

24th March 2016



Hon Robyn McSweeney MLC
Chair, Legislation Committee
Legislative Council
Parliament House
West Perth WA 6005

Email: lclc@parliament.wa.gov.au

Dear Chair

Mining Legislation Amendment Bill 2015

Thank you for the opportunity to comment on the *Mining Legislation Amendment Bill 2015*.

The Association of Mining and Exploration Companies (AMEC) is the peak national industry body representing hundreds of mining and mineral exploration companies, many of which have projects in Western Australia.

On behalf of its wide membership base AMEC has had a direct interest in ensuring that industry has clarity and certainty in public policy matters, and that the development approval process is efficient and effective.

This objective is in taxpayers' interest as more efficient processes will stimulate investment, exploration, discovery, growth and productivity and generate significant social and revenue dividends to the State and nation. The Amendment Bill is in the public interest.

AMEC has been a proactive participant in the Reforming Environmental Regulation (RER) agenda which was created as a direct result of findings in the WA Auditor General's Report *Ensuring Compliance with Conditions on Mining, September 2011 (OAG Report)*.

At the time, AMEC expressed disappointment with the findings of the OAG Report in that it relied too heavily on the Department of Mines and Petroleum's (DMPs) supposed poor execution of the regulations rather than whether the regulatory system was systemically allowing serious environmental and financial risks to accrue to the Government.

No evidence was, or has been provided to show that there is a contemporary failure of the mining and mineral exploration industry.

AMEC responded by providing support for a robust, transparent, efficient and best practice environmental regulation model which would be risk based outcome focussed.

Association of Mining and Exploration Companies

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Submission to the WA Legislative Council Standing
Committee on Legislation re:

Mining Legislation Amendment Bill 2015

ASSOCIATION OF MINING AND EXPLORATION COMPANIES

March 2016



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Prepared by

Association of Mining and Exploration Companies Inc (AMEC)

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1. INTRODUCTION

Thank you for the opportunity to comment on the *Mining Legislation Amendment Bill 2015*.

The Association of Mining and Exploration Companies (AMEC) is the peak national industry body representing hundreds of mining and mineral exploration companies, many of which have projects in Western Australia.

On behalf of its wide membership base AMEC has had a direct interest in ensuring that industry has clarity and certainty in public policy matters, and that the development approval process is efficient and effective.

Red tape reduction and increased efficiency within those processes are crucial to achieving such an outcome.

2. BACKGROUND

AMEC has been a proactive participant in the Reforming Environmental Regulation (RER) agenda, which was initiated by then Minister for Mines and Petroleum Hon Norman Moore, as a direct result of findings in the WA Auditor General's Report *Ensuring Compliance with Conditions on Mining, September 2011 (OAG Report)*.

At the time, AMEC expressed disappointment with the findings of the OAG Report in that it relied too heavily on the Department of Mines and Petroleum's (DMPs) supposed poor execution of the regulations rather than whether the regulatory system was systemically allowing serious environmental and financial risks to accrue to the Government.

No evidence was, or has been provided to show that there is a contemporary failure of the mining and mineral exploration industry in meeting its compliance obligations.

AMEC also expressed strong opposition to any cost-recovery model to fund the proposed RER agenda. AMEC remains firmly of the view that any form of cost-recovery should be a last resort revenue option and at least after all other alternatives have been fully assessed (such as removal of duplication, increased efficiency, organisational restructure, delegation of responsibility).

The Department then embarked on a long and extensive consultation process which was based around the principles of transparency, accountability, predictability, proportionate and targeted.

AMEC responded by supporting the concept of a robust, transparent, efficient and best practice environmental regulation model which would be risk based outcome focussed.

AMEC contended that the introduction of a risk based outcome focussed assessment and compliance regime should result in process, procedural and system efficiency improvements within DMP, and reduce unnecessary costly delays.

It was not envisaged that there would be a requirement for additional DMP resources, or an extra cost impost to the taxpayer or industry.

During the subsequent comprehensive consultation undertaken over the past four years through the formation of a Ministerial Advisory Panel (MAP) and associated Working Groups (Compliance, Governance and Approvals) and Department meetings, AMEC has been able to drive several recommendations including:

- Establishing clear and appropriate environmental objectives as the underpinning principle of a risk based assessment and compliance framework,
- Defining a 'low impact' threshold for the risk based assessment approach,
- Design and implement the Mining Rehabilitation Fund (MRF), and relinquish over \$1 billion in environmental security bonds,
- The duration of Programmes of Work being extended from one year to four years, avoiding the need for annual renewal and assessment,
- A review and reduction in the number and type of standard conditions on approvals,
- A review and removal of duplication and overlap between DMP and other approvals agencies (resulting in the need for amendments in the way in which Native Vegetation Clearing Permits are processed; increased use of parallel processing and escalation policies),
- Improved timelines and efficiency performance indicators and reporting across Government approvals agencies,
- Combined compliance reporting, and
- On-line lodgement and tracking of applications.

Some of these recommendations have received action and are ongoing, and others will be effected through passage of the *Mining Legislation Amendment Bill 2015*.

3. EXECUTIVE SUMMARY

AMEC is supportive of the current Amendment Bill before the Legislative Council, subject to the following recommendations:

1. **A threshold of 10 hectares per tenement per year be included in the definition of 'low impact activity',**
2. **Removal of the proposed 'prescribed assessment fees' for Programmes of Work and Mining Proposals,**
3. **Exploration and prospecting activities are excluded from the requirement to prepare an Environmental Management System,**
4. **Removal of reference to 'statutory' guidelines, and**
5. **AMEC is closely consulted on the development of the associated Regulations following passage of the Bill.**

4. SPECIFIC COMMENTS ON THE AMENDMENT BILL

Low impact activity

The AMEC response to a DMP low impact activity Discussion Paper indicated that it is crucial a fair and realistic definition is determined in order that the potential efficiency and productivity benefits from introducing a risk based outcome focussed regime can be fully achieved.

AMEC considers that Schedule 1 Clause 2(2) of the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004 (NVC Regulations)* is relevant as it provides a precedent for the definition of “*Low Impact of other mineral or petroleum activities*”.

That Clause sets out that it is an offence to clear native vegetation unless it is of a kind prescribed. It then provides a threshold of 10 hectares per tenement per financial year.

The *Mining Rehabilitation Fund* also provides a precedent in that an MRF liability does not arise if the estimated rehabilitation liability threshold is less than 25 hectares for ‘exploration’ activities.

AMEC notes that the Minister for Mines and Petroleum has already announced an interim threshold of 1.5 hectares. We consider that such a threshold level is completely inadequate and extremely precautionary, and contrary to other contemporary legislative requirements.

AMEC has therefore recommended the low impact definition in the *NVC Regulations* (ie a threshold of 10 hectares) should be considered the minimum threshold for low impact activities adopted in the *Regulations* to the *Mining Act*.

It is noted that use of the ‘low impact activity’ definition will not be applicable if the activity is in an ‘environmentally sensitive area’ (ESA). Consultation needs to be undertaken prior to the finalisation of any prescribed list of ESAs, particularly in respect of the basis on which the ‘*Identified Banded Iron Formation Ranges of the Midwest and Goldfields*’ are possible inclusions on that list. AMEC is still unaware of any robust science that would support the listing as environmentally sensitive land.

When implemented this will allow a proponent to immediately commence that low impact activity upon notification to the Department. This will have the effect of significantly reducing the number of Programme of Work (PoW) applications being assessed by the Department, resulting in:

- Efficiency savings to the Department,
- Providing the Department with the flexibility of transferring assessment staff to compliance work, or a combination of both to meet workload demands, and
- Reducing unnecessary approval delays and red tape.

Recommendation:

- 1. A threshold of 10 hectares per tenement per year be included in the definition of ‘low impact activity’**

Prescribed assessment fees

AMEC is not supportive of cost recovery or the introduction of ‘prescribed assessment fees’ for an activity which is considered to be a core function of DMP as the regulator. In this case, this refers to assessment of Programmes of Work and Mining Proposals.

In early 2012, the Department presented an overview of the RER agenda which included a proposal to increase the number of environmental inspectors and strengthen the enforcement capacity within DMP by 30% to 40%, thereby increasing the cost of the Environment Division

from \$10 to \$21 million. DMP advised at the time that the funding would be met through government appropriations and / or through the introduction of industry-based fees.

AMEC sought an explanation and requested a copy of the business case for the introduction of any form of cost recovery. The scant information subsequently provided to AMEC was not and is still not acceptable in explaining why cost recovery from industry was necessary, other than to meet a Departmental budget shortfall.

Following considerable silence and presumably internal review, the Minister for Mines and Petroleum then advised that there was still a budget shortfall of \$4.8 million and that there was an intention effective from 1 July 2015 to impose a cost of \$590 to assess each Programme of Work application, and \$6,950 to assess each Mining Proposal.

AMEC found this proposition to be entirely unacceptable and suggested to the Minister that any additional costs associated with the RER should be met from the Consolidated Account or alternative sources. The Minister subsequently agreed not to implement the assessment fees from 1 July 2015.

It is understood that this matter is still under consideration by the Minister.

Sections 103AO and 103AP (and other consequential amendments) relating to prescribed assessment fees should be deleted from the Amendment Bill.

Recommendation:

- 2. Removal of the proposed 'prescribed assessment fees' for Programmes of Work and Mining Proposals**

Environmental Management Systems

AMEC notes that Section 103AZ of the Amendment Bill refers to a requirement that environmental management plans will be required '*in relation to carrying out mining operations on the land subject of a mining lease*'.

Section 8 of the Mining Act refers to ground disturbance, removal of overburden and processing activities as '*mining operations*', as opposed to *fossicking, prospecting and exploration for minerals*.

AMEC therefore understands that exploration or prospecting activities are excluded from the requirement to prepare an environmental management system. In any event, the major proportion of exploration and prospecting activities have minimal impact on the environment, and are subject to standard compliance and rehabilitation requirements. There is no need for such activities to develop an Environmental Management Plan.

Recommendation:

- 3. Exploration and prospecting activities are excluded from the requirement to prepare an Environmental Management System**

Guidelines

Clause 103AM states that '*the Director General may approve guidelines for the purposes of this Part*'.

AMEC appreciates the fact that Government agencies produce guidelines and information statements to assist proponents in the development approval process. However, some of these guidelines have become statutory based and extremely prescriptive.

The Department of Mines and Petroleum (DMP) has developed a large number of guidance documents, some of which could be consolidated. For example, it has been suggested by AMEC that consideration should be given to the merits or otherwise of consolidating the Mine Closure Plan Guideline and the Mining Proposal Guideline as they do have some duplication in content.

These guidance documents also appear to be becoming extremely extensive and complex.

In 2015 DMP released extremely detailed prescriptive Mine Closure Plan Guideline spanning 100 pages (<http://www.dmp.wa.gov.au/documents/ENV-MEB-121.pdf>).

DMP is now reviewing its Mining Proposal Guidelines, with the initial draft being 93 pages.

AMEC is concerned with the use of such prescriptive statutory guidelines, and their subsequent impact in increasing administration and compliance costs and the associated delays. Guidelines should be treated as information statements and not be statutory based.

The creation of prescriptive and complex guidelines is creating a paper 'train wreck' and opportunity for external consultants and advisors as they produce additional, and sometimes unnecessary information for approvals agencies.

Although AMEC is supportive of the use of guidelines for general assistance purposes, the proposed Clause 103AM in the Amendment Bill will result in all guidance material being 'mandatory and statutorily' based. There will be no opportunity for adaptive management principles to be applied to suit special or individual situations or unforeseen circumstances.

AMEC considers that there should be greater separation between the use of general guidelines and the use of Statutory Regulations to avoid prescriptive assessment processes being adopted by Departmental officers.

Clause 103AM and other consequential amendments to Part IVAA of the Act should be removed.

Recommendation:

4. Removal of reference to 'statutory' guidelines

Regulations

The details surrounding the full implementation of the RER program are still to be finalised. This will be achieved through the Regulations, which are still to be prepared.

AMEC looks forward to further consultation when the Regulations are drafted following passage of the Amendment Bill.

Recommendation:

- 5. AMEC is closely consulted on the development of the associated Regulations following passage of the Bill.**

AMEC has contended that the introduction of risk based outcome focussed assessment and compliance processes should result in efficiency improvements within DMP, and not result in additional resources or costs to the taxpayer or industry.

During the subsequent comprehensive consultation undertaken through the formation of a Ministerial Advisory Panel (MAP) and associated Working Groups and Departmental meetings, AMEC has been able to drive a number of recommendations including:

- Establishing clear and appropriate environmental objectives as the underpinning principle of a risk based assessment and compliance framework,
- Defining a 'low impact' threshold for the risk based assessment approach,
- Design and implement the Mining Rehabilitation Fund (MRF), and relinquish over \$1 billion in environmental security bonds,
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AMEC is supportive of the current Amendment Bill before the Legislative Council, subject to the following recommendations:

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2. Removal of the proposed 'prescribed assessment fees' for Programmes of Work and Mining Proposals,
3. Exploration and prospecting activities are excluded from the requirement to prepare an Environmental Management System,
4. Removal of reference to 'statutory' guidelines, and
5. AMEC is closely consulted on the development of the associated Regulations following passage of the Bill.

I would be pleased to appear before the Committee to expand on the **attached** submission.

Yours sincerely



Simon Bennison
Chief Executive Officer