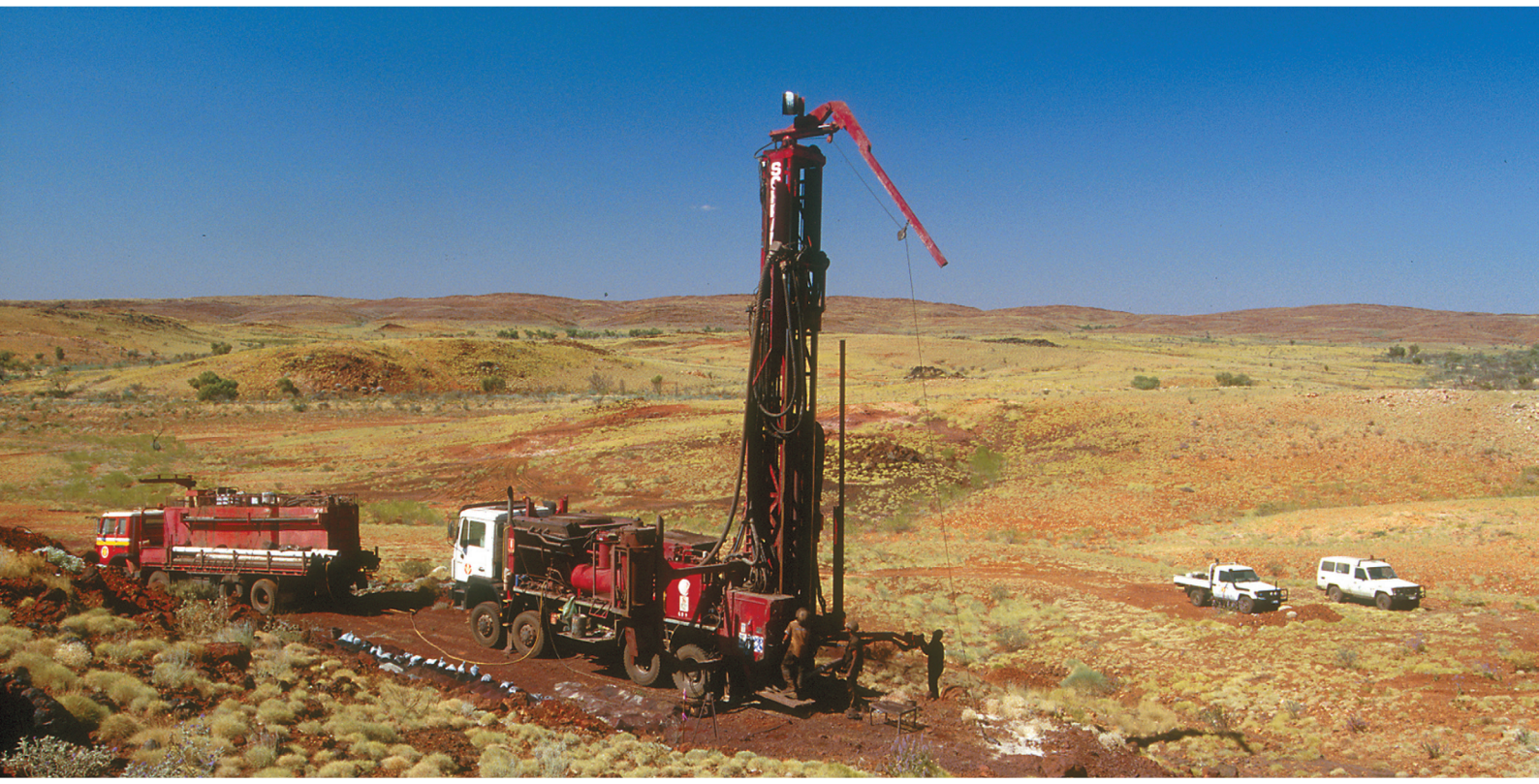
Western Australian Government Submission

Productivity Commission Inquiry

Non-Financial Barriers to Mineral and Energy Resource Exploration in Australia



April 2013

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1. Terms of reference — comments on the scope of the inquiry

Western Australian Government representatives met with the Productivity Commission Inquiry team in Perth on 14 November 2012 and 6 March 2013. At these meetings the Government sought to clarify the scope of the inquiry. The Productivity Commission team confirmed the scope of the inquiry excluded the following:

- processes under the Commonwealth *Native Title Act 1993*;
- processes under the *Aboriginal Land Rights (Northern Territory) Act 1976* and State Indigenous Land Rights regimes;
- the Commonwealth government response to the Hawke review of the *Environment Protection Biodiversity Conservation Act 1999;* and
- local, State, Territory and Commonwealth taxation and fiscal policy

While heritage issues are within the Productivity Commission's terms of reference for this inquiry, the Western Australian (WA) Government submits that it is not possible to effectively consider the impact of Aboriginal heritage on mineral and energy resource exploration without considering its intersection with native title legislation. If these matters are not considered, it will limit the effectiveness of this inquiry and opportunities for removing unnecessary barriers to exploration. The WA Government considers native title and Aboriginal heritage to be substantive aspects of the exploration approval process. Figure 1 below provides evidence of the impact of the introduction of the *Native Title Act 1993* on approval timelines for mining tenements applications in WA.

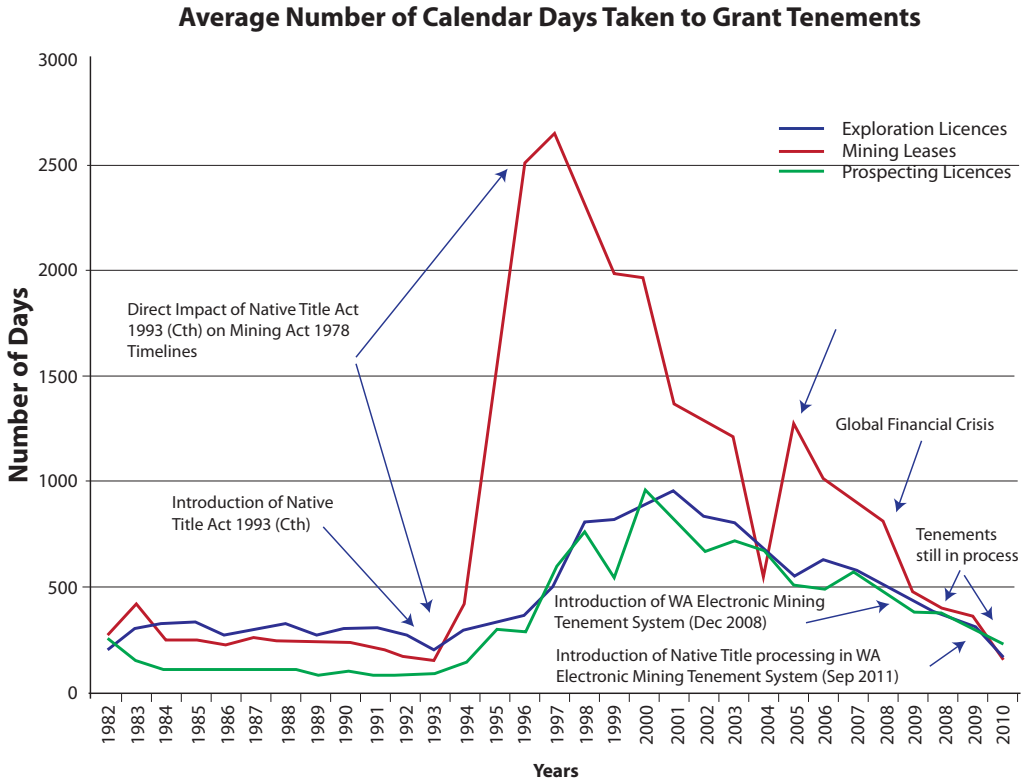

Figure 1: Average number of days taken to grant mining tenements in WA

Prior to the introduction of the Commonwealth *Native Title Act 1993* (NTA), in 1994, the average time taken for the grant of an exploration licence in WA was 205 days. After 1994, the average time increased to 542 days. Timelines are now around 200 days but there is a growing cost to industry to achieve this. The NTA requires that Prescribed Bodies Corporate (PBCs) or Native Title Representative Bodies (NTRBs) are consulted or negotiated with prior to the grant of exploration titles. These consultations/negotiations have become increasingly costly for explorers.

Prior to the introduction of the NTA, the average time taken to grant a prospecting licence was 87 days. After 1994, the average time increased to 526 days.

The impact of the NTA on mining lease application timelines has been even more significant with post 1994 timelines measured in years.

NTA requirements continue to have a significant impact on exploration approval timelines in WA. A 2010 report produced by the Policy Transition Group (PTG) to the Australian Government on 'Minerals and Petroleum Exploration' noted that native title, along with indigenous and non-indigenous heritage, is a key non-financial barrier to exploration (2010: 17-19). More specifically, the PTG observed that:

> *Many exploration companies also struggle with the regulatory burden placed upon them in relation to native title. In all jurisdictions, if an explorer wishes to explore on native title lands they generally have to obtain an agreement or determination that authorises the exploration. In some cases, lengthy negotiations with Traditional Owners may take place. These negotiations can determine land use regulations and compensation arrangements and can take many months to negotiate even though no discoveries have been made.*
>
> *(PTG 2010: 18).*

The WA Government submits that since 1994, the NTA has become the key non-financial barrier to exploration in Western Australia. In order for any inquiry into barriers to mineral and energy exploration productivity to be fully effective, it should include an analysis of impediments to land access emerging under the umbrella of the NTA. This includes the management of cultural heritage as a product of the NTA's future act regime which governs the release of prospecting, exploration, mining and petroleum licenses and leases.

Notwithstanding concerns raised by the Western Australian Government, the Commonwealth Government has declined to bring these practices under greater scrutiny or to establish clear guidelines to govern revenue-raising by Native Title Representative Bodies (NTRBs) or Native Title Service Providers (NTSPs). The Government of Western Australia welcomes this inquiry and awaits its findings and looks forward to working cooperatively with the Federal Government to reduce the administrative burden and costs and duplication that explorers and prospectors are currently exposed to in this state.

2. The mineral and petroleum exploration sector in WA

The Australian Bureau of Statistics (ABS) reports mineral exploration expenditure in Western Australia during the 2011-12 financial year represented around 50 – 60% of expenditure in Australia (Figure 2).

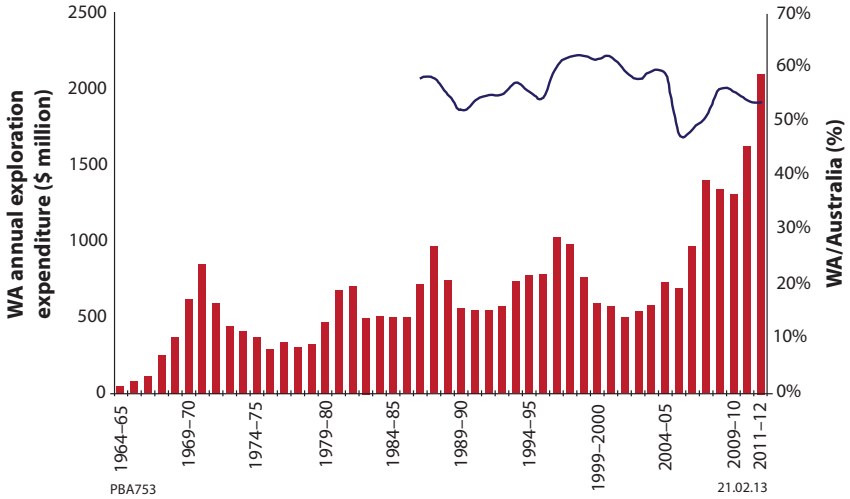

Figure 2: West Australian annual mineral exploration expenditure (ABS 2012)

In terms of annual mineral exploration expenditure over the last few years, the Western Australian exploration sector looks increasingly active. However, annual exploration expenditure, in a rising cost environment, is not always an accurate or reliable indicator of exploration activity.

The number of mineral exploration applications received by Government is a more reliable lead indicator of planned mineral exploration activity. The majority of approved mineral exploration applications are conducted within two years after the approval date.

Figure 3 below provides a chart of the number of mineral exploration applications received by the WA Government on a quarterly basis over a four year period. There is a declining trend from a peak of 767 applications in the September 2011 quarter to 472 applications in the December 2012 quarter. This declining trend has continued into the March 2013 quarter.

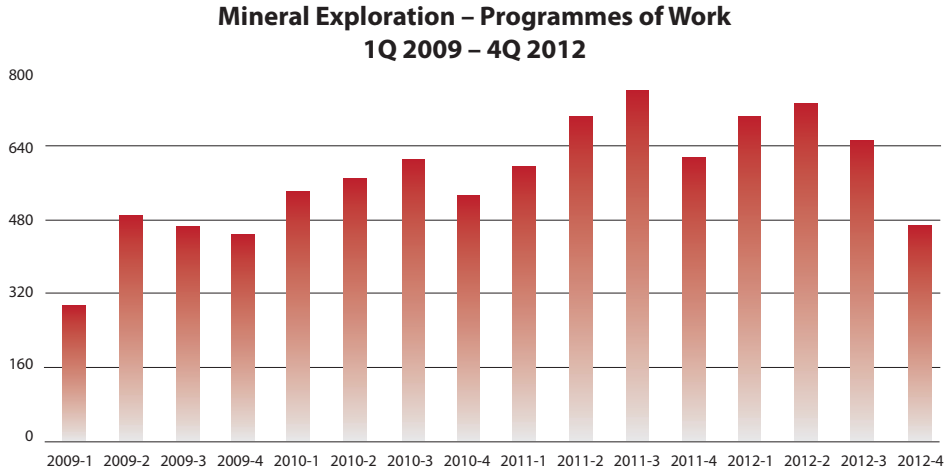

Figure 3: The number of WA mineral exploration applications received in the period 2009 to 2012 (DMP)

Despite the reported increased expenditure, mineral exploration activity is in decline in WA.

Declining levels of exploration is further evidenced by the increasing number of under-utilised exploration drilling rigs. The Australian Drilling Industry Association (ADIA) has advised there are approximately 700 exploration drilling rigs in Australia. Around two thirds of these are based in WA. As of March 2013, ADIA estimate that 20% of all WA land based exploration drilling rigs are under-utilised.

Figure 4 below identifies a declining trend in annual petroleum exploration expenditure. This includes exploration expenditure in both State jurisdiction and Commonwealth waters.

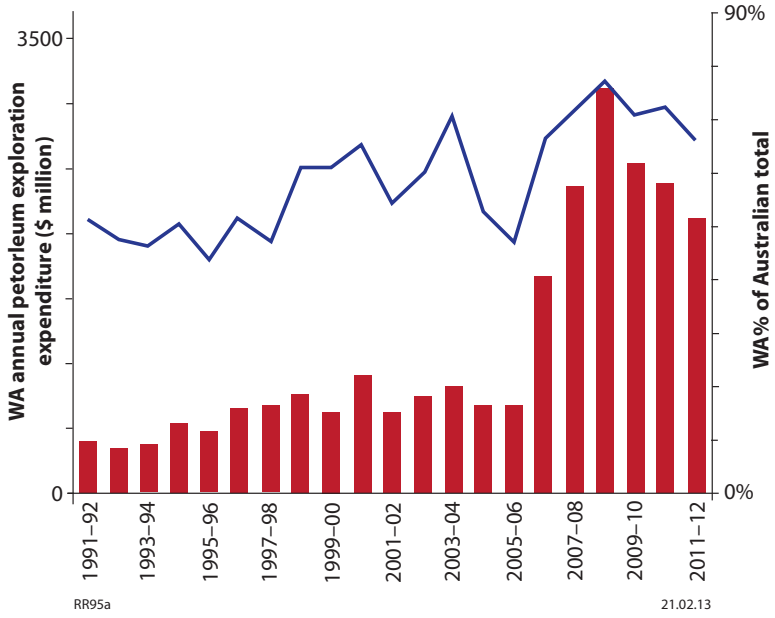

Figure 4: WA annual petroleum exploration expenditure (ABS 2012)

In contrast with the decline in the headline petroleum exploration expenditure (WA onshore and offshore combined, including exploration in Commonwealth-controlled waters off WA), expenditure within the State jurisdictional area increased considerably in 2011–12 to $180 million on the back of activity in the Northern Carnarvon, Canning and Perth basins (Figure 5). Unconventional petroleum exploration drove the increased activity in the Perth and Canning basins, with some impressive discoveries being announced in both basins.

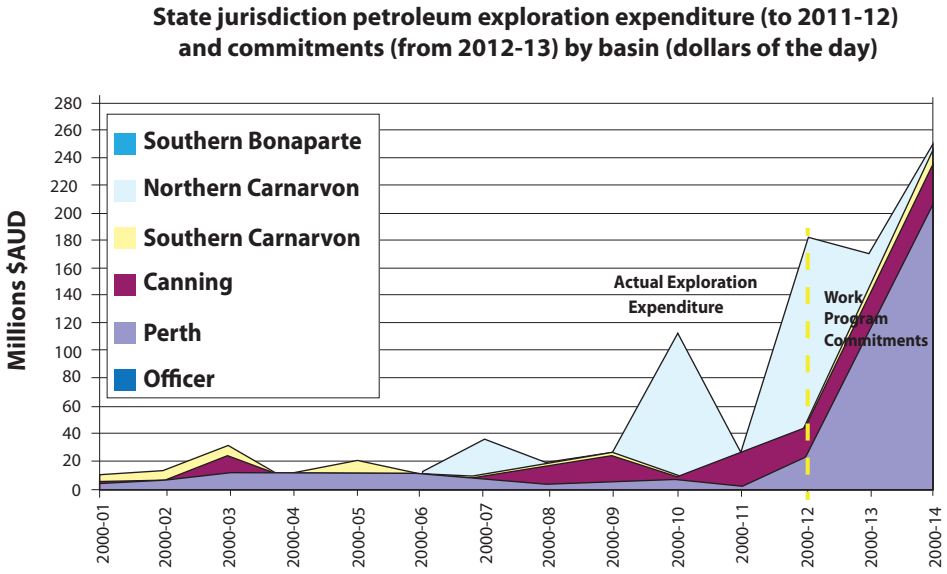

Figure 5 State Jurisdiction petroleum expenditure 2011-12 and commitments by basin.
Source: Geological Survey WA Program Plan 2012-13 (being compiled).

3. Non-financial barriers to exploration

3.1 The native title and heritage market

The NTA established regional legal service organisations, Native Title Representative Bodies (NTRBs) or Native Title Service Providers (NTSPs), to provide assistance to native title claimants. The NTRBs are, in almost all instances, the only organisations receiving Commonwealth Government funding to assist native title claimants. In that respect, the NTRBs have a monopoly in terms of legal services for native title claimants. Most NTRBs and NTSPs rely on keeping their clients to maintain their accreditation under the NTA and, increasingly, rely on the revenue generated by future act negotiations to maintain their corporate base. The annual reports of certain NTRBs and NTSPs demonstrate how reliant they have become on income from future act negotiations and the management of Aboriginal heritage surveys and how this can conflict with their primary task of bringing native title claims to finality before the Federal Court.

After a native title claim is determined, the NTA requires that corporations, Prescribed Bodies Corporate (PBCs), are established to hold determined rights and interests in trust for native title holders. NTRBs/NTSPs and PBCs are the corporate interface for native title claimants and native title holders in their dealings with other land users.

In Western Australia NTRBs increasingly continue to represent PBCs following a determination of native title ostensibly because of a lack of resources available to PBC's.

The WA Government supports the recognition of native title rights and interests and the protection of significant cultural heritage sites. However, the unavoidable conclusion is that the NTA has also been a catalyst for an anti-competitive bargaining environment over access to Crown land for exploration and prospecting. The economic barrier is a product of explorers and prospectors being required to underwrite the costs attached to, *inter alia*, convening meetings of the members of a claim group, cultural heritage surveys (over an increasingly wide radius around exploration work areas), fees for lawyers to represent native title claimants,

administrative levies for NTRB management, and a swathe of other "add-ons" that are essentially arbitrary "taxes" (for example, demands for a fixed percentage of exploration expenditure, fees for use of roads and tracks). Frequently, there are a variety of consultants also required to take part in different parts of the full future act negotiation process and heritage clearances.

The scope and scale of fees attached to native title negotiations have, in the West Australian context, escalated rapidly without any external oversight. Furthermore, there is a lack of clarity about where the taxpayer-subsidised functions of an NTRB cease and where the NTRB becomes a "free agent" with self-interest in revenue raising albeit with the privileges of its statutory role. This now impacts on the fundamental economic viability of exploration, with the greatest impact on the smaller exploration companies and prospectors.

The State Government recognises that PBCs, representing native title rights holders, are a fundamental part of future land use and development across most of Western Australia. As such the Government has taken steps to encourage a "partnership" culture between native title holders, government and third party land users. The Government's concern rest with adversarial and opportunistic practices that have arisen in the future act process focussed on short-term revenue-raising in the name of native title claimants and native title holders, on many occasions with the greater share of revenue directed not to the traditional owners but to the NTRBs and other native title business "brokers".

The NTA requires that PBCs or NTRBs are consulted or negotiated with prior to the grant of exploration titles to ensure the legal and physical impacts on native title rights are minimised. The centrepiece of negotiations is invariably the question of whether a proposed exploration program – which is by its nature usually flexible about where drilling or sampling takes place – might impact on indigenous cultural heritage sites. Current practices create a financial incentive for the non-disclosure of information (i.e. where sites are or, more simply, where to avoid).

In many instances the suggestion that cultural heritage could be impacted upon has more commercial currency than providing advice that assists explorers to avoid an impact. The assertion is that disclosure will allow sites to be identified and damaged by other third parties, contrary to all available historical evidence and the statutory protection that comes for the formal registration of sites. Instead, the trend is towards prolonged negotiations with mounting costs and the capacity to penalise companies with the threat of delay.

There are indications that withholding cultural heritage information after a heritage survey is completed is becoming increasingly prevalent as a means to extract further payments from resource companies. Anecdotal advice from the resource industry is that in recent years compliance with Heritage Agreement obligations (including native title and access) has increased from 1% to 10% of exploration expenditure.

That a PBC may be more likely to approach heritage agreements as a central source of revenue from native title is exacerbated by the Federal Government's chronic underfunding of PBCs in undertaking their core functions under the NTA[1]. Guidelines[2] produced by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) encourage PBCs 'to explore all avenues of [financial] support', including from industry and state governments. Cultural heritage is singled out in the FaHCSIA guidelines as an appropriate potential discrete source of external funding.

The WA Government recommends the Productivity Commission consider all matters that are substantive barriers to exploration. The captive native title and Aboriginal heritage market is a substantive barrier to mineral and energy resource exploration in WA. The WA Government recommends that the income/funding arrangements, role and performance of NTRB's is reviewed and that the financial and development requirements of PBC's are examined with a view to recommending PBC business models that are self-sustaining and productively integrated into the local economy (Native Title Program 2013).

1 See Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account (2006) 'Report on the Operation of Native Title Representative Bodies' for a discussion on the role of the Commonwealth Government and the underfunding of PBCs in undertaking their core responsibilities under the NTA.

2 http://www.aiatsis.gov.au/ntru/docs/resources/rntbc/toolkits2011/FaHCSIAguidelines.pdf

3.2 Exploration tenure approval complexity and timelines

All WA mineral and petroleum exploration tenure application processes are subject to the requirements of the NTA. Generally, a mineral tenement cannot be granted unless it has satisfied the future act requirements of the NTA.

The WA State Government has a policy whereby applicants for an exploration licence or a prospecting licence are required to sign a Regional Standard Heritage Agreement (RSHA) or prove they have an existing Alternative Heritage Agreement before the applications undergo the NTA Expedited Procedure (Kimberley Region excluded).

The NTA expedited procedure adds a level of complexity and uncertainty to the grant of prospecting and exploration licence applications. The introduction of the NTA has increased approval timelines for the grant of mineral licences and petroleum exploration permits (see Figure 1).

Increased approval timelines impose a burden for the exploration sector as they increase project costs, reduce an organisation's ability to respond to changing market conditions, impede project financing and defer potential development and revenue opportunities.

3.3 Exploration activity approval complexity and timelines

Onshore mineral exploration activity applications represent more than 90% of all exploration applications received in WA. DMP is responsible for administering the *Mining Act 1978* (the Mining Act) and Mining Regulations 1981 and has a lead role in facilitating the responsible development of mining (including exploration and prospecting) for the benefit of the people of Western Australia.

The Mining Act (sections 46, 63 & 82) requires an exploration environmental management plan or Programme of Work (PoW) is lodged in the prescribed manner and approved by the Minister (or a prescribed official) prior to an explorer or prospector conducting any ground disturbing activities with mechanised equipment.

Once approved, the PoW becomes a legally binding document which is often imposed as a tenement condition. Any alterations or expansion of the approved activities requires a new PoW application to be lodged and approved.

Approved PoW's are valid for a period of 24 months unless an extension is granted. It is expected that rehabilitation of disturbed lands approved under a PoW is completed within 6 months from the date of the ground disturbing activity occurring. Extensions of time for rehabilitation may be granted when sufficient justification is provided in writing to DMP.

The PoW application process is not complex. DMP requires all PoW exploration applications to be submitted online. Once submitted, applicants can track the progress of the assessment process online. This online lodgement and approval tracking service has been available in WA since August 2010.

On average, DMP receive, assess and finalise between 2000 - 2500 PoW's per annum. During calendar year 2012, DMP finalised ninety three per cent of PoW's within the target timeline of 30 business days. DMP target timelines and published approval performance reports are available on the website at **www.dmp.wa.gov.au/7436.aspx**

In general, the WA exploration activity approval process can be characterised as having low levels of complexity and predictable approval timelines.

By contrast, the mineral exploration tenure approval process is more complex and has less predictable approval timelines. NTA requirements contribute to this increased complexity and uncertainty.

In addition to the requirement to obtain a PoW approval under the *Mining Act 1978* (WA), mineral explorers may be required to obtain a range of other statutory approvals at the local, state and commonwealth levels, depending on the scale, nature and complexity of their proposed activity. Examples of other approvals that may be required include:

- Approval of the Federal Minister for Environment to carry out the proposal under the EPBC Act 1999 (for proposals deemed a controlled action and assessed by SEWPaC);
- Approval of the Minister for Environment (WA) to carry out the proposal under the *Environmental Protection Act 1986* (for proposals formally assessed by the Environmental Protection Authority);
- Approval to construct bores and extract groundwater under the *Rights in Water and Irrigation Act 1914* (WA); administered by the Department of Water;
- Approval to clear native vegetation under the *Environmental Protection Act 1986 (WA);* administered by the Department of Mines and Petroleum under delegated authority from the Department of Environment and Conservation;
- Approval to disturb a Registered Aboriginal Heritage Site under the *Aboriginal Heritage Act 1972* (WA), administered by the Department of Indigenous Affairs;
- Approval to take Declared Rare Flora (DRF) under the *Wildlife Conservation Act 1950*, administered by the Department of Environment and Conservation;
- Approvals associated with waste water and effluent disposal for exploration campsites, administered by the Department of Health;
- Hot works permits/licences, administered by the Department of Fire and Emergency Services Authority (DFES);
- Local Government planning approval under Local Planning Schemes;

As part of the WA Lead Agency Framework, DMP is responsible for coordinating resource sector approvals across Government (Lead Agency Framework 2009). This provides a single point of entry for applicants. Approval coordination helps streamline those applications which require input from other agencies. DMP's electronic online tracking system automatically notifies other key approval agencies involved in the assessment process. In general, other agencies have a target of 20 business days to respond to DMP. DMP monitor other approval agency timelines. Other key approval agencies publish approval performance reports.

In general, mining and petroleum exploration is a low impact activity and is not likely to have a significant impact on the environment. In WA, very few mineral and petroleum exploration applications (less than 1%) are referred to the State Environmental Protection Authority (EPA) and/or attract formal assessment under the Commonwealth *Environment Protection Biodiversity Conservation Act 1999 (EPBC Act).*

4. Duplication of process

4.1 West Kimberley national heritage listing

The Federal Government decision to place more than 20 million hectares of the West Kimberley under National Heritage Listing creates uncertainty for existing and prospective tenement holders. Figure 6 below, provides the location and status of existing (live) and pending tenement within the newly listed West Kimberley National Heritage Area.

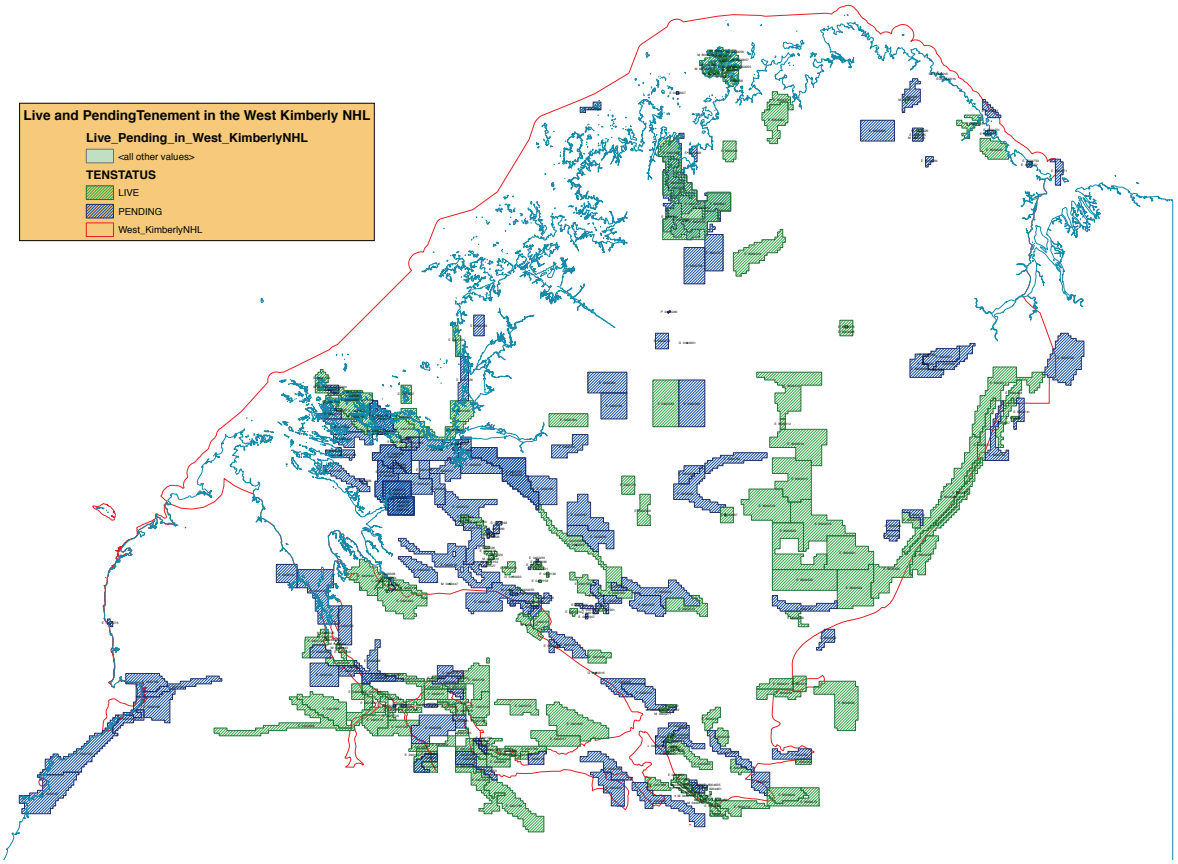

Figure 6: Live and Pending Tenements in West Kimberley National Heritage Listing area

The National Heritage Listing adds a level of uncertainty for existing exploration tenement holders. Explorers may be less inclined to invest and explore in this area due to uncertainty about possible constraints on future potential mining if a resource is identified. The Commonwealth Department of Sustainability, Environment, Water Population and Communities (SEWPaC) have published draft referral guidelines for the West Kimberley National Heritage Place and a draft guide for landholders.

The guidelines have been in draft format for over 12 months and are open to interpretation in their current form. The guidelines do not clarify the requirements for mineral and petroleum explorers.

It is recommended that the Department of Sustainability, Environment, Water, Population and Community (SEWPaC) better define the requirements for landholders in the West Kimberley National Heritage Area and finalise the draft landholder guidelines as a matter of priority.

4.2 Duplication of environmental requirements

The terms of reference of this inquiry exclude the Government response to the findings of the Hawke review of the *Environment Protection Biodiversity Conservation Act 1999* (EPBC Act). However, there is well documented evidence of inefficient duplication between the federal and state regimes regarding environmental assessment of project proposals.

The majority of mineral and petroleum exploration activities have a light environmental footprint and do not generally trigger matters of national environmental significance. In Western Australia less than 1% of onshore mineral and petroleum exploration proposals attract formal assessment under the EPBC Act or WA *Environmental Protection Act 1986* requirements.

The Council of Australian Governments (COAG) announced in early 2012 that it was pushing ahead with the devolution of federal approval powers under the EPBC to the states through what are known as "approval bilateral agreements". This announcement was well received by the WA Government. However, in late 2012, the Australian government announced that it was shelving the proposal to devolve approval powers to the States.

Recently the Australian Government unilaterally introduced a new matter of national environmental significance trigger relating to water associated with coal seam gas and coal mining. This change is likely to further duplicate State assessment processes.

4.3 Pre-competitive geoscience information

Lack of high quality pre-competitive geological information is a major barrier to exploration investment. Australia has a very good reputation for provision of high quality pre-competitive geological information generally free or at cost of data transfer (Fraser Institute Report 2013). However, we should not take this for granted because the science continues to develop and provides opportunities for more effective exploration by looking deeper, often below thick non mineralised cover.

WA is currently well positioned with the Royalties for Regions and Exploration Incentive Scheme. Programs such as these across Australia must be maintained in the long term if we are to find ore bodies to replace those being exploited by expanding mining operations.

The Australian and WA approach to promote pre-competitive geological information through geological survey type bodies has served Australia well and has been copied around the world. The exploration spend that this stimulates currently runs at over $4 billion per annum in WA alone. This is a major contribution to the economy, especially in regional and remote WA.

Maintaining vigorous pre-competitive programs across Australia, along with robust databases and ready access to all acquired geoscientific information collected by exploration will assist in avoiding repetition and duplication of effort.

This work is complemented by the requirement for companies to report all geoscience results to government each year with the information made public within five years. This ensures we are not repeating effort and continually building our geoscience knowledge and understanding. Funds to maintain the smart databases and easy access is crucial as Australia leverages its natural competitive advantage in resources research and development and provision of technical services internationally.

5. Costs of non-financial barriers

5.1 Cost created by the heritage and native title market

The cost of procuring indigenous heritage services and land access arrangements in exploration provinces is inextricably associated with, and exacerbated by, the native title market. A combination of statements made by Yamatji Marlpa Aboriginal Corporation and Central Desert Native Title Services demonstrates the nexus between native title and Aboriginal heritage:

> *"The Native Title "Future Acts" regime provides the mechanism for the negotiation of the protection of Aboriginal Cultural Heritage, rather than the [State's Aboriginal heritage legislation], through agreement making including processes for managing cultural heritage issues".*
>
> *www.yamatji.org.au/go/our-work/heritage-production*

"All mineral or petroleum title applicants and holders are also required to seek the consent of the relevant native title holders to gain access on to determined native title lands. All native title holders within the Central Desert region have developed standard agreements for the purpose of permitting access for exploration or prospecting activities".

www.centraldesert.org.au

The consequence is that individual explorers are required to negotiate and operate pursuant to land access and Aboriginal heritage agreements that are effectively compulsory and totally unregulated.

The preferred contractual terms of native title groups providing heritage services are as set out in Aboriginal Heritage Agreements that cover all regions of Western Australia except for the South West. These agreements are provided to exploration title applicants by Native Title Representative Bodies (NTRB's) and constitute barriers to exploration by imposing the following financial and procedural commitments on explorers to varying degrees:

- Financial costs include
    - lump sum payments;
    - Annual payments based on area of title granted (typically 25%) or exploration expenditure (typically 5%);
    - Private monitoring of compliance with regulation i.e. environmental / Aboriginal Heritage, i.e. at cost to explorer;
    - Negotiation costs i.e. legal and meeting fees at cost to explorer;
    - Costs higher than the State standard for the conduct of heritage surveys; and
    - Administration fees based on percentage of total cost of service (meeting / heritage survey) usually 20%-25% or fixed daily amounts.

- Procedural constraints include:
    - Revokable permits to access land at the discretion of the native title group;
    - The insertion of native title-imposed delays into heritage approval;
    - Inconsistency across the State through the operation of various heritage agreements;
    - Deferred or in some cases no access to s.18 of the Aboriginal Heritage Act (AHA) (Indemnity for disturbing an Aboriginal site) without consent of the native title group. This consent is statutorily with the Minister for Indigenous Affairs;
    - Potential duplication whereby native title party can seek to use the provisions of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) post-compliance with AHA requirements (forum shopping);
    - No uranium exploration without the consent of the native title party;
    - Limitations as to the term or validity of survey information; and
    - Requirement to undertake unnecessary or further surveys of areas and sites previously surveyed.

5.2 Cost of Aboriginal heritage surveys

The WA Government is concerned that the escalating costs of Aboriginal heritage surveys is a significant disincentive for exploration in WA.

The following case study has been provided to Government by an Australian Stock Exchange (ASX) 200 listed company undertaking exploration and mining in the Midwest region of Western Australia. It reflects the experience of many other exploration companies operating in other regions of WA.

Case Study — Background

During the exploration phase, which typically entails clearing access roads in order to conduct exploratory drilling, the company generally encounters Heritage matters when forming a Heritage Agreement with Traditional Owners or other Aboriginal groups with connections to the land the company wishes to explore. This agreement will specify the process in which the company will consult with Traditional Owners regarding use of the land and engage Traditional Owners or other consultants in Heritage Surveys. During the exploration phase it is unlikely the company will be required to apply for consent from the Minister for Indigenous Affairs to use the land as it is relatively easy for the company to alter its plans to avoid sites during this phase.

Heritage related costs, issues/barriers

The process of engaging with Traditional Owners in order to conduct a Heritage Survey to ensure the company does not impact any Aboriginal sites during exploration incurs costs and takes time. The extent to which this can impact the company is largely dependent on the Traditional Owners or the Representative Body, their availability, the fees they charge and their willingness to participate. When dealing with Representative Bodies the time frame between submitting a notice and getting the survey completed can be more than three months while it can take 10 months before receiving the final survey report in the experience of this company. Additional barriers can arise when there are multiple Traditional Owner groups that cover a single area. This increases the costs and time to consult with all groups and coordinate representatives from all groups to participate in surveys.

Traditional Owner groups may use the Heritage process as a lever in Native Title negotiations in order to place pressure on the company to come to a Native Title settlement. Failure to reach an agreement to conduct a Heritage Survey can result in delays which lead to increased costs. In order to obtain Heritage approvals and progress work the company feels pressured to come to settle Native Title negotiations in less favourable terms.

The onus is on the company to negotiate with Traditional Owners or Representative Bodies to reach an agreement which can include a fee just to meet begin negotiations. The success of these negotiations relies on the ability and experience of the company in dealing with these matters and the intent of the Traditional Owner groups to participate. Once an agreement has been reached to conduct a survey the company may be required to pay the following costs related to the process. The quantum of these costs depends on the size of the survey, location of the site and cooperation between all parties.

- Payments to Traditional Owner groups to meet attend meetings. Representative Bodies will usually charge the company a fee to attend and request travel costs, a daily fee and lunch for attendees. This can be 12 people. The costs for a standard meeting can be $20,000.
- Costs for anthropological and ethnographic survey by an expert consultant including Aboriginal consultants. This can be $25,000 for a 2 day survey.
- Daily rate for Aboriginal consultants from groups involved typically $500 per day.
- Logistical considerations including transport, accommodation, food, beverage for all participants. This can be in the order of $200 – $300 per day (depending on the circumstances of accommodation).
- Administration fee for NTRB to assist with coordination (can be 10 – 20 per cent of total cost In total the company usually pays approximately $50,000 for a standard meeting and 2 day survey during the exploration phase, including the administration fee.

The quality of the survey and the methodology employed can vary considerably between consultants. The identification of Aboriginal sites is open to interpretation by consultants and Aboriginal people and is open to abuse in that sites that may be of no or low significance can be identified in order to obstruct or delay the process or extract further consulting fees.

As described earlier, the company has had to wait 10 months between submitting a notice of intent to explore and receiving the final survey report. The cost of delays in the process can be $10,000 – $20,000 due to equipment on hire standing idle*. The greater opportunity cost and internal costs to manage the process are not easily quantified.

*Note: the costs can vary depending on a range of circumstances.

The experience and expertise of the company is critical in negotiating favourable terms. If the company is not experienced the Traditional Owner groups can make contract terms restrictive, burdensome and inflexible. The company highlighted a case where, following agreed terms to explore, the changing of the location of a drill hole would trigger the requirement to resubmit a Notice to the Representative Body or Traditional Owners and begin negotiations again regarding surveys and exploration activities. Again this places a time and cost burden on the company.

In summary the company feels that protecting Aboriginal Cultural Heritage is important and is a necessary aspect of exploring and mining minerals in Australia however the current process is inefficient and results in unnecessary delays that leads to higher costs of exploration.

5.3 Cost of environmental approvals

The time and cost associated with collecting environmental knowledge (which often involves commissioning experts to conduct vegetation, flora, fauna and/or other specialist biological surveys) can have an adverse financial impact on mineral and petroleum explorers. Exploration companies cannot access much of the environmental information previously collected by others. A central database is needed for ease of access to existing environmental knowledge.

Recognising this issue, the WA Government has recently committed $8 million to establish a State Environmental Data Library that will enable online access to biodiversity, water and cultural heritage information (Western Australian Mining and Petroleum Policy 2013). This will provide an accessible database for the large amount of information that is held by industry and Government agencies in Western Australia.

The system will reduce duplication of effort along with exploration and development costs and ensure that the assessment processes are more efficient and cost effective. Perhaps more importantly it will lead to a far more rapid advance of our environmental knowledge and understanding. It is already aknowledged that the resource sector already employs the vast proportion of environmental scientists and is Australia's largest investor in environmental science.

6. Impact of barriers to international competitiveness

The Fraser Institute (2012/13) Survey of Mining Companies Report lists Western Australia as 15th out of 96 jurisdictions for its Policy Potential Index (PPI). Whilst Western Australia is the highest ranking Australian jurisdiction, the Australian taxation regime is ranked as a *"mild to strong deterrent to investment"* (Page 36; Fraser Institute Survey of Mining Companies Report 2012/13).

The majority of exploration is conducted by small companies with limited access to capital. Whilst the terms of reference of this inquiry specifically exclude fiscal and taxation policy, mining company executives consider this to be significant barrier to Australia's international competitiveness.

The Western Australian Government encourages the Productivity Commission to review fiscal policies and taxation systems and identify options that will attract more exploration investment in Australia.

7. Key recommendations to improve the regulatory environment for exploration

Recommendation 1: The native title and Aboriginal heritage market is a substantive barrier to mineral and energy resource exploration in Western Australia. The Western Australian Government recommends that the income/funding arrangements, role and performance of Native Title Representative Bodies is reviewed and that the financial and development requirements of Prescribed Bodies Corporate are examined with a view to recommending Prescribed Bodies Corporate business models that are self-sustaining and productively integrated into the local economy.

Recommendation 2: There is a lack of clarity as to the regulatory requirements for mineral and petroleum explorers within the newly established West Kimberley National Heritage Area. The Western Australian Government recommends that the Department of Sustainability, Environment, Water, Population and Community better define the requirements for landholders within the West Kimberley National Heritage Area and finalise the draft landholder guidelines as a matter of priority.

Recommendation 3: The Western Australian Government encourages the Productivity Commission to review fiscal policies and taxation systems and identify options that will attract more exploration investment in Australia.

8. References

The WA Government has separately provided the Productivity Commission with the Bowler Report (2002), Jones Report (2009), the WA Exploration Incentive Scheme and other information relevant to this Inquiry. These reports are included in the references below.

ABS (2013): Australian Bureau of Statistics, Exploration Expenditure in WA (2013).

"Bowler Report" (2002): Ministerial Inquiry into Greenfields Exploration in WA (November 2002): www.dmp.wa.gov.au/documents/Bowler_Report.pdf

Fraser Institute Report (February 2013): Survey of Mining Companies Report (2012-13); Taxation Regime, pp. 36, www.fraserinstitute.org.

Fraser Institute Global Petroleum Survey (2012): www.fraserinstitute.org

Jones Report (2009): Industry Working Group, Review of Approval Processes in WA, (April 2009): www.dmp.wa.gov.au/documents/Review_of_Approval_Processes_070809_WEB.pdf

Native Title Program (2013): Guidelines for Basic Support Funding for Prescribed Bodies Corporate (PBCs), Australian Government, Department of Families, Housing, Community Services and Indigenous Affairs, (February 2013).

Policy Transition Group Report (2010): Australian Government; Report on Minerals and Petroleum Exploration (December 2010).

WA Lead Agency Framework (2009): A Guidance Note for Implementation: www.dmp.wa.gov.au/documents/Lead_Agency_Guidance_Document_March_2011.pdf

WA Department of Mines and Petroleum: DMP Approval Performance Reporting, (2009 – 2012), www.dmp.wa.gov.au/7436.aspx

Western Australian Liberal Party Mineral and Petroleum Policy (Feb 2013): www.wa.liberal.org.au/sites/www.wa.liberal.org.au/files/plans/Mines.pdf