2016 Federal Election Policy Priorities

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Leading growth and prosperity for South Australians through a strong resources industry

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1. Exploration Development Incentive

The scheme as it currently exists expires in June 2017. SACOME seeks a review of the scheme in 2017 to determine its effectiveness and recommend improvements as necessary with a view to continue the scheme post 2017.

SACOME recommends the removal of the cap on the deductable exploration expenses (presently $100 million over 3 years) which limits the effectiveness of the scheme by reducing the ability of companies to raise capital for Greenfields exploration expenditure because of the uncertainty for investors.

2. Reform to the Tax System

SACOME supports a comprehensive reform of the tax system at a Federal level to improve efficiency, enabling the removal of regressive taxes (e.g. stamp duties, payroll tax, and other inefficient and economically regressive taxes) by the States

SACOME also contends that a reduction in corporate income tax would encourage further investment in Australia and encourage companies to head quarter their operations in Australia if the taxation rates were sufficiently competitive.

3. Infrastructure for Resource Development

SACOME recommends the federal government utilise bodies such as, but not limited to, Infrastructure Australia and EFIC to provide funding arrangements to stimulate Infrastructure for Resources projects in SA.

4. Petroleum Resource Rent Tax (Low Profit Offset)

SACOME recommends that the Petroleum Resource Rent Tax (PRRT) should have a low profit offset mechanism whereby profits below $50 million are not subject to the PRRT to encourage investment by junior petroleum companies.

5. Remove all legislative impediments to uranium mining and nuclear fuel cycle

SACOME recommends the removal of references to uranium mining and milling, from the definition of 'nuclear action' and consequently a matter of national environmental significance (Section 22) under the Environment Protection and Biodiversity Conservation Act (EPBC Act). This would not detract from the already rigorous environmental assessment and approvals in place for mining and ore processing.

SACOME seeks the repeal of section 140(A) and associated sections 37J and 146M of the EPBC Act to enable a future nuclear industry in Australia. This is justifiable on the basis that the market should decide whether any or all of the nuclear fuel cycle is viable in Australia.

The current legislative impediments distort the market and means that Australia has missed out on a number of investment opportunities, most notably the opportunity, on several occasions, to build a uranium enrichment facility in South Australia which would be contributing several billion dollars annually to the state's economy.

6. Workplace Relations

SACOME supports reforms to industrial relations that will improve the sector's international competitiveness given the global nature of the resources industry.

Reform needs to ensure the sector has flexibility to react to rapid changes in economic conditions and commodity price cycles.

7. Native Title

SACOME recommends an increase in resourcing and funding to Aboriginal and Torres Strait Islander Representative Bodies to assist in the resolution of overlapping claims and negotiation of agreements to facilitate access to land.

SACOME recommends continuance and increased funding to the Native Title Assistance Scheme to support agreement negotiations.

8. Diesel Fuel Credit

SACOME recommends that the Fuel Tax Credit scheme for all off road vehicles be retained as a means to ensure business inputs are not taxed and that the policy purpose of the diesel excise duty is maintained as a way for road users to contribute towards the cost of roads.

9. Coastal Shipping

Reform to coastal shipping continues to be a high priority for the resources industry and should be revisited by the Federal Parliament. Costs for shipping solely within Australian waters is much higher than shipping from Australia to China or vice versa. This exposes companies using Australian raw products and processing/manufacturing at another location in Australia to be disadvantaged compared with undertaking the processing/manufacturing off shore.

10. Electricity Policy oversight

The functioning of the National Electricity Market should be reviewed to ensure that the market operates to the benefit of end users and the Federal Government should encourage collaboration of the States through the COAG Energy Council to consider changes necessary to the National Electricity Market to address network stability and lower prices.

Federal Government energy policies should also be reviewed to ensure policies do not distort the energy market to the extent that it adversely impacts cost, reliability and security of supply.

Whilst South Australia may benefit most at this point in time from any changes to the National Electricity Market, all other states (to varying degrees) are following behind South Australia and will be affected by higher costs and reliability issues. For example all states now have summer peak which was only evident in South Australia at the time of the establishment of the National Electricity Market.

1) EXPLORATION DEVELOPMENT INCENTIVE (EDI) POLICY

Policy Recommendation

SACOME seeks policy commitment to the continuation of the EDI post the schemes expiration in June 2017.

SACOME recommends that the Federal Government review the EDI prior to the schemes current expiration date to identify improvements and efficiencies to the scheme.

SACOME recommends the removal of the cap on the deductable exploration expenses (presently $100 million over 3 years) which limits the effectiveness of the scheme by reducing the ability of companies to raise capital for Greenfields exploration expenditure because of the uncertainty for investors.

Overview

Junior resource companies typically have huge upfront exploration costs and little or no revenue. Prior to the implementation of the EDI, companies were unable to access tax deductions they would accrued if they were income-generating companies. The introduction of the EDI has given companies the option to issue shares with the potential for tax credits on exploration activities flowing through to investors. This has created an incentive for further shareholder investment which will increase the capacity of companies to finance exploration. The first year of the operation of the scheme has afforded companies the opportunity to issue more than $21 million in credits to shareholders on the back of $70 million of new Greenfields investment.

Economic conditions in 2016 for the Australian resources sector are more constrained then at the time of the 2013 election with companies experiencing significantly stressed operating budgets in a period of severely depressed commodity prices and limited capital investment.

The EDI needs to be re-enforced with a commitment to continue the scheme which has a demonstrated incentive to exploration and ensure the resilience and strength of the foundation of the resources sector into the future.

Policy Discussion

The Exploration Development Incentive has been operational for a full financial year now and awarded $21 million in EDI credits to 84 exploration companies with a modulation factor of 1. The EDI credits have come under the first year's cap of $25 million and this financial year's credits of $35 million to be utilised.

From the discussions and design of the EDI it was clear that the modulation factor, a result of the $100 million cap over 3 years, is a distorting and complex factor which has caused some companies to be hesitant to apply and submit an application for EDI credits. **SACOME's members have indicated that the modulation process (required only because of the cap) is a limiting factor in being able to successfully raise capital and attracting more capital for Greenfields Exploration is the main reason for the EDI.** SACOME argued during the design process that the cap is not necessary and that the first year's results are reflective of this. At very least the modulation factor should be set in advance to give certainty to investors at the time of investing, again encouraging more investment into Greenfields exploration.

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2) REFORM TO THE TAX SYSTEM

Policy Recommendations

SACOME supports a comprehensive reform of the tax system at a Federal level to improve efficiency, enabling the removal of regressive taxes (e.g. stamp duties, payroll tax, and other inefficient and economically regressive taxes) by the States.

SACOME also contends that a reduction in corporate income tax would encourage further investment in Australia and encourage companies to head quarter their operations in Australia if the taxation rates were sufficiently competitive.

SACOME recommends that the immediate deductibility for exploration is reinstated.

Overview

Taxation and royalties represent a large share of the total tax to profits ratio in Australia. Data from 2013-14 highlight that the industry is taxed 46.8% on profits and recently released taxation information from the ATO highlighted that mining companies are the biggest tax payers in the country. With the market in a downturn and commodity prices low inefficient and damaging taxes should be lowered or removed to ensure a competitive industry. Furthermore as exploration is a risky activity, taxation should reflect the nature of this business and ensure that deductions and incentives are maintained to ensure a viable sector.

Exploration requires a competitive taxation system to ensure capital flows are maintained to ensure that new deposits are discovered and existing deposits can be expanded. Immediate deduction of exploration expenditure is essential for a financially high-risk activity and should remain as an immediate deduction.

Policy Discussion

SACOME supports a comprehensive reform of the tax system to improve efficiency and include reduction in corporate and income tax, and the removal of regressive taxes (e.g. stamp duties, payroll tax, and other inefficient and economically regressive taxes).

The corporate tax rate will need to be benchmarked against the OECD average to ensure that it is not a burden on investment and adjusted accordingly. Presently the corporate tax rate is 4.5% higher than the average OECD rate (30.0% vs. 25.5%) and presents a barrier to investment as highlighted by Treasury in their discussion paper *Re:Think*. New Zealand underwent a tax reform where company rates were lowered resulting in economic gains.

The immediate deductibility of exploration expenditure acknowledges that:

- Such expenditure is an ongoing, necessary and ordinary business expense of a minerals company
- There are high levels of risk associated with exploration
- There is a need to encourage discovery of new deposits (where exploration has both public good and positive externality attributes)
- Typically, there will not be a successful mine resulting from most exploration expenditures and
- A competitive fiscal regime is a policy imperative for future mineral resource development.

Analysis commissioned by the Standing Council on Energy and Resources, comprising State and Federal Energy and Resources Ministers, noted correctly in April 2012 that: "Policies that are ignorant of the realities of exploration risk will cripple the industry and drive away investment".

Treasury and the Australian Taxation Office have officially detailed the measures for deductibility of exploration expenditure that have come into effect on the 14th May 2013, these are as follows:

There is no change for:

- Tangible depreciating assets.
- Intangible depreciating assets pertaining to exploration, geoscience, mining, quarrying, or prospecting information, or rights from an issuing government entity.

Changes to:

- Mining, quarrying or prospect rights acquired by a third entity.
    - The expenditure will now be deductable over the shorter of 15 years or the effective life of the mine, quarry or petroleum field for acquisition of rights
    - However, where the right is acquired by a third party in a 'farm-in, farm-out' arrangement it is still eligible for immediate deduction.

The objective of the changes is to halt the erosion of the immediate deductibility for exploration rules during the acquisition of mining rights from a 3rd party, whereas rights acquired from a government issuing body are still considered able to be immediately deductable. This according to the Treasury department will improve the sustainability of the concession.

However the change to the acquisition of rights lowers the investment attractiveness of a junior explorer that does not wish to develop a mine to sell the rights of the deposit or field to a 3rd party.

3) INFRASTRUCTURE FOR RESOURCE DEVELOPMENT

Policy Recommendation

SACOME recommends the Federal Government utilise bodies such as, but not limited to, Infrastructure Australia and EFIC to provide funding arrangements to stimulate Infrastructure[1] where a market failure exists for Resources projects.

Overview

The Resources and Energy Sector Infrastructure Council (RESIC), Regional Mining and Infrastructure Taskforce (RMIT) and the Roundtable for Oil and Gas have released reports on the state of South Australia's infrastructure, future requirements, and recommendations to the government and stakeholders. These reports identified key infrastructure requirements for logistics, energy and water for the resources industry.

The RMIT report also identified a range of infrastructure projects that are able to practically address the issues for the mining industry in the Far North, Eyre and Western, and Yorke and Mid-North/Braemar regions of SA.

Policy Discussion

There have been numerous studies in South Australia since 2005 outlining the infrastructure requirements for the resources industry in South Australia in terms of logistics, energy and water; the consistent priorities are the need for sealing the Strzelecki, a deep water port and upgraded transmission infrastructure.

The RESIC and RMIT reports have highlighted the need for both transmission upgrades in key regions and a deep water port capable of handling greater than 20 Mtpa in bulk commodity. The critical issue for the South Australian industry is the ability of the junior resource companies to afford the upfront costs of large infrastructure projects. Alone these companies cannot develop these large infrastructure projects alone but can invest in multi user infrastructure projects of comparable size.

The recent Ernst and Young 'Business risks in mining and metals 2013-2014' report identifies the main risk for emerging mining companies is capital allocation and access. Where there is a need to develop export and related mining infrastructure in South Australia in an environment where proponents of the infrastructure face capital raising challenges due to tight capital markets there will **exist a market failure that will require third party assistance to remedy.**

Two key examples are the need to develop multi-user deep water ports in the lower and upper Eyre Peninsula and the upgrade of the transmission network along the eastern flank of the Eyre Peninsula. The first example is due to the higher capital risks associated with junior companies and investment into billion dollar ports and the second is due to the Australian Energy Regulator limiting the amount of investment to be passed onto customers with respect to transmission upgrades and future power loads.

The Roundtable for Oil and Gas highlighted the need for the upgrade of the Strzelecki Track into Australia's pre-eminent onshore petroleum region; the Cooper Basin. The benefit to industry and government is recognised both in the context of current production and potential future production from unconventional reservoirs. The State Government's transport division currently allocates 20% of its annual road

[1] The infrastructure projects identified in Industry and State Government Infrastructure studies such as RESIC and Deloitte respectively.

maintenance budget on unsealed outback roads; and with the high freight movements into the Cooper Basin a significant proportion of this budget is allocated to maintenance of the Strzelecki. For industry, the unsealed track increases operational expenses and capital expenditure on heavy haulage machinery in the order of 50% and 30% respectively through factors, including:

- Limitations on road train size, although the track is gazetted to take road trains.
- Truck speed on average is 35-40 km/h from the Lyndhurst turnoff to the Moomba facility. To put this into perspective a one way trip is approximately 9.5 hours, and two drivers are required.
- The track is closed for around 45 days per year due to flooding and heavy rain. Haulage is diverted through Broken Hill to access the Cooper Basin from Queensland.
- Modification to trailers and prime movers.
- Significant damage to equipment and haulage machinery.
- Industry has significant annual operation expenses to maintain and repair the track.

4) PETROLEUM RESOURCE RENT TAX (Low profit offset) POLICY

Policy Recommendations

SACOME recommends that the Petroleum Resource Rent Tax (PRRT) should have a low profit offset mechanism whereby profits below $50 million are not subject to the PRRT to encourage investment by junior petroleum companies.

Overview

South Australia has recently identified key basins where there is significant potential for unconventional oil and gas production. In the Cooper Basin alone there is a potential for 29 billion barrels of oil and a further 2.6 trillion cubic meters of gas. In the Cooper Basin as well as other key onshore basins in South Australia large oil and gas companies operate alongside with junior companies. It is imperative that the junior oil and gas companies have the economic environment where they can expand and diversify into other fields and basins.

Policy Discussion

The importance of the junior sector is critical to the further development of the oil and gas industry in South Australia. The Australian Petroleum Production and Exploration Association (APPEA) state:

> *"The diversity in size and activity in the Australian petroleum industry has been a major contributor to its success. A number of Australia's major oil and gas discoveries have resulted from the innovative and pioneering work undertaken by junior exploration companies, while the prospectivity of some basins has been established by the work undertaken by small independent companies at the frontier stage of the exploration cycle. Of more recent times, junior explorers have underpinned […] the growth of shale gas activities.*
>
> *The challenges confronting small to mid-sized Australian companies in raising capital to fund exploration have been long standing, but have increased markedly over recent years."*

The continued discoveries in South Australian basins rely on a strong junior sector to pioneer into underexplored basins. In recent years however the cost of drilling has increased reflecting in higher exploration expenditure in official statistics and low meters drilled. A low profit offset will assist the junior sector in leveraging funding for further exploration programs.

Low profit offset mechanism was utilised in the Mineral Resources Rent Tax (MRRT) to shelter junior miners with low profits from the effects of the MRRT. This mechanism in isolation is one that the wider industry supports as a form of assistance to the junior sector as indicated in the Policy Transition Group discussions on the MRRT, and also outlined in the PTGs report to the Australian Government in December 2010 (p. 75-77).

A low profit offset shelter needs to be introduced to junior companies to assist them in completing wells in conventional projects where the cost per well can be in the range of $2 to $7 million and unconventional projects where the cost per well ranges from $10 to $14 million per well. While the PRRT does allow for this expenditure to be deductable against a PRRT liability a low profit offset will enable junior companies with small operations to not be unduly impacted by the PRRT.

5) URANIUM MINING AND NUCLEAR FUEL CYCLE

Policy Recommendation

SACOME recommends the removal of uranium mining, milling, decommissioning and rehabilitation from the definition of 'nuclear action' and consequently a matter of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). This would not detract from the already rigorous environmental assessment and approvals in place for mining.

SACOME seeks the repeal of section 140(A) and associated sections 37J and 146M of the EPBC Act to enable a future nuclear industry in Australia. This is justifiable on the basis that the market should decide whether any or all of the nuclear fuel cycle is viable in Australia.

The current legislative impediments distort the market and means that Australia has missed out on a number of investment opportunities, most notably the opportunity, on several occasions, to build a uranium enrichment facility in South Australia which would be contributing several billion dollars annually to the state's economy.

Overview

Presently approvals for uranium mining in South Australia automatically trigger the EPBC Act as they are a declared 'nuclear action' under section 22 of the Act. In the submission to the Hawke Review of the EPBC Act in 2008, SACOME made the point that:

Uranium mines should be assessed under the act as for any other mine where the action will have, or is likely to have, a significant impact directly on matters of National Environmental Significance. SACOME questions whether the act of mining uranium should, of itself, be classified as a 'nuclear action' for the purposes of the EPBC Act.[2]

The Final Report of the Hawke Review considered clarification of the scope of the matter of National Environmental Significance relating to nuclear action had merit and should be further explored[3].

The tentative findings of the South Australian Nuclear Fuel Cycle Royal Commission (Royal Commission) identified the duplication of regulation as a "significant barrier" to the viability of new uranium mines[4]. Adding that this dual approval for a similar process increases anticipated costs of and timeframes for regulatory approvals.

In 1998, the Australian parliament voted on legislation to centralise the task of radiation protection and safety to an independent regulatory body. It is in this piece of legislation that the outright prohibition on nuclear installations occurs that was then later adopted in the EPBC Act in section 140A.

The Australian Radiation Protection and Nuclear Safety (ARPANS) Bill entered parliament in 1998 without any prohibition on nuclear installations and passed through the House of Representatives several months later. It entered a Senate committee where an additional report was provided from minority parties (the

[2] Submission 111 to the *Australian Environment Act – Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*; South Australian Chamber of Mines and Energy, p 3.
[3] *Australian Environment Act – Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999*, p 100.
[4] Nuclear Fuel Cycle Royal Commission: Tentative Findings. Tentative Finding 18, p7. February 2016. Adelaide South Australia.

Australian Democrats and Greens) who held balance of power in the Senate and wanted the Bill to include a prohibition of nuclear power. The amendment was swiftly passed, on voice vote alone.

Policy Discussion

The mining and milling of uranium, of itself, creates no additional environmental risk than any other mining development, and should not be defined as a 'nuclear action' as fission does not occur.

Environmental matters as prescribed under the *Mining Act 1971* (SA) contain all the necessary requirements for a company to detail and outline the relevant impacts to land, air, water, soil, plants, animals, social, cultural, heritage features, visual amenity, economic and other land uses. These are addressed and described in detail in a projects Program for Environment Protection and Rehabilitation (PEPR) document.

Where a uranium mine proposal will have, or is likely to have, a significant impact on one of the other matters of national environmental significance it will trigger assessment under the EPBC Act.

Under the EPBC Act the South Australian government has signed with the Federal Government a bilateral agreement to assess projects, reducing duplication in the approvals process. The *Mining Act 1971* (SA) and associated mining lease assessment process have been accredited by the Federal Government to be used, even if the action is controlled. However the Environment Minister is still required to make a decision in addition to State Ministers and the Department of State Development to approve the project.

With an accredited approvals process under the EPBC Act, a mining process that co-coordinates approvals and seeks expert advice from the Department of Environment Water and Natural Resources (DEWNR), Environment Protection Agency (EPA), Safework SA, and Department of Planning Transport and Infrastructure (DPTI), and the involvement of the Federal Department of Environment, Department of Foreign Affairs and Trade (DFAT), and Department of Industry and Science (DIS) there is sufficient scope and evaluation to have an approvals process that is co-ordinated and approved from a single authority for environmental matters.

There is no need for a dual environmental approval from a State Minister that liaises with all relevant departments listed above and has the proper accreditations under EPBC Act Bilateral Agreements to ensure that State assessment processes meet best practice. Furthermore, if a project is in an area that is listed as a 'matter for environmental significance' it will automatically trigger an approvals process that involves the Minister.

Matters related to radiation safety are appropriately regulated through the *Radiation Protection and Control Act 1982* (SA) which adopts and implements national agreements through the COAG process.

The amendment of section 140A of the EPBC Act, and associated sections 37J and 146M, would enable the approval in South Australia of any nuclear facility including enrichment, fuel fabrication, nuclear power, and reprocessing. Submissions made to the Royal Commission and advice from legal members indicates that the ARPANS Act would not need to be amended with its prohibition under section 10 as this would only apply to Commonwealth land and not that held by the Crown. However, repealing s140A would require the establishment of a regulatory regime for the currently prohibited facilities to ensure confidence of management of the facilities therefore s10 of the ARPANS Act would need to be amended in that instance.

The tentative findings of the Royal Commission in relation to commercial viability if nuclear power generation[5] stated:

> *"While nuclear generation is not currently viable, it is possible that this assessment may change"*.

This assessment, and given the long lead times of such projects, makes it essential to plan now for when nuclear generation is viable by putting in place the necessary regulatory framework to allow for normal commercial decisions to be made. Not at the point of viability, for Australia may miss the opportunity.

For example, the UAE established a full regulatory regime and signed contracts for four Korean reactors within 4 years. The decision to develop a nuclear industry began in 2007 and begun construction of their first reactor in 2011 with the fourth starting in 2015.

[5] Nuclear Fuel Cycle Royal Commission: Tentative Findings. Tentative Finding 55, p13. February 2016. Adelaide South Australia.

6) WORKPLACE RELATIONS

Policy Recommendation

SACOME supports reforms to industrial relations that will improve the sector's international competitiveness given the global nature of the resources industry.

Reform needs to ensure the sector has flexibility to react to rapid changes in economic conditions and commodity price cycles.

Overview

The *Fair Work Act* has reduced choice and flexibility in employment arrangements and created a more adversarial bargaining system. It stifles direct engagement between employers and employees, impedes innovation, diverts managers from core business, prolongs business decision-making and reduces the capacity of firms to respond to changing market conditions.

A survey of the Australian industry undertaken by the MCA found the "workplace relations framework as second only to approvals processes and 'green tape' as requiring policy attention from government".

The same survey established that the key factors impeding productivity in the in the industry was delays in reaching agreements, restrictions on flexibility in work arrangements and a lack of productivity offsets in agreements.

The resources industry operates in a global economy and needs to be internationally competitive to support the creation of jobs and infrastructure, and continue to be a leading driver of the Australian economy. Australia has to compete with other jurisdictions and projects, even with in companies for capital, and policies that reduce the industry's ability to access capital will impede the development of the industry. Workplace relations is a critical element in determining this competitiveness. Accordingly, the workplace relations framework needs to be flexible, whilst maintaining reasonable workplace arrangements for workers.

Policy Discussion

The minerals industry's priorities for workplace relations reform include:

• A wider suite of agreement options – The object of the Fair Work Act states that statutory individual agreements 'can never be part of a fair workplace relations system'. This ignores ample evidence from within the minerals industry regarding the capacity of these agreements to provide attractive salaries and working conditions for employees, while facilitating flexible and productive workplaces. Earnings from individual arrangements in the mining industry are higher than those from collective agreements. Individual statutory agreements should be permitted as an agreement making option, subject to a robust 'no disadvantage test'. The sanctioned form of direct contractual agreement within the existing framework – Individual Flexibility Arrangements (IFAs) – are inadequate given they have proven to be very difficult to negotiate for anything other than relatively minor matters. More specifically, the value of IFAs has been diminished by stipulations that they cannot be offered as a condition of employment and can be terminated on just 28 days' notice. The industry supports proposed changes to the Fair Work Act in the Government's Fair Work Amendment

(Remaining 2014 Measures) Bill 2015, including to extend the period of notice for unilateral termination of an IFA and to provide clarity and certainty around allowed matters and the 'better off overall' requirement.

The Industry supports the Productivity Commission's reforms in this area (recommendations 22.1, 22.2 and 22.3), including to allow for a default termination period of 13 weeks, but with the capacity for employers and employees to agree at the formation of the agreement to a one year minimum period.

• More balanced union entry rules – Provisions relating to union access to workplaces should reflect the sensible arrangements that operated prior to the Fair Work Act, whereby a union has legitimate claims for access to a workplace where: the union can demonstrate that it has members on that site, and those members have requested the union's presence. These arrangements allowed union access to workplaces for valid reasons, where visits are conducted in a safe and orderly way and with appropriate checks on costs and complexities.

The industry supports the four proposed changes to the Fair Work Act in the Government's Fair Work Amendment (Remaining 2014 Measures) Bill 2015:

a. Repealing amendments made in 2013 requiring an employer or occupier to facilitate transport and accommodation arrangements for permit holders exercising entry rights are work sites in remote locations

b. Requiring that permit holders can only enter a workplace for discussion purposes if the permit holder's union is covered by an enterprise agreement or if at least one employee invites the union to send a representative

c. Returning to the rules on location of interviews and discussions in place prior to amendments in 2013, and

d. Expanding the Fair Work Commission's capacity to deal with disputes about the frequency of visits to premises for discussion purposes, including by no longer requiring the employer to demonstrate that the frequency of visits required a diversion of 'critical resources'. The Productivity Commission's recommendations in this area are more modest and include a similar proposal to give the Fair Work Commission more power to resolve disputes about the frequency of visits and a recommendation that unions without members at a workplace or not covered by an agreement should have visits limited to two every 90 days.

• Permitted matters – The Fair Work Act should make clear that permitted matters in enterprise are matters that pertain only to the employment relationship between employers and employees. They should not include items which pertain to relations between an employer and a union or operational, performance or other matters that are the appropriate responsibility of management. The issue of permitted matters in agreements lies at the heart of the system's functionality and performance. It has been nominated by industry as among the current regime's biggest impediments to productivity improvement.

• Adverse action provisions – The adverse action provisions of the Fair Work Act have opened the door to unmeritorious claims. The Fair Work regime allows for multiple reasons for taking action to be considered as material, with contravention if one or more of the reasons are proscribed. The scope of

'workplace right' is defined too broadly and the interaction of the reverse onus of proof on employers and the uncapped nature of potential compensation claims acts as a particular encouragement to unmeritorious claims. Adverse action provisions are too loose and too open to unintended consequences. They should be refocused around traditional freedom of association principles to prevent

genuine discrimination against employees based on the union or non-union status. The Productivity Commission has made some modest reform recommendations that address select shortcomings in the existing Fair Work regime (Recommendations 18.1-18.4). However, it has failed to adequately address the unintended and unmanageable consequences arising from the removal of an earlier qualification that applied; namely, that it is unlawful to take adverse action because a person is entitled to the benefit of an industrial instrument, or for reasons that include that matter, but such conduct is only unlawful if the 'sole or dominant purpose' was to avoid the instrument.

Note: This policy is adopted from the Minerals Council of Australia, Pre-budget submission 2016-17, February 2016

7) NATIVE TITLE

Policy Recommendation

SACOME recommends an increase in resourcing and funding to Aboriginal and Torres Strait Islander Representative Bodies to assist in the resolution of overlapping claims and negotiation of agreements to facilitate access to land.

SACOME recommends continuance and increased funding to the Native Title Assistance Scheme to support agreement negotiations.

Overview

SACOME has had an active role in assisting and supporting the use of Indigenous Land Use Agreements (ILUA) in South Australia as a means to resolving Native Title matters. These documents offer an alternative to Part 9B under the *Mining Act 1971* (SA) and the RTN provisions under the *Native Title Act 1993* (Cwth) where there exists a Native Title claim.

ILUA in South Australia are negotiated on a whole of claim basis which deliver efficiencies, and clear and positive outcomes for all parties to the agreement. These Framework ILUA's are pre-negotiated where all terms are negotiated upfront and once only. They promote the exercise of rights in a way that **advances economic development** through authorised activities being carried out in a sustainable manner for the benefit of current and future generations.

The number of overlapping native title claims are having an impact on the access to land for the exploration and development of resource projects in South Australia through the uncertainty of whom the correct group to be negotiating with. Overlap claims are affecting the efficiency of ILUA, which cannot be effected for the area of overlap.

Policy Discussion

In South Australia four (4) mineral exploration and two (2) petroleum conjunctive ILUA have been negotiated and registered with the National Native Title Tribunal. Three (3) of these are in their review period and three (3) new ILUA are of priority to the resources industry to be negotiated.

For Native Title Parties ILUA provides for, amongst other things, procedures protecting their rights and interests in the ILUA area in relation to the grant of tenements, leases and licences, and the carrying out of exploration activities under them.

For industry, a native title agreement is negotiated once. Companies signing on to the Agreement have the benefit of known and consistent conditions related to access and exploration activities, costs for entering into the agreement and of Heritage clearances, and production payments in the case of petroleum conjunctive agreements; the agreement covers all tenements in an ILUA area; provides for early exploration provisions; and agreed benefit sharing opportunities for Native Title Bodies.

As an example, the Kokatha Uwankara claim area is covered by 46 mineral tenements (exclusive of the 7 held by BHP Billiton) which would require a separate Part 9B agreement under the *Mining Act 1971* (SA) for each tenement at significant cost to both parties. In contrast the ILUA produces a single agreement for the whole of claim which owners of tenements are able to sign on to.

Whilst there is willingness of both Native Title Groups and SACOME to negotiate and review ILUA in good faith, preventing progress is a lack of funding and resourcing to the Native Title Groups. For industry these agreements are essential to facilitate access to land.

Funding to resolve overlapping claims is critical to resolving native title in South Australia, and effective and efficient land access arrangements.

8) DIESEL FUEL CREDIT

Policy Recommendation

SACOME recommends that the Fuel Tax Credit scheme for all off road vehicles be retained as a means to ensure business inputs are not taxed and that the policy purpose of the diesel excise duty is maintained as a way for road users to contribute towards the cost of roads.

Overview

The diesel fuel rebate is designed to credit mining companies with the 38.143 cent per litre excise that is included in Diesel fuel as this excise is intended to pay for maintenance of the Nation's roads. As mining companies primarily operate off-road this excise is refunded as a rebate.

Policy Discussion

Tax excise on diesel was introduced to help pay for public roads. The mining industry builds and maintains its own roads. Fuel tax credits ensure that fuel, as a key business input, is rebated. Rebates for fuel excise are a long standing feature of Australia's tax system, existing in various forms for diesel since 1957. The current fuel tax credit system – where tax on diesel is paid and later credited – is simply a means of streamlining government tax administration.

Fuel Tax Credits are not a "subsidy", as such. Like the GST system, fuel tax credits reimburse taxpayers for tax paid on a key business input. The purpose of the scheme is to remove the effect of fuel tax on business inputs to ensure that production decisions are not distorted. Treasury has stated unequivocally that:

> *"Fuel Tax Credits are not a subsidy for fuel use, but a mechanism to reduce or remove the incidence of excise or duty levied on the fuel used by business off road or in heavy on-road vehicles" (Treasury briefing, released under FOI, 2012).*

9) REFORM TO COASTAL SHIPPING

Policy Recommendation

Reform to coastal shipping continues to be a high priority for the resources industry and should be revisited by the Federal Parliament.

Costs for shipping solely within Australian waters is much higher than shipping from Australia to China or vice versa. This exposes companies using Australian raw products and processing/manufacturing at another location in Australia to be disadvantaged compared with undertaking the processing/manufacturing off shore.

Overview

SACOME gives its full support to renewed competition policy reform following the Harper Review. Laws associated with competition policy help to shape the business environment in which the resources industry operates. The Federal Government's move to adopt the majority of the Harper review's recommendations provides opportunity to develop a microeconomic reform agenda that focuses on productivity gains.

Policy Discussion

A critical element of competition reform agenda for the resources industry in Australia is reform to coastal shipping and should be revisited by the Federal Parliament.

SACOME on behalf of the SA resources sector supported the *Shipping Legislation Amendment Bill 2015*. The current regime has restricted access to shipping services, resulted in a doubling of costs and made it more difficult to source coastal shipping services when they are needed. The deadweight loss of the existing regulatory regime was highlighted in the Minerals Council of Australia submission to the senate rural and regional affairs and transport committee inquiry into shipping legislation amendment bill 2015. A recommitment from the Federal Government to a coastal shipping reform is vital considering that Australia's freight task is estimated to grow by 80 per cent by 2030.

10) ELECTRICITY POLICY OVERSIGHT

Policy Recommendation

The functioning of the National Electricity Market should be reviewed to ensure that the market operates to the benefit of end users and the Federal Government should encourage collaboration of the States through the COAG Energy Council to consider changes necessary to the National Electricity Market to address network stability and lower prices.

Federal Government energy policies should also be reviewed to ensure policies do not distort the energy market to the extent that it adversely impacts cost, reliability and security of supply.

Whilst South Australia may benefit most at this point in time from any changes to the National Electricity Market, all other states (to varying degrees) are following behind South Australia and will be affected by higher costs and reliability issues. For example all states now have summer peak which was only evident in South Australia at the time of the establishment of the National Electricity Market.

Overview

The introduction of renewable energy sources, namely wind and solar PV, combined with the closure of baseload power plants and heavy reliance on a single interconnector are manifesting a scenario in South Australia where large industrial users are moving to complex electricity contracts and decreasing grid security by relying on single assets and variable renewable generation.

Policy Discussion

The South Australian electricity network has significantly changed over the past decade where generation of renewable sources has increased from 10% in 2007 to 41% in 2014-15, the closure of Torrens A, Playford, and Northern Power stations, increase in capacity over the Heywood interconnector and market prices that have increased both in the spot and long term markets.

The changing grid has led to studies to assess the evolving grid and the consequences for stability, reliability and security. Australian Electricity Market Operator (AEMO) and ElectraNet undertook a study (2016) to look at the integration of Renewable Energy integration in South Australia. The report found that the system can operate securely and reliably with a high percentage of wind and solar PV as long as one of two conditions is met:

1) Heywood interconnector (SA-VIC) is operational

2) Sufficient synchronous generation is connected and operating in the SA system

On 1st November 2015 the Heywood interconnector suffered a fault (human operator error) and there was not sufficient synchronous generation at the time to supply the South Australian load. As such frequency control breakers tripped protecting the grid from a frequency shift and large load users were informed to cut load. The outage lasted for 35 minutes however in this time processing plants that were forced to shut down required longer to start up once power was restored resulting in some cases of full days' loss of production.

The loss of Heywood interconnector at a time when there was not sufficient wind generation or synchronous generation available resulted in emergency protocols that caused major disruptions in industrial activities. The AEMO ElectraNet report also noted that with the increasing changes in generation

towards wind and solar PV there will be an increasing reliance on the Heywood interconnector, a single asset. While AEMO can justify that their reliability standard is met as only 35min in the total year was offline the reliance on a single asset is worrying from a point of view of grid stability.

Furthermore, the introduction of low operating cost generators reduces the capacity for baseload generators to feed into the grid consistently, effectively increasing their costs through the need to amortise their overheads over insufficient production into the grid. Their required capacity to meet baseload generation at times when renewable do not produce or during peak times cannot be justified by the operators. These operators are then forced out of the market, resulting in higher electricity prices to the consumer.

The imminent closure of Northern Power Station and the potential closure of Torrens Island A means that there are few retailers that can offer hedges and long term contracts. The market after the closure of Northern will mean that industrial users will have to look to two remaining at either AGL (Torrens Island B) or Origin (Osbourne) for hedges and long term contracts. This is already resulting in wholesale contract being offered to large manufacturers at double their previous contract pricing.

The result of Federal and State Government policy to encourage renewable energy and a lack of forward planning has resulted in a scenario where South Australian businesses and industry are reliant on a single asset to ensure security and a market that has pushed out much needed assets to provide certainty in electricity costs.