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Practice Group:

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## Reforming Australia's mineral and energy resource exploration sector

By Clive Cachia

### Removing unnecessary regulatory burdens

Recognising Australia's declining share of international energy and resources exploration investment, the Australian Government has commissioned its independent research and advisory body, the Productivity Commission, to evaluate non-financial barriers to exploration investment. This inquiry is underway, providing an opportunity for interested stakeholders (including those in the regulated industry and finance communities) to weigh in with comments and input to the Commission.

The Productivity Commission released an Issues Paper in December 2012 (**Issues Paper**), a copy of which is available [here](#). The Issues Paper notes a number of factors contributing to the decline in exploration investment (for example, the perception that Australia is a mature exploration destination which provides fewer opportunities for discovery, the intense international competition for exploration investment, and the high costs of exploration given high currency and labour costs), but is focused on one reason in particular: the impact of *unnecessary regulatory burdens*.

The Issues Paper notes such burdens not only impose administration and operational costs but also fundamentally change the way explorers operate and take advantage of opportunities.

Specifically, the Issues Paper has raised the following regulatory issues for public consultation:

- Increasing coverage and **complexity of the permit and approvals system** as a result of incremental responses to various demands rather than as part of an overall plan.
- Longer and significant **delays** as a result of such increased regulatory coverage. The Issues Paper notes that the approval process can in some cases take up to 12 months before tenure to explore is granted.
- Unnecessary **costs** involved where applications for resource exploration are also required to be submitted for a range of land access, environmental and heritage requirements. Some reports note that total administration and compliance costs account for up to 60 cents in every \$1 of exploration capital raised.
- Inefficiencies due to **overlap and duplication** between different regulatory regimes, such as complying with the environmental or heritage requirements of the Australian national, state and territory governments. For example, the preparation of environmental impact assessments under both Commonwealth and state/ territory environmental legislation can result in duplication and uncertainty.
- **Access to land** issues, including the merits of the current regime that excludes exploration activities from particular land, or whether the processes and conditions placed on exploration activities are unnecessarily onerous.
- Whether there is an appropriate **balance** between **heritage preservation** and resource exploration.

It is worth noting that the Australian Government specifically excluded taxation and fiscal policy from the inquiry. However, the Issues Paper does note that tax deductions relating to exploration activities are important. Many commentators have also suggested that the recently introduced Mineral Resources Rent Tax and carbon tax have likely had a significant effect on investors' appetite for committing exploration expenditure in Australia.

## Other issues impacting on the performance and efficiency of resource exploration in Australia

In addition to the current regulatory arrangements, the Productivity Commission is also examining other non-financial barriers to resource exploration, including: the skills shortage in the resource sector (a particular issue for Western Australia and Queensland); the adequacy of pre-competitive geoscience information in order to assess productivity and reduce risks involved in exploration area selection; access to infrastructure, such as roads, rail, water and ports; the effect of differing occupational health and safety regimes across various Australian jurisdictions; and the ability (particularly of junior explorers) to raise capital.

The Issues Paper notes that the wider Australian resources sector is presently experiencing a moderation in resource prices and a higher Australian dollar. In response to these pressures, there are growing calls for governments to adjust policy settings in order to reduce the cost base in the sector to ensure that Australia remains internationally competitive.

Submissions must be sent to the Commission by **15 March 2013**.

We are happy to assist you with any submissions you may wish to raise in response to the Issues Paper.

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