



Resources Sector Regulation Issues Paper

Submission to Australian Government
Productivity Commission

November 2019

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1. Introduction

The South Australian Chamber of Mines and Energy (SACOME) is the peak industry body representing companies with interests in the South Australian minerals, energy, extractive, oil and gas sectors and associated service providers.

The importance of the resources sector to the Australian economy is well documented. The Australian resources sector employs over 247,000 Australians and accounts for 75% of goods exports in 2018-19¹ contributing to the rise in living standards, the development of infrastructure and the prosperity of the communities they operate in and the nation.

Similarly, SACOME member companies are a cornerstone of the South Australian economy, with their combined activity generating the following key economic outcomes:

- \$6.1 billion in production value;
- 33% of exports from South Australia worth almost \$4 billion, making it the highest value export sector in the State;
- \$1.6 billion in Capital Expenditure investment in new mines and petroleum projects;
- Direct and indirect employment of 26,800 South Australians; and
- \$1.2 billion in royalties to the South Australian Government over the next five years.²

These economic outcomes are the result of a history of bi-partisan support for the resources sector and a stable regulatory framework that has created an environment for low-risk, sustainable investment.

The continued success of the Australian resources sector is not guaranteed. Popular activism is shaping public perception of regulatory frameworks creating an environment of mistrust and uncertainty that underplays the vital contribution the resources sector makes to the communities they operate in and the overall prosperity of the nation.

The resources sector is already subject to extensive regulatory oversight across all stages of activity and is one of the most heavily regulated sectors in Australia. Given the global context that the resources sector operates within, it is important to emphasise the value of efficient regulatory frameworks as an enabler of investment and economic growth. Sound regulatory structures operate as an attractor of global capital.

¹ Overview | Resources and Energy Quarterly September 2019 (<https://publications.industry.gov.au/publications/resourcesandenergyquarterlyseptember2019/index.html>)

² SACOME 2024 Vision p.12 (<https://www.sacome.org.au/2024-vision.html>)

SACOME understands the Australian Government has asked the Productivity Commission (the Commission) to conduct a comprehensive review of the regulatory landscape affecting the resources sector in Australia.

The Commission is to consider ways governments can simplify regulations and reduce business costs without compromising environmental and social standards; and any broader impediments to business investment.

SACOME supports the development of regulations that reflect best practice; reduce red tape; and result in clear and transparent regulatory frameworks that meet stakeholder requirements.

Efficient regulatory frameworks reduce time and cost pressures for the resources sector, offering a competitive advantage and better promoting low-risk investment in the resources sector.

They also provide industry with the certainty required to invest in the “enabling” infrastructure required for resources sector projects. Infrastructure is critical to the development of resources projects and will continue to play a critical role in connecting the resources sector to the world, and the world to regional and remote communities.

SACOME welcomes the opportunity to make this submission reflecting the South Australian resources sector’s priorities to the Australian Government Productivity Commission’s inquiry and remains committed to working with all stakeholders to improve regulatory outcomes.

2. Scoping the study and defining key concepts

The South Australian resources sector is diverse.

The Commission proposes to align the scope of resources for review with the Australian and New Zealand Standard Industrial Classification of the mining industry.

This classification covers coal, oil and gas (conventional and unconventional), iron ore, other metal ores including gold, silver, bauxite, uranium, mineral sands and construction material mining.

Prima facie, this provides the Commission with a wide-ranging definition of resources to focus on in its review.

SACOME notes that the proposed definition of mining excludes smelters; manufacturers that produce mineral origin products; and energy infrastructure companies whose activities are integral to the South Australian resources sector.

SACOME suggests that incorporating the perspective of these operators could provide further insight to the review process; and supports a broadening of the definition of mining to include these aspects of the South Australian resources sector.

2.1 Is the Commission's proposed scope for the study appropriate? Is it too broad or too narrow? How should the proposed scope be adjusted?

SACOME's view is the Commission's proposed scope of resources sector activities and regulations is broad enough to allow it to adequately consider all the regulatory impacts the resources sector face throughout the lifespan of a project.

A broadening of the definition of mining to include smelters; manufacturers that produce mineral origin products; and energy infrastructure companies will allow for a more comprehensive review into resources sector regulation in Australia.

2.2 Should the Commission's definitions of the concepts of broader impediments and community engagement and benefit sharing be refined? If so, how?

SACOME's view is that the Commission's definitions of the concepts of broader impediments; community engagement and benefit sharing is appropriate.

2.3 Are there other relevant reviews that the Commission should be aware of, including ones being conducted overseas?

SACOME welcomes the Commission's commitment to a broad inquiry.

As referenced in SACOME's 2024 Vision document road, rail, port and power infrastructure are critical for the development of resources projects, particularly greenfield resource provinces³.

The National Resources Statement objective of opening new resources' provinces will require the Commonwealth Government to work closely with State and Territory Government's to develop a best practice approach.

The South Australian State Government has also recently released the "Sustainably Growing Energy and Mining in South Australia" consultation paper as part of the South Australian Growth Agenda⁴.

The South Australian Growth Agenda has identified the resources sector as one of the sectors with the ability to contribute to a sustainable 3% annual rate of economic growth.

This consultation paper is further to the South Australian 20-Year Infrastructure Strategy⁵ being developed in parallel with a number of other strategic planning initiatives such as the PIRSA Regional Development Strategy⁶.

In its submissions to these respective processes, SACOME has called for Governments to take a more interventionist approach in looking at ways to drive infrastructure development as an enabler of State and economic growth outcomes^{7 8}.

SACOME has called for the South Australian Government to develop a "Resources Infrastructure Corridor" framework to facilitate infrastructure investment by holistically resolving land access, approvals and logistics issues.

The importance of regulatory settings to investment should not be underestimated, in particular development of appropriate regulatory frameworks to reduce the time and cost of project development. Regulatory settings are an important consideration and play a direct role in the "investment attractiveness" of a given jurisdiction.

³<https://www.sacome.org.au/2024-vision.html>

⁴http://www.energymining.sa.gov.au/_data/assets/pdf_file/0003/348915/Energy_and_Mining_Growth_Strategy.pdf

⁵https://infrastructure.sa.gov.au/_data/assets/pdf_file/0019/98101/Discussion-Paper-WEB.pdf

⁶<https://s3-ap-southeast-2.amazonaws.com/assets.yoursay.sa.gov.au/production/2019/05/22/01/44/32/7aabfdd0-c736-4734-a564-2a52be9daeb5/Regional%20Development%20Strategy%20FINAL%20MAY%202019.pdf>

⁷https://infrastructure.sa.gov.au/_data/assets/pdf_file/0018/111492/SACOME.pdf

⁸<https://www.sacome.org.au/submissions.html>

3. Identifying best-practice regulatory approaches

The resources sector requires stable regulatory procedures and processes around key issues including: land access; exploration; tenure; development; and operations.

SACOME support regulations that are efficient and effective in allowing our member companies to make investments and to conduct their operations with certainty.

SACOME member companies do not seek to diminish environmental and social safeguards or standards but to create a more efficient process in meeting regulatory objectives through the removal of unnecessary processes.

3.1 The Commission is seeking feedback on whether the criteria outlined in table 1 are appropriate for assessing whether regulation is best practice?

Table 1 in the Commission's Issues Paper provides wide-ranging assessment criteria for assessing whether regulation is best practice.

SACOME member companies have suggested that the assessment criteria could be improved by including:

- *Regulatory design: Regulation is not duplicated in another Act or set of regulations.*
- *Regulator conduct: Applications are assessed in a timely manner.*

4. To what extent are current regulatory processes consistent with best practice?

The South Australian Department of Energy and Mining (DEM) frameworks for best practice regulation are outlined on their website⁹ ¹⁰.

The regulatory principles that DEM adheres to are: effectiveness; accountability; enforcement; and engagement.

The South Australian resources sector is highly regulated and good regulatory design is of paramount importance to ensure economic, social and environmental outcomes continue to be met.

The majority of the South Australian resources sector regulatory frameworks are fit for purpose, however, there are opportunities to improve regulatory outcomes.

For instance, the imposition of legislated moratoria on the extraction of unconventional gas in the South-East of South Australia is an example of regulatory creep that overlaps with established approval processes.

Land access is fundamental to the viability of the resources sector in order for the resources sector to continue to explore, develop and produce.

Poorly designed, complex and unclear regulatory frameworks lead to regulatory confusion and sovereign risk concerns, with the potential to negatively impact on resources sector investment.

As a broad principle SACOME supports progress towards best practice regulation developed in consultation with industry.

4.1 The Commission is seeking feedback on how jurisdictions design regulation that affects the resources sector. What are the consequences of identified instances of poor regulatory design for regulatory outcomes, investment in the sector and broader community outcomes? How could shortcomings be identified?

Mining Act 1971 (SA)

The Commission has referenced the review of the *Mining Act 1971 (SA)* (Mining Act) in South Australia in its Issues Paper.

The *Statutes Amendment (Leading Practice in Mining) Bill 2017* was introduced to the South Australian Parliament in late 2017. This included proposed amendments to the *Mining Act 1971*, the *Mines and Works Inspection Act 1920* and the *Opal Mining Act 1995*.

⁹http://www.energymining.sa.gov.au/minerals/mining/mining_regulation_in_south_australia/best_practice_regulation

¹⁰http://energymining.sa.gov.au/petroleum/legislation_and_compliance/petroleum_and_geothermal_energy_act_and_Regulations

This Bill passed in the House of Assembly in 2017 but lapsed in the Legislative Council when Parliament ended prior to the 2018 election.

The Marshall Government committed to reviewing the proposed amendments and stakeholder feedback received during the 2017 engagement process, and the *Statutes Amendment (Mineral Resources) Bill 2018* was introduced to the Parliament on 2 August 2018, reflecting these commitments.

The *Statutes Amendment (Mineral Resources) Bill 2018* passed the South Australian Legislative Council on 17 October 2019.

SACOME made recommendations to the review that proposed improved approvals processes and modernisation of the Mining Act in line with best-practice in other Australian and international jurisdictions.

SACOME acknowledges the passage of the Bill as a positive first step in modernising the Mining Act and is committed to working with government and all other stakeholders on further reform.

SACOME reiterates the importance of continuing the comprehensive reform of the Mining Act to streamline approvals and clarify land access concerns as a means of promoting regulatory best practice and economic investment in the State.

Land Access/Moratoria

The South Australian resources sector has experienced opposition to development proposals, particularly in locations where multiple land users hold differing viewpoints on the legitimacy of a proposed development.

Questions have been raised by local community members, farmers, environmental activists, regulators and members of parliament on the issue of land access for resources sector development projects.

Examples include:

Oil and Gas

- Oil and Gas exploration in the Limestone Coast region;
- Oil and Gas exploration in the Great Australian Bight;

Mining

- Underground gold mining in the Adelaide Hills;
- Open pit mining on Yorke Peninsula;
- Open pit mining on Eyre Peninsula.

Some stakeholder groups have called on politicians to impose moratoria on activities like unconventional gas extraction and banning offshore oil exploration and production.

An example of this is the imposition of a 10-year ban on exploration of unconventional gas in the Limestone Coast via legislated moratoria.

The imposition of this legislative change creates investment risk concerns for the resources sector and impacts on how jurisdictions are perceived as an investment destination.

The imposition of a moratorium on hydraulic fracking across the Limestone Coast in the South-East of South Australia sets a precedent whereby the State Government is willing to impose legislation banning resources projects in the face of political pressure in other areas of South Australia.

The resources sector acknowledges and understands the importance of community and stakeholder engagement during project development; however, it is important to fully consider the implications that abrupt changes can have in damaging investment confidence and perceptions of jurisdictional stability.

4.2 The Commission is seeking feedback on approaches to regulator governance in jurisdictions in Australia and overseas. What have been the consequences of identified instances of poor regulatory governance, including unnecessary duplication, for regulatory efficacy and efficiency and for investment in the sector? How can identified shortcomings be remedied? The Commission is also interested in the different approaches have taken to recover costs. Should "user pays" be applied more broadly?

Environment Protection and Biodiversity Conservation Act (EPBC Act)

The EPBC Act is consistently put forward by the resources sector as a prime example of unnecessary regulatory duplication.

SACOME supports harmonising processes under the EPBC Act to reduce costs on the resources sector without compromising the environmental and social concerns of all stakeholders.

SACOME reiterates its call that the *Environment Protection and Biodiversity Conservation Amendment (Bilateral Agreement Implementation) Bill 2014* ('the Bill') was intended to give legislative effect to draft bilateral agreements between the Commonwealth and the South Australian Government for streamlining approvals under the EPBC Act and creating a single, State-based approval mechanism. This process remains split between State and Commonwealth regulators.

In a 2014 red-tape review of the EPBC Act, the Commonwealth Government calculated that a 'one-stop-shop' for environmental assessment and approvals would produce a benefit of \$426 million in regulatory and business costs.

The recently announced EPBC Act review is welcomed by SACOME and provides an opportunity to drive greater regulatory efficiency.

Programs for Environment Protection and Rehabilitation (PEPRs)

The 2019-2020 South Australian State Budget introduced a new fee for submitting or reviewing PEPRs, with this new structure to come into effect on 1 January 2020.

SACOME is not opposed to cost recovery for assessments and approvals of PEPRs given resources sector projects generate a private benefit for proponents and therefore any associated cost should not be borne by the wider community.

However, the new fee structure establishes a 'fee for service' arrangement, and SACOME member companies have requested the implementation of quicker turnarounds for the processing of PEPRs.

Feedback from industry members has broadly been that a fee for service arrangement is supported where it can reduce the time associated with securing regulatory approvals.

5. What are the broader impediments materially affecting investment?

SACOME submits the two major impediments materially affecting resources sector investment in South Australia are infrastructure (including water availability); and energy security and affordability.

SACOME has consistently advocated that road, rail, port and power infrastructure are critical for the development of resources projects, particularly for greenfield resource provinces.

SACOME's Energy Policy 2019 aligns with its *Powering Ahead – South Australian Resources Sector 2024 Vision* in articulating strategic investment in energy affordability¹¹.

SACOME suggests that the "investment attractiveness" of a jurisdiction should be an overarching consideration for the Commission, taking into account factors such as energy availability and price; requisite infrastructure; and regulatory settings that reduce project development timeframes.

5.1 The Commission is seeking examples of government activity beyond resources sector specific regulation that influences investment, particularly where that activity represents a major impediment. How important for investment are these impediments? How could these impediments be reduced?

Infrastructure

Existing South Australian mineral and petroleum projects are well-understood by both industry and government and provide a baseline for strategic planning.

Significant work has been undertaken by industry and government to define the location of economic resources across the State. This has produced a sound knowledge of demonstrated mineral and petroleum reserves; and a high-quality collection of geoscientific data showing prospective areas of the State.

South Australia's jurisdictional challenges continue to operate as a deterrent to investment.

In contemplating ways to drive new economic growth, the key challenge is in bringing identified but stranded resources to market, which is fundamentally a problem of infrastructure.

These challenges include deep cover, remoteness of project locations, the cyclical nature of commodity prices and a lack of existing infrastructure which has meant that

¹¹ <https://www.sacome.org.au/energy-policy.html>

investors are unwilling to fund projects that are marginal compared to other Australian/global prospects.

The South Australian Government has historically taken a facilitative approach to attracting investment in 'economic infrastructure', relying on operators/investors to fund infrastructure necessary for project development.

This approach has also meant that when commodity prices have entered an upswing, the lack of available infrastructure to bring product to market has resulted in a lost economic opportunity as the infrastructure necessary to take advantage of price cycles has not been in place.

The South Australian State Government has set, over the next 5-8 years, an ambitious 3% GSP growth target for the State. It is therefore reasonable to ask whether this facilitative approach is enough to meet the 3% growth target.

Resolving the 'chicken and egg' dilemma of resources project development in South Australia is a core challenge, as developing the State's 'stranded' resource wealth provides a realistic means of achieving the State Government's 3% growth target.

Mapping of the near-and long-term economic returns for planning and investment in infrastructure development will better allow for prioritisation of project development and coordination with key stakeholders like the Commonwealth Government and Infrastructure Australia.

The development of 'enabling' infrastructure also fits neatly with the Commonwealth Government's objective of opening new resources provinces as detailed in the National Resources Statement and provides a strong basis for collaboration between governments.

SACOME submits that the Commission could focus on resolving regulatory impediments to infrastructure development to assist the development of South Australian resources projects and to drive state and national productivity outcomes.

SACOME also emphasises the importance of maintaining 'economic infrastructure' so that existing resources projects can continue to operate efficiently.

Regional and remote roads are of critical importance to major operators and these roads have continued to degrade in recent times. This has resulted in vehicle damage, increased travel times and safety concerns for the transport of sensitive commodities.

The significant state and national road maintenance backlog are a material challenge to immediate and future productivity.

Energy

The energy needs of the resources sector are distinct given:

- the importance of energy prices as a component of business viability;
- the scale of resources operations;
- the quantity of energy required to power them;
- the consequences of an interruption to supply;
- the importance of energy as a pre-requisite to project development; and
- the scale and cost of energy infrastructure investment required for project development.

Accordingly, the policy settings relevant to the energy supply chain are of critical importance.

A lack of clear direction at the Federal level resulted in Australian States and Territories pursuing their own energy policy agendas with a range of unplanned consequences.

The lack of a clear, agreed national energy policy has led to government investment in state-owned generation projects; the offer of financial incentives and subsidies for private generation; and the energy market operator having to issue direction to ensure reliability and security of supply.

The outcome of this disparate approach has been the rapid, uncoordinated development of subsidised renewable energy generation; the retirement of aging coal-fired generation plants (due to the economic impact of new renewable generation); and a National Electricity Market (NEM) that has been forced to reconceptualise itself in the context of increasing amounts of non-synchronous generation and a tightening supply/demand balance.

These effects have wide-ranging implications for the whole of the Australian economy, including future investment by major resources sector operators.

Long-term consistency in national energy policy is needed to resolve the regulatory and policy uncertainty that has operated as a disincentive to investment in energy generation.

6. Best-practice community engagement and benefit sharing?

There are various legal and regulatory frameworks that necessitate resources sector operators to engage with the community they operate/or propose to operate in.

SACOME member companies understand the importance of community engagement and overwhelmingly engage in open and thorough negotiations with all relevant stakeholders at the earliest possible stage of the project cycle.

The community engagement models of these member companies have allowed for relationships between the resources sector and communities to develop over time to one of increasing cooperation and collaboration. In some cases, these engagement processes have been held up as 'leading practice' examples of how to engage with communities.

SACOME understands that successful relationship building facilitates project development and mutually beneficial outcomes for all stakeholders.

6.1 The Commission is seeking examples of both effective and best practice community engagement and benefit sharing practices, including with Indigenous communities, in Australia and internationally, and examples that are problematic?

SACOME member companies are key stakeholders in the communities they operate in, a large majority of which are in South Australia's regions, with resources projects located in the Regional Development Australia areas of the Far North; Yorke and Mid North; Whyalla and Eyre Peninsula; and the Limestone Coast.

As regional stakeholders, SACOME member companies invest in their communities through employment, procurement of goods and services, community partnerships and sponsorships, contribution to regional infrastructure and provision of mineral and petroleum commodities to regional supply chains.

While the perception of resources projects is that they are temporary due to their finite operational life, they are often multi-generational in nature. Rather than being an 'outsider' in these communities, the resources sector is an active community member and neighbour.

Community Engagement and Development

The resources sector has invested heavily to support regional communities and has helped to develop community partnerships to address fundamental social issues, improve quality of life, and build community capacity.

The Mining Minds and Time for Wellbeing programs are examples of a new generation of community partnerships that are funded by BHP but driven by local communities. Mining Minds is focused on education, including childhood, adult and

leadership education, while Time for Wellbeing is a community health and wellbeing program.

Transparency and Disclosure

For decades, the resources sector has led the way in disclosure and engagement with all interested parties from government to individual families to activist groups and NGOs.

The resources sector has implemented corporate reporting initiatives in such areas as health, safety, sustainability, community and climate change that have transformed global reporting in other sectors.

The sector continues to develop proactive and engaging approaches to transparency and disclosure.

Hillgrove Resources instigated the formation of the Kanmantoo Action Group to monitor dust and measure impacts on community health and lifestyle. Data was independently supplied to the group from the laboratory. Known as 'fingerprint free' data, this approach engendered trust and set a new standard of disclosure and transparency.

Inclusion and Diversity

Improving the diversity of the workforce is a key issue for the resources sector and a critical element in attracting the best and brightest minds to the resources industry, now and in the future.

There are a number of areas in which the resources sector is leading the way. From indigenous employment, attracting skilled migrants from overseas and closing the gender gap, the resources sector continues to invest heavily in this space.

Indigenous employment is a key focus for the resources sector, sharing the economic benefits of resources development and building long-term individual and community capacity.

At Jacinth-Ambrosia, Iluka Resources has partnered with the Far West Coast (FWC) Aboriginal Corporation through the FWC Iluka Liaison Committee to deliver positive socio-economic outcomes. As a result, Jacinth-Ambrosia operations has achieved a rate of Aboriginal employment at or above 20% for the past five years.

7. Conclusion

SACOME welcomes the opportunity to make this submission to the Productivity Commission's resources sector regulation inquiry and supports the Commission undertaking a comprehensive review of the regulatory landscape affecting the resources sector industry in Australia.

SACOME member companies are a cornerstone of the South Australian economy, contributing to the civic and economic well-being of the communities it operates in and of the nation.

SACOME supports the development of regulations that reflect best practice; reduce red tape; and result in clear and transparent regulatory frameworks that balance stakeholder requirements.

Efficient regulatory frameworks reduce time and cost pressures for operators, offering a competitive advantage and encouraging investment by the resources sector.

SACOME remains committed to working with all stakeholders to improve regulatory outcomes.