Mineral and Energy Resource Exploration recommendations

RECOMMENDATION 3.1

Governments should ensure that their authorities responsible for exploration licensing:

- ***prepare and publish information on the government's exploration licensing objectives and the criteria by which applications for exploration licences will be assessed***
- ***publish the outcome of exploration licence allocation assessments, including the name of the successful bidder and the reasons why their bid was successful.***

RECOMMENDATION 4.1

Regulators of exploration activity should create public databases which would allow any interested user to know where exploration licences exist or have been applied for. The public database should be map-based and facilitate address-based searches. The system should allow interested parties the option of being automatically notified if exploration licences are allocated or applied for in a particular area.

RECOMMENDATION 4.2

The maker of exploration licensing decisions should provide the relevant party or parties with a statement of reasons for decisions such as to: allocate or renew a licence, or not to do so; revoke a licence; impose conditions on licences; or allow or disallow a transfer of title.

RECOMMENDATION 4.3

Where not already implemented, governments should ensure that at a minimum their lead agencies responsible for exploration proactively guide exploration proposals and related approvals (such as environment and heritage approvals) through the agencies responsible for regulatory assessments and approvals.

RECOMMENDATION 4.4

Governments should ensure that their regulators set target timeframes for their assessment and decision-making processes for exploration licensing and related approvals (such as in relation to environment and heritage). The lead agency for exploration should publish whole-of-government performance reports against these timeframes on their website.

RECOMMENDATION 4.5

Regulators of exploration activity should expand the use of online lodgment and tracking technologies and develop systems that support integrated performance reporting to the extent that the benefits in their jurisdiction exceed the costs.

RECOMMENDATION 5.1

Governments should, when deciding to declare a new national park or conservation reserve in recognition of its environmental and heritage value, use evidence-based analyses of the economic, social and environmental costs and benefits of alternative or shared land use, including exploration. In doing so, they should draw on the guiding principles of the Draft Multiple Land Use Framework endorsed by the Standing Council on Energy and Resources.

Governments should, where consideration of exploration activity is allowed, assess applications by explorers to access a national park or conservation reserve according to the risk and the potential impact of the specific proposed activity on the environmental and heritage values and on other uses and users of that national park or conservation reserve.

RECOMMENDATION 5.2

State and territory governments should ensure that:

- ***reasonable legal and other costs incurred by land holders in negotiating a land access agreement are compensable by explorers, including where the explorer withdraws from the negotiations prior to finalising the agreement***
- ***land holders are made aware that such compensation is available.***

RECOMMENDATION 5.3

Governments should ensure that the development of coal seam gas exploration regulation is evidence-based and is appropriate to the level of risk. The regulation should draw on the guiding principles of the Draft Multiple Land Use Framework endorsed by the Standing Council on Energy and Resources to weigh the economic, social and environmental costs and benefits for those directly affected as well as for the whole community, and should evolve in step with the evidence.

RECOMMENDATION 6.1

The Australian Government should establish a system to accredit appropriate state and territory Indigenous heritage protection regimes, thus reducing the potential for regulatory duplication. Accreditation could only occur once Commonwealth requirements and standards are met.

RECOMMENDATION 6.2

Governments should ensure that their heritage authorities:

- ***require that resource explorers or other parties lodge all heritage surveys with that authority***
- ***maintain registers which map and list all known Indigenous heritage sites***
- ***adopt measures to ensure that sensitive information collected by a survey is only provided to approved parties (and only as necessary for the purposes of their activities), on the basis of agreed protocols.***

RECOMMENDATION 6.3

State and territory governments should manage Indigenous heritage on a risk assessment basis.

- ***Where there is a low likelihood of heritage significance in a tenement and the exploration activity is low risk, a streamlined 'duty of care' or 'due diligence' process should be adopted.***
- ***Where there is a high likelihood of heritage significance and the exploration activity is higher risk, agreement making should be adopted.***
- ***When negotiated agreements cannot be reached, all parties should have access to a facilitation process.***
- ***When facilitation is unsuccessful, governments should make decisions about heritage protection based on clear criteria, transparency and consultation with the proponent and Indigenous parties that have authority to speak for country.***

RECOMMENDATION 7.1

The Commonwealth Minister should endorse the National Offshore Petroleum Safety and Environmental Management Authority's process to assess and accept environmental management arrangements for petroleum exploration activities in Commonwealth waters for the purposes of the Environment Protection and Biodiversity Conservation Act 1999 (Cth).

RECOMMENDATION 7.2

The Australian Government should improve the efficiency of environmental assessment and approval processes under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) by strengthening bilateral arrangements with the states and territories for assessments and establishing bilateral agreements for the accreditation of approval processes where the state and territory processes meet appropriate standards. The necessary steps to implement this reform should be properly identified, scoped and approved by COAG and published with a timetable of key milestones.

RECOMMENDATION 7.3

The Australian Government should give priority to undertaking and publishing a review of the benefits and costs of the 'water trigger' amendment to the Environment Protection and Biodiversity Conservation Act 1999 (Cth), including the exclusion of water trigger-related actions from bilateral approval arrangements.

RECOMMENDATION 7.4

The Australian Government, in cooperation with state and territory governments, the resources industry and other stakeholders, should make greater use of strategic assessments under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) and, where appropriate, reduce reliance on project-based assessments.

The different models of strategic assessment should be reviewed periodically by governments to assess their overall efficiency and effectiveness.

RECOMMENDATION 7.5

Governments should ensure that their regulatory agencies only set requirements relating to exploration that are:

- ***the minimum necessary to meet their policy objectives***
- ***proportionate to the impacts and risks associated with the nature, scale and location of the proposed exploration activity.***

RECOMMENDATION 7.6

Governments should adopt performance-based environmental regulation of exploration activities wherever practicable, in order to better manage risk and achieve environmentally sound outcomes.

RECOMMENDATION 7.7

Governments should ensure that when there is uncertainty surrounding the environmental impacts of exploration activities, regulatory settings should evolve with the best available knowledge (adaptive management) and decisions on environmental approvals should be evidence-based.

RECOMMENDATION 7.8

Governments should clearly set out in a single location on the internet guidance on the range of approvals required.

RECOMMENDATION 7.9

Governments should ensure that their authorities responsible for assessing environmental plans and environmental impact statements (and equivalent documents) make their archived environmental information, including all information used in a decision-making process, publicly available on the internet, while operating within agreed protocols to protect commercially sensitive information.

RECOMMENDATION 8.1

The Australian Government should require foreign exploration companies operating in Australia and private exploration companies to publicly disclose information about resource discoveries in Australia on the same basis as the current requirements for exploration companies listed on the Australian Stock Exchange.

Major Projects Assessment Processes recommendations

FINDING 1.1

None of the jurisdictions whose development assessment and approval (DAA) processes were benchmarked for this study stood out as performing better overall. However, leading practices were identified both domestically and internationally that could be replicated across Australia to improve outcomes from DAA processes.

Achieving regulatory objectives and improving strategic decision making

RECOMMENDATION 4.1

Governments should review legislative and regulatory objectives across major project development assessment and approval processes within their jurisdiction to ensure that they are clear, consistent and coherent.

RECOMMENDATION 4.2

Where conflicting objectives are unavoidable, parliaments and governments should provide public guidance to their regulators with regard to the priority and weighting to be given to different objectives. A range of approaches may be appropriate, from the inclusion of an overarching policy goal in objects clauses, to the provision of guidelines on how tradeoffs are to be made between objectives.

RECOMMENDATION 10.1

Governments should ensure that agency responsibilities and strategies for the monitoring of compliance and enforcement in relation to project conditions are clearly specified and communicated to stakeholders.

RECOMMENDATION 11.1

Drawing on the lessons learned to date from the use of Strategic Assessments, governments should employ the tool in circumstances where it is likely to produce a reduction in the costs of project approval, while delivering environmental and other regulatory outcomes that are equal or superior to those achieved under other processes.

RECOMMENDATION 11.2

State and Territory Governments should make more use of strategic planning, so as to reduce the number of issues that need to be considered at the project level, by:

- ***expanding the scope of decisions about development at the strategic level***
- ***using more effective public consultation techniques***
- ***collecting and disseminating baseline environmental and heritage data***
- ***using Strategic Assessments to analyse plan impacts.***

Reducing regulatory overlap and duplication

RECOMMENDATION 6.1

The Australian and State and Territory Governments should continue to strengthen and expand the scope of existing bilateral assessment agreements under the Environment Protection and Biodiversity Conservation Act 1999 (Cwlth). Areas for improvement include agreements on standards and procedures for assessment, and extending the number of regulatory processes accredited (in full or part) under current bilateral agreements.

RECOMMENDATION 6.2

Regulatory agencies should establish cooperative arrangements — for example, memorandums of understanding — for joint or substitutable assessments to minimise unnecessary duplication between major project assessment processes within a jurisdiction.

RECOMMENDATION 6.3

The Australian Government should undertake and publish a regulatory impact assessment of the 'water trigger' amendment to the Environment Protection and Biodiversity Conservation Act 1999 (Cwlth), including the exclusion of water trigger-related actions from bilateral approval arrangements. If the assessment shows that there are no net benefits to the community, the amendment should be repealed.

RECOMMENDATION 7.1

Governments should aim to establish a 'one project, one assessment, one decision' framework by restarting negotiations on bilateral approval agreements between the Australian Government and the States and Territories. Such agreements must ensure that environmental standards are not compromised and rights of appeal are no less than those in the Environment Protection and Biodiversity Conservation Act 1999 (Cwlth), and provide for periodic reviews of the agreements' effectiveness.

RECOMMENDATION 7.2

To facilitate the successful negotiation of bilateral approval agreements, governments should consider a strategy that involves:

- ***increasing the number of State and Territory assessment processes with Commonwealth accreditation***
- ***strengthening the approval processes of States and Territories through the implementation of other reforms proposed in this report***
- ***targeting 'easy wins' — for example, by giving priority to approval responsibilities for activities in urban areas (other than on Commonwealth land)***
- ***scoping the task of negotiating the agreements between the Commonwealth and other jurisdictions, including a published timetable of key milestones***
- ***tasking the COAG Reform Council to monitor progress of development of agreements.***

Regulatory certainty, transparency and accountability

RECOMMENDATION 5.1

Governments should provide clear, upfront information and guidance on the development assessment and approval pathways that apply to major projects, including details about the processes, the generic information requirements, the assessment criteria, the standard and model conditions and the statutory timelines that apply under a given pathway.

RECOMMENDATION 5.2

Governments should establish statutory criteria that identify which projects have access to designated major project pathways. Limited ministerial discretion should be available to 'declare' or 'call-in' a project that does not meet the criteria (thereby making it subject to a major project pathway). In exercising this power the Minister must:

- ***follow guidelines on when and how the power can be used***
- ***publicly report the reasons for any declaration against the guidelines.***

RECOMMENDATION 5.3

To achieve greater transparency, accountability and certainty in the process for setting the scope of major project primary assessments, governments should ensure that key stakeholders (including local governments, the public and proponents) have input to the draft terms of reference for primary assessments and that such input, and how it has been addressed, should be made public.

RECOMMENDATION 6.5

Where not already the case, the Australian and State and Territory Governments should institutionally separate regulatory assessment and enforcement functions from environmental policy functions, provided that the expected benefits exceed the costs.

RECOMMENDATION 6.6

Where it is not already the case, regulators should establish measures that 'scale' aspects of the major project assessment requirements based on the risk and significance of expected impacts. Criteria for determining the level and scope of assessment should be identified and publicly available.

RECOMMENDATION 7.5

Ministers should be the decision makers for major project primary approvals. Governments should consider whether this is better achieved through administrative or legislative means. Legislation should establish the types of decisions that Ministers can delegate.

RECOMMENDATION 7.6

Legislative guidance should be provided for decision makers to follow when making approval decisions. The guidance should include:

- ***the factors that decision makers need to take into account when reaching decisions***
- ***the best ways to consult with other decision makers, agencies and interested parties, and to take account of community concerns.***

RECOMMENDATION 7.7

Decision makers should be required to publish assessment reports and statements of reasons (including identification of the risks being mitigated) for their approval decisions and conditions for all major projects.

RECOMMENDATION 9.1

Judicial review is appropriate for major project primary approval decisions where a Minister is the decision maker. For decisions not made by a Minister, including those that are deemed because a Minister has not made a decision, limited merits review is appropriate (along with judicial review). Jurisdictions that do not have statutory judicial review for these decisions should provide for it in legislation.

RECOMMENDATION 9.2

Standing to initiate judicial or merits reviews of approval decisions should be limited to:

- ***proponents***
- ***those whose interests have been, are, or could potentially be directly affected by the project or proposed project***
- ***those who have taken a substantial interest in the assessment process.***

In exceptional circumstances, the review body should be able to grant leave to persons other than those mentioned above to bring a review application if a denial of natural justice would occur if they were not granted leave.

RECOMMENDATION 12.1

Governments should undertake periodic reviews to ensure that regulatory agencies have the necessary governance frameworks, resources, capacity and skills to efficiently administer the development assessment and approval processes of major projects.

Improving timeframes and coordination

RECOMMENDATION 6.4

Where they do not exist, State and Territory Governments should establish a major projects coordination office (or similar) to:

- ***advise proponents of complex, large-scale projects of state or territory significance on regulatory requirements***
- ***develop project agreements that document the agreed working arrangements among regulators and the timeframes for the completion of processes***
- ***electronically track and publicly report on progress against statutory and regulator-determined timeframes***
- ***facilitate interactions with relevant Australian Government regulators and local governments.***

A public assessment of the expected benefits and costs of this reform should be undertaken to determine the functions and resources of these offices.

RECOMMENDATION 7.3

Governments should develop statutory timelines that specify the maximum time that may elapse between a proponent's assessment documentation being lodged and when the assessment agency provides its report and decision recommendation to the relevant decision maker.

Legislation should also set the maximum time for the decision maker to make the decision. If no decision is made within the time period specified, the recommendation (along with the reasons, advice regarding the decision and any conditions and offsets) made by the assessment agency should be deemed to be the decision by the decision maker and in the public domain.

RECOMMENDATION 7.4

Governments should provide guidance, preferably in statutory form, for the use of any 'stop the clock' mechanisms. Such arrangements should only be available to assessment agencies when significant matters emerge that were not contained in the terms of reference or could not have been reasonably anticipated. Decision makers should only be able to stop the clock once. Proponents should be allowed to stop assessment and decision processes at any time. Any party that stops the clock should be required to disclose when these triggers are activated and the reason(s) for activation.

Better targeting and enforcement of conditions

RECOMMENDATION 8.1

Governments should ensure that regulatory agencies only set conditions that:

- ***are directed at the impacts of the development to be consented***
- ***are consistent with relevant regulatory objectives and broader environmental and natural resources management policies***
- ***are outcome-based wherever possible***
- ***deliver outcomes that are not assured by other legislation***
- ***are cognisant of, and do not duplicate, the conditions imposed by other regulatory agencies***
- ***are public, and identify the type of impact that the condition is seeking to address***
- ***are enforceable, precise and reasonable in all other respects.***

RECOMMENDATION 8.2

COAG should commission an independent and public national review of environmental offset policies and practices to report by the end of 2014. The review should:

- ***survey the consistency of offset policy objectives against the principles of ecologically sustainable development***
- ***critically assess the methodologies used for measuring and valuing offsets***
- ***examine the role of market-based offset approaches, including offset funds***

- ***consider the case for greater national consistency and linkages between offset regimes, including the potential for a single national scheme.***

RECOMMENDATION 10.2

Governments should ensure legislation enables regulatory agencies to amend conditions and offsets, provided that there is a strong case, the proponent is consulted and the proposed change is publicly announced.

RECOMMENDATION 10.3

Regulators should produce an annual major projects compliance statement that reviews monitoring and compliance activities and identifies redundant or ineffective conditions on approvals.

RECOMMENDATION 10.4

Governments should ensure that third parties are able to initiate legal action to enforce the conditions that have been placed on primary approvals, and that legal costs do not present a barrier to legitimate actions of this type being brought by individuals or bona fide community groups.