA by reducing duplication, improving regulation and regulatory practice. A key focus for us is to support the WA Government in identifying improvements to environmental approval processes for major mining infrastructure projects and additions to those projects, which includes approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). We maintain this focus in this submission to the Commission, though note the most impact to reducing red tape will be made at a State level for our organisation.

As a greenfield project, Roy Hill can provide insights regarding the navigation of State and Federal government processes in order to develop, construct, ramp up and operate an iron ore mine. This experience translates to an ability to provide constructive, tangible examples of where regulatory processes contradict or overlap, and provide suggestions as to where processes could be simplified and/or potentially be completed in parallel, rather than sequentially in order to improve approval times.

In the Commission's recent roundtable meeting with members of the Chamber of Minerals and Energy WA (CME), there was a request for examples of not only Federal red tape, or red tape created by duplication of legislation between State and Federal tiers of government, but also State government related red tape – so as to provide an insight into the level of detail and volume of regulation that is imposed on business by all tiers of government. These examples are provided in Attachment A to this submission.

Industry's voice on the need to cut red tape is not alone. The Institute of Public Affairs has this month released a report by Morgan Begg<sup>1</sup> stating there has been an 80-fold increase in environmental regulation in less than 50 years, posing a significant barrier to economic opportunity and prosperity in Australia. One way in which Parliament could address the red tape issue to repeal onerous regulations like Section 487 of the EPBC Act, which gives Green Groups a special legal privilege to challenge Federal environmental project approvals. This legal privilege has resulted in significant delays to major mining projects being held up in the Courts and have largely been unsuccessful. The increased cost to projects as a result of this privilege cannot be underestimated, nor can the reputational cost in terms of its impact on investor decision-making.

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<sup>1</sup> Begg, M (October 2019) The Growth of Federal Environmental Law 2019 Update, Institute of Public Affairs



## The cost of red tape to industry

It is important for the Commission to appreciate the significant impediment that red tape imposes on Australia in terms of investment, industry growth and opportunities. Roy Hill is in the position of having the financial means to continue to operate, despite sometimes significant delays associated with necessary regulatory approvals.

The costs of red tape for exploration companies can be far more significant and potentially the difference between a project commencing at all, or not. The opportunity cost of a mining project not going ahead – in terms of jobs, improved living standards and the future prosperity of all Australians that could otherwise be created, is significant and cannot be underestimated. Roy Hill is an advocate for change to improve our mining regulatory system – so as to ensure that Australia remains an attractive location for resources investment at all stages of a mining project, including exploration, into the future.

All tiers of government need to work together to simplify regulations. The complexity of mining approvals processes continues to grow, and is becoming increasingly difficult for small, start-up exploration organisations to navigate.

For example, the mining industry is required by State regulators to provide updates every three years with regards to mine closure plans, or additional updates when there are key infrastructure changes. This requirement is particularly burdensome for new operators that are not expected to close their mine for a number of years. For this reason, Roy Hill recommends a shift to providing mine closure plan updates every five years and only updates when there is an addition of a different type, or change in design, of a key piece of infrastructure. This move would significantly reduce the regulatory burden while still maintaining environmental standards.

One area that has the potential for an immediate positive impact on red tape reduction, would be all tiers of Government supporting the creation of a government database of biological surveys that could be used by the mining industry to support cumulative impact assessments. There is an expectation by both the State (by the Environmental Protection Authority) and Federal (by the Department of Environment and Energy) governments that proponents conduct cumulative impact assessments. This requirement has proven to be a difficult, costly and often erroneous process for industry however, because publicly available information is limited, and government actually holds the largest repository of all this information. If the Federal and State governments agreed to support a database, including all the information they have on record for the whole of industry to access – significant time and cost would be avoided.

## Scope Creep

A recent [report](#) released by the Institute of Public Affairs highlights red tape is not only created through the legislative process, but additional tape is generated by regulatory bodies who have power delegated to them from government (termed 'regulatory dark matter' in the report). The report explains that regulatory dark matter forces businesses to "devote increasing resources to understanding and complying with regulation" and estimates the burden of red tape costs the Australian economy \$176 billion each year in lost economic output, concluding that "...red tape drives up the cost of living for all Australians and damages our international competitiveness, reducing investment and undermining productivity and wage growth"<sup>2</sup>.

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<sup>2</sup> Wallace, K (June 2019) [Regulatory Dark Matter: how unaccountable regulators subvert democracy by imposing red tape without transparency](#), Institute of Public Affairs



When regulatory bodies interpret legislation whose industry compliance has been delegated to them, industry is at risk of creating more red tape if the ‘guidance documents and rules’ that are created are not well crafted. These regulator guidance documents can become ‘pseudo legislation’ and unintentionally impose more conservative requirements than the legislation itself – creating scope creep.

A cycle of increasing regulatory compliance (scope creep) can occur when business has a vested interest in receiving an important approval from the regulator, so there is no incentive to push back on additional information and reporting requests made from these bodies, in the interests of time (as often the associated financial cost associated with any further delay in receipt of approval outweighs the benefit). Over time, these additional requests for information from the regulator can move further and further away from the original intention of the legislation, resulting in scope creep, with each new project having more and more regulatory requirements applied. Roy Hill has a lived experience of this, where requests from regulatory bodies has grown from the time our original mine licence was granted to more recently, where in light of our expansion plans, we’ve had to go back and amend our original licences. Attachment A outlines specific examples Roy Hill has experience of this with regard to not only licences but monitoring and reporting requirements as well.

**Expand bilateral compliance arrangements to remove duplication**

The Australian mining approvals process is characterised by the involvement of multiple agencies, across multiple tiers of government; each often unaware of the requirements another arm of government is requiring of an organisation seeking a mining approval. The opportunity for improvement exists – there should be collaboration across all government tiers to take a ‘customer centric view’ and consider the regulatory burden from the perspective of the mining applicant. Attachment A visually represents this in a table highlighting regulatory overlap across legislation (both State and Federal) that a mining company is required to comply with.

Understanding compliance from an industry perspective will enable government as a whole to better understand each other’s compliance obligations and approvals processes that are imposed on business. It will also provide the opportunity to identify areas of duplication, processes that can be undertaken in parallel instead of sequentially and highlight the many, duplicative requests for stakeholder consultation (which can often lead to stakeholder fatigue).

Roy Hill notes the positive impact felt by industry with the introduction of bilateral assessments, where accredited assessments led by State government bodies inform and can be utilised for Federal environmental approvals – though there is the potential to go further. Bilateral approvals (not just bilateral assessments) would go a long way to reducing red tape and the time taken to receive necessary approvals to progress mining projects.

There are currently bilateral agreements in place to provide opportunity for Federal environmental assessments to piggy-back off State environmental assessments, and that this in some way removes duplication. However, there remains opportunity for duplication in both sets of conditions at a State and Federal level for the mining industry. This in turn leads to the potential for duplicated compliance reporting to State and Federal departments. Environmental condition setting at State and Federal levels also has the potential to translate into inconsistent compliance requirements to be imposed on major projects.

Despite these bilateral arrangements there also remains in place cost recovery regimes that impose significant application fees on major project approvals at the Federal level, despite the bulk of the



assessment process being undertaken at the State level. Collaboration between both the State and the Commonwealth to review opportunities for bilateral approvals, the way in which regulatory compliance duplication can be removed and how cost recovery mechanisms can be improved, with the aim of reducing time and cost for business would be worthwhile.

## **Transparency on ‘stop the clock’ and hold regulators accountable for delays**

Currently, the opaque nature of regulatory processes makes it very difficult for business to accurately predict the time required to attain the necessary government approvals at all levels of government, which is a significant risk to business. By enhancing the transparency and efficiency of the regulatory approvals process, Government will significantly improve direct investment in private projects in Australia and Roy Hill strongly encourages prompt progress to achieve this.

Perhaps there is a mechanism the Commonwealth could consider using to hold States/Territories to account with regards to lengthy delays. A tangible financial consequence to the States/Territories for not providing timely approvals that cause costly delays to business would send a strong signal for State regulatory bodies to sharpen their focus on outcomes, and to perhaps be more mindful towards growing the economy and improving living standards.

## **Outcomes focussed, risk-based reporting**

Roy Hill advocates for the regulatory regime to change to outcomes focussed, risk-based reporting, where the regulator can then check via audits and visits. This change in approach is not about reducing the standard to which industry is held to account, but rather a different approach as to how the existing standard is applied.

A change is required because the current approvals process and compliance focus of regulators is not delivering outcomes in a time frame that is able to keep our industry internationally competitive. Reasons for this include previously mentioned scope creep, requests for unnecessary information and the general conservative, risk averse approach taken by regulatory bodies. For example, Roy Hill has a requirement to submit certain bore logs to the regulator within 30 days of bores being installed – regardless of whether these bores are operational or not. Installation of bores is completed on different days, which results in often numerous submissions to regulators, rather than one collated document upon completion of the bore installation program. A significant improvement would be for regulators to consider the level of risk when applying new conditions on proponents.

Currently, prescriptive reporting requires an enormous effort on the behalf of business to collate – even for compliance matters that present very little risk. Roy Hill routinely provides at least 14 reporting documents to State regulators representing hundreds and hundreds of pages of work under highly prescriptive requirements, and there is often no confirmation as to whether any of these reports are read in detail by the regulator. Such numerous, ongoing reporting requirements that have no or little environmental outcomes must be streamlined.

The flipside to this risk averse approach is to report on the exceptions (the high-risk matters) and make reference to the previous submission as to any ongoing, low risk reports where there has been no change since the last submission.

By focussing on the unique aspects of a project which present the greatest risk as a priority for assessment, while maintaining a simplified, outcomes based process for all other iron ore approval processes; there is a real opportunity to make a step change in reducing the volume of effort required under the current regime, and save considerable time. It should be noted that there would be the



need to ensure a minimum level of consistency in adopting a risk based approach across all regulatory bodies, however. This shift to an outcomes, risk based reporting structure would also free up resources and save costs both in the relevant Government departments as well as in the reporting company, without compromising regulatory standards.

## **Regulator culture and resourcing**

There is the opportunity for government agencies to drive a culture of innovation, open mindedness and collaboration to achieve outcomes that will benefit not only West Australia, but the country as a whole. It is clear that many of the officers engaging with mining companies do not have a complete understanding of the legislation under its remit to administer, due to the conservative nature of requests for superfluous information requested by agency officers and managers. Roy Hill has found that it is only when urgent approval matters are escalated to an executive level within a regulatory body, or to a Ministerial level that a sense of reasonableness and transparency on next steps prevails.

Directors General/Secretaries who successfully achieve a positive cultural shift in their agencies are likely to also experience less staff turnover. Succession planning and proper handover of approvals projects is an important policy for agencies to have in place, so that companies impacted are made aware, and can work with a newly appointed bureaucrat as soon as possible. Appropriate training for officers is also important, so as to ensure there is consistency in the level of assessments between officers, and a minimum standard of conduct.

Roy Hill strongly encourages regulators to adopt new technology to help reduce the administrative burden on both themselves and industry. Operating Licences require specific forms of data entry for industry, which is very time consuming to enter the numerous data entry values. This could be improved by enabling industry to provide the same information in an excel format, rather than prescriptive forms that require manual data entry.

The Commission cannot underestimate the importance of a 'lead agency' to support private sector companies through the approvals process. In WA, this agency was previously called the Department of State Development, and is now called the Department of Jobs, Tourism, Innovation and Science (JTSI). JTSI acts like a 'Sherpa' to help companies on projects of State significance navigate through the approvals process, and is able to 'get things moving' from the inside, championing the bigger picture in terms of jobs, investment and potential royalty payments to the State that flow from the approvals process. JTSI understands the cost to the economy of a mining project not being approved in a timely way, and can drive outcomes at an officer level, where the economic implications are perhaps less understood. It might be worthwhile to consider having a lead agency approach generally for resources projects. However it would need to avoid becoming just another step which is added to the time needed for the government process to run its course.

Regulators should be able to better predict approval uptick and then plan to 'flex up' more quickly to deal with the anticipated workload. Perhaps there's a role for the Commonwealth to facilitate the 'enhanced mobility' of bureaucratic regulatory experts from different States to meet growing demand in another State/Territory in order to alleviate this issue. Clearly, the alignment of regulatory approvals may also be helpful, providing it didn't increase the approvals burden.

It is leadership and cooperation such as this, between the Commonwealth and the States that will see Australia's ongoing success. Further, benefits that the West Australian Government is able to realise through their Streamline WA red tape reduction initiative must be shared with the Commonwealth and the States (and vice-versa), so that any improved regulatory outcomes can extend across borders



and benefit all. The mechanism for achieving this is for both the Federal and State/Territory Governments to work through and agree, with the input of industry.

## **Aboriginal Heritage and Native Title**

The mining industry co-exists with extensive Indigenous heritage across northern Australia, and thoughtful reviews of outdated legislations such as the *Aboriginal Heritage Act 1972* (WA) (or AHA) and the *Mining Act (WA) 1978* is vital in governing land use decisions in the best interest of Western Australia and the country as a whole. Roy Hill supports the repeal and replacement of Western Australia's AHA, with the objective of the proposed new State Act to enable Aboriginal people to be the custodians of their heritage. This aligns with Government's commitment to support tourism and the growth of Indigenous business owners across northern Australia.

Roy Hill further supports streamlined legislation that provides a clear framework where transparent land use decisions can be made. In the drafting of the new State AHA Act it will be of considerable importance that the integrity of agreements made under the *Native Title Act 1993* (Cth) (or NTA) are honoured and that any overlap with the NTA is avoided.

Ensuring mutually beneficial agreements are entered into between industry and Native Title parties is vital to the co-existence of interests across Australia. As such, Roy Hill supports the recent amendments to the NTA, providing certainty around the validity of Section 31 agreements. Roy Hill also supports the general intention of the reform to streamline the agreement-making process while improving efficiency and reducing costs for all parties. The recent amendments to the NTA smooth the way for negotiated outcomes and provides certainty for Australian mining development, while improving opportunities for native title holders to jointly manage conservation estate with government.

Reforms to the Prescribed Body Corporate (PBC) sector as part of Commonwealth amendments must be mindful of ensuring there is governance capacity built into any changes, in order to ensure a successful transition across the sector is adequately resourced. Additional funding to address the capacity constraints of PBCs will enable greater cooperation and capacity building for increasing the involvement of Traditional Owner groups in the mining industry, from both an employment and community perspective.

## **Investment in Regional Communities**

There is a significant requirement on the mining industry to undertake community consultation with stakeholders impacted by our operation. This can be in regard to land access negotiations, conditions of our Mining Licence, and conditions of our Native Title Agreements. Stakeholder consultation fatigue is real, and any streamlining governments can suggest in order to reduce the quantity of times that the same stakeholders are engaged on the same issue (by multiple mining companies operating in the same region of the Pilbara for example) would be appreciated.

Roy Hill seeks to support regional economies and businesses in the areas within which it operates by applying fair payment terms, providing on-the-job employee training and apprenticeships, accommodating local, FIFO and DIDO options for our people, and working with Traditional Owner businesses to provide the best possible opportunity to successfully secure Roy Hill procurement contracts.



Roy Hill consults with community voluntarily with regards to a number of matters and is committed to supporting and making a positive difference to the communities in which we operate, leaving a positive legacy through helping to build capability and capacity.

Roy Hill sponsors local initiatives that support a positive step change in the communities in which we operate. We support the Royal Flying Doctor Service, Pilbara sporting clubs such as fishing, golf and school sport programs, education initiatives in partnership with local schools and other philanthropic initiatives, like the Port Hedland Well Women's Centre. This support comes in the form of both donations and in kind, where Roy Hill staff give their time to volunteer, provide donations in the form of goods, for example we have provided emergency accommodation to members of our community at our Port Hedland Gateway Village.

Through Roy Hill's membership of the Port Hedland Industries Council (PHIC), we engage the Port Hedland community in an open and transparent manner to understand concerns and seek to enhance the responsiveness to matters raised, supporting an effective approach to achieving mutually beneficial outcomes. Matters raised via PHIC by the local Port Hedland community are those that require a whole-of-industry approach, working with regulators and community to achieve sustainable outcomes. Dust and air quality, noise and marine considerations are all matters in which Roy Hill engages via this forum.

Roy Hill also invests in local infrastructure to improve the safety of the communities in which we operate. In 2018 Roy Hill funded the upgrade of 22 kilometres of the Marble Bar Road from gravel to a fully sealed Main Roads WA compliant highway. This project cost Roy Hill approximately \$39 million, and while greatly benefiting Roy Hill, the upgrade of the road from gravel to now be Main Roads WA compliant has also benefited the local community.

The [Roy Hill Community Foundation](#) (RHCF) delivers a number of programs across the health, education and arts sectors in the Pilbara in support of thriving, vibrant communities. The RHCF is a partnership that includes Roy Hill contractors, Traditional Owner groups, business partners and suppliers working together to make a lasting difference in the Pilbara. Currently, there are 11 members of the RHCF, each bringing a their own perspective and insights, enabling the Foundation to achieve more than any one of the partners would be able to alone.

This model of engagement and community collaboration in order to amplify return on investment is something all tiers of government could consider applying by perhaps committing to bi-partisan meetings between State and Federal Members of Parliament whose electorates are aligned in terms of climate, major industry or infrastructure. Meetings such as this every two-three years would facilitate the opportunity for best practice sharing across these electorates regarding topics of common interest such as the treatment of tropical diseases, the latest in emergency response management to tropical cyclones and common infrastructure challenges like harnessing solar energy for more usages on a mass scale.