

22 March 2019

Mr David Smith
Director General
Department of Mines, Industry Regulation and Safety
Mineral House, 100 Plain Street
East Perth WA 6004

Mr Mike Rowe
Director General
Department of Water and Environmental Regulation
Prime House, 8 Davidson Terrace
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Via email: streamlinewa@treasury.wa.gov.au

Dear Mr Smith and Mr Rowe

STREAMLINE WA – REQUEST FOR REGULATORY REFORM PROPOSALS

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia. CME is funded by its member companies who are responsible for most of the State's mineral and energy production and employment of the sector's workforce. In 2017-18, the value of royalties received from the sector totalled \$5.8 billion, accounting for 19 per cent of State Government revenue.^{1 2}

CME appreciates the opportunity to provide early input into Streamline WA. With an estimated \$81 billion of prospective projects in the pipeline for the Western Australian resources sector,³ this initiative is a timely opportunity to streamline regulatory processes across whole-of-government. Alignment of regulatory objectives, processes and timeframes across different branches, agencies and tiers is welcome. Reducing and removing costly and ineffective regulation will assist in realising productivity improvements for both project proponents and public sector agencies.

Australia's institutional burden of government regulation has room to improve in attracting investment.^{4 5 6} The burden of legislative, regulatory and administrative processes (red tape) needs to both stabilise and reduce to ensure the Western Australian resources sector remains competitive and sustainable.⁷ CME has long advocated for public sector reform, which will increase the efficiency and effectiveness (quality and sustainability) of regulation practices to support the local industry to remain globally competitive and attract new investment into the State. Current regulatory and licensing frameworks can be complex and bureaucratic, often overlapping with Commonwealth requirements, contributing to *ex-ante* delays of up to almost five years.⁸

¹ Excludes contributions via State taxes and levies.

² DMIRS, *WA mineral and petroleum – Statistics digest 2017-18*, "October 2018.

³ DMIRS, *On the rise – Gas projects push WA projects*, Prospect, March 2019.

⁴ World Economic Forum, *The global competitiveness report 2018*, Insight Report, October 2018.

⁵ Allianz Group, *Allianz risk barometer – Top business risks for 2019*, 8th report, January 2019.

⁶ KPMG, *Australian mining risk forecast 2018*, March 2018.

⁷ PwC, *CEOs' curbed confidence spells caution*, 22nd Annual Global CEO Survey, January 2019.

⁸ Economic Regulation Authority, *Inquiry into reform of business licensing in WA*, draft report, October 2018.

In preparing this submission, CME has sought feedback from member companies (hereafter referred to as proponents) operating across different commodities. We have aggregated their concerns into five common themes and proposed respective solutions. The reforms suggested are high level, with benefits anticipated for all stakeholders involved.

CME's key regulatory challenges for reform include:

1. Poor agency communication, collaboration and coordination;
2. Duplicated and non-value adding assessment and reporting processes;
3. Delayed assessment timeframes and unreasonable conditions;
4. Ineffective and inconsistent risk-based assessments; and
5. Limited integration of various databases and automation of online assessments.

Given the number of public sector reviews in the past, it is important systemic failings previously identified are considered. Evaluation of performance and process outcomes achieved from these previous reforms should shape the strategic direction of Streamline WA. Many of our key proposals in this letter echo the findings and recommendations previously made by the Red Tape Reduction Group in 2009, Special Inquirer in 2018 and Economic Regulation Authority in 2019.

For reform to be successful, agencies need a culture of regulatory stewardship grounded in continuous improvement, as well as sufficient resources to implement their regulator functions within reasonable timeframes. CME looks forward to ongoing engagement and consultation on the matters discussed in this letter.

1. Poor agency communication, collaboration and coordination

There appears to be a lack of clearly defined and well-understood procedures for referring assessments to other agencies for advice. If there is a Memorandum of Understanding between particular agencies they are not consistent in their application, and officers are often unaware of their existence. This inconsistency or absence of formal protocols has contributed to a practice of "referrals within referrals" for a variety of opaque reasons, enabling agencies to "stop the clock" and effectively draw out assessment timeframes without negatively affecting reported performance. With no statutory timeframes imposed on inter-agency referrals, there is limited evidence of agencies demonstrating best practice principles of transparency, accountability and regulatory stewardship in these circumstances.

There is also considerable overlap and "scope creep" of agencies outside of their legislated responsibilities. This is of particular concern when the overreach is outside of their expertise and creates conflicting assessment requirements for proponents to address, e.g. water quality limits. This practice does not encourage communication or collaboration between agencies, nor provides consistency in how assessments and site inspections are conducted.

CME's key proposals for reform include:

- Clearly define procedures and legislate statutory timeframes on inter-agency referrals, with public reporting on performance to encourage good governance and ownership;
- Clearly delineate overlapping interagency responsibilities and enable assessments to continue concurrently referrals, rather than sequentially; and
- Implementation of an effective and functional lead agency should provide a consistent and simplified whole-of-government approach to regulation. Alternatively, an assigned case manager with the requisite industry knowledge to guide assessments from a whole-of-project lifecycle would achieve a similar outcome.

A service delivery model focused on proponents demonstrates proactive collaboration, providing an opportunity to educate and assist the industry and community to understand the value of good regulation and effective use of taxpayer funds.

2. Duplicated and non-value adding assessment processes

Overlap and instances of duplication exists across various assessment processes and statutory reporting obligations. Compliance to these requirements can be onerous and rigid for both proponents and agencies as an ongoing “check box” exercise, running the risk of poor regulation practices and detracting resources away from core businesses. Proponents currently provide the same or similar information to various branches and agencies under different legislative mechanisms and reporting timeframes, e.g. Annual Environment Reports.⁹ Duplication of information is neither efficient nor effective in achieving improved outcomes for the environment, community or government. It is also not necessarily clear if the information requested is useful or meaningful in influencing ongoing regulation (feedback loop to provide a nexus between past and future assessments). A whole-of-government strategy to managing natural resources needs to be legislated through amendments to ensure regulatory decision-making sits at the appropriate level within the most appropriate agency.

Through bilateral agreements, CME recognises there has been a reduction in duplicated regulation vertically. Reform is needed however to reduce legislative overlap between State agencies. For example, if a higher-order Act clearly and completely regulates a matter, it should take precedence over other applicable Acts.¹⁰ Where overlap is necessary, the enforcement of the prevailing Act should determine the minimum scope of complementary assessment required. This will serve to foster proactive collaboration between agencies and reduce the burden on proponents.

Similar to the Landgate model, our proposal for reform is a single online portal for proponents to access and apply for a range of similar assessments. This would achieve the following benefits:

- Lower cost of preparing assessment information through enabling a “single point of truth”;
- Improve visibility of how assessments are progressed through a dashboard view;
- Centralise and remove duplication of requests for additional information on proponents;
- With improved visibility it may drive accountability and regulatory stewardship in agencies; and
- Increase process efficiencies by sharing common information between agencies.

3. Delayed assessments and unreasonable conditions

CME supports introduction of “deemed approval” mechanisms to provide certainty on assessment timeframes, where appropriate. Where the risk is low according to predetermined categories or triggers, mechanisms for deemed approvals, refusals and renewals of assessments should occur by default once a specified period has lapsed.

Where there are open-ended circumstances with no statutory timeframes or triage available, introducing mechanisms to compel agencies to reach a decision or provide advice in a timely manner is fair and reasonable. Currently, the Appeals Convenor cannot force a decision by agencies, with appeal processes under Part V of the *Environmental Protection Act 1986 (WA)* taking in some circumstances up to three years to resolve.

If legislative, regulatory or administrative requirements change whilst an assessment is in process, to reduce the incidence of counter productivity with proponents returning to “square one”, reform should consider introducing grandfathering provisions to recognise efforts undertaken to date. If not, in these circumstances a concession for requesting variations is suitable.

CME’s other key proposals for reform include:

- Legislate amendments to standardise assessment timeframes to calendar days across agencies (consistent with practice by industry and other tiers of government, rather than business days which can be inconsistent in meeting stakeholder expectations);
- Standardise timeframes for proponents to reasonably respond to notices of requests for information on complex and lengthy assessments; and

⁹ For example Programme of Works, Mining Proposals, Ministerial Statements, Work Approvals, Water Licences and Permits, Native Clearing Vegetation Permits, Mining Rehabilitation Fund and State Agreement Acts.

¹⁰ Heritage, water, industrial buffers and planning, land and vegetation clearing.

- Increase the flexibility for approval conditions to be modernised to reflect project phases maturing from planning, construction, operation, decommissioning to rehabilitation. Often proponents are required to report on Ministerial conditions that are outdated and no longer applicable in demonstrating outcomes are being achieved.

4. Ineffective and inconsistent assessment processes

Currently there is no standardised policy framework used by officers and branches across different agencies to inform risk-based assessments (desktop or site inspections), which are effective, fit-for-purpose and/or reasonably appropriate. Contingent on the officer's skills, industry knowledge or technical expertise, disconnect between agencies and with proponents can widen. This typically means a high subjectivity in regulating a range of industry sectors. Officers therefore tend to be risk averse,¹¹ even when it is a routine exercise or the likelihood of occurrence and magnitude of impact or harm is low. A culture of risk aversion thus favours a practice of disproportionate overregulation, which may include protracted requests for additional information from proponents or primary and secondary referrals to other agencies for advice. This contributes to poor clarity and certainty on how assessments are determined as approved, rejected or renewed. Pronounced incidences of these inconsistencies occur when one officer will have minor findings in one year whilst another officer in the subsequent year will have major findings.

To increase transparency of decision-making processes, there should be clear reasoning for inter-agency referrals and assessment determinations communicated to proponents. If internal policies or Australian Standards are referenced to support extension of time or refusal rationales, where relevant these should be made freely available to proponents to view and comment on. Enforcing compliance to a benchmark that is not readily accessible by proponents is unreasonable. Providing this type of feedback on an ongoing basis would enable proponents to submit future applications with improved quality and certainty. It may also reduce the need to refer assessments to other agencies, as well as reduce the burden on proponents to navigate unnecessary compliance.

CME's key proposal for reform is clearer guidance and standardised training provided to officers on interpreting legislation, their common application to specific industries and effective use of risk-based assessment frameworks to guide decision-making processes. These reforms would help to reduce the obscurity and variability of risk-based assessments conducted behind "closed doors".

5. Limited integration and automation of online processes

CME appreciates efforts to date by agencies to digitise information access and improve administrative efficiencies. Readily available regional and geological datasets promotes exploration investment. There is still, however, a number of processes and database queries that are done manually and separately.¹² This is an opportunity to take a whole-of-government approach to sharing information across fragmented data sets, legacy systems and disparate processes. Automating checks and balances of data between various branches and agencies will increase the reliability and efficiency of assessments, and in turn reduce the resourcing demands and charges levied on proponents for such routine tasks. In today's modern economy, it is vital that relevant business activities can be conducted online in efficient, intuitive, and functional ways and irrespective of location.

Our key proposals for reform include:

- Commit to digitising all assessments by a future date, including administrative processes such as online payment systems;
- Invest in data matching protocols that allow disparate legacy systems to speak to one another, enabling auto filling of assessments and reducing the need to change systems to retrieve required information such as tenement maps and titles; and

¹¹ Government of Western Australia, *Reducing the burden – Report of the Red Tape Reduction Group*, Department of Treasury and Finance, February 2010.

¹² For example, extracting information from legacy systems that are not integrated or compatible with processes.

- Standardise data entry fields, impose minimum required sections and streamline compatible file format attachments for online applications to enforce systematic completion of assessments prior to submission.

The recent announcement of initiatives such as the National Resources Statement, WA Future Battery Industry Strategy, Westport Strategy and Australian Future Mines Centre are positive signs for continued economic prosperity of the State economy. Deregulation and microeconomic reform needs to occur to support competitiveness, diversification and growth. Streamline WA is a welcome opportunity which CME looks forward to contributing meaningfully to.

CME would welcome the opportunity to participate in any working groups established.

Should you have any questions regarding this letter, please contact Linh Nguyen, Policy Adviser, Economic Competitiveness on (08) 9220 8513 or l.nguyen@cmewa.com.

Yours sincerely



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