

To: Northern Territory Department of Environment, Parks and Water Security

Re: Water Regulatory Reform

20 September 2021

Introduction

AMEC appreciates the opportunity to provide comment on the Northern Territory Department of Environment, Parks and Water Security's (the Department) Water Regulatory Reform 2021-23 Information Paper (the Information Paper).

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry body representing over 400 companies across Australia. Our members are explorers, emerging miners, producers, and a wide range of businesses working in and for the industry, with 30 member companies actively exploring, mining and developing projects in the Northern Territory.

The mining and exploration industry make a critical contribution to the Australian economy, employing over 255,000 people. In 2018/19, these companies collectively paid over \$39 billion in royalties and taxation, invested \$36.1 billion in new capital and generated more than \$283 billion in mineral exports. In 2019/20, \$2.8 billion was spent on minerals exploration, representing an 18% increase from the previous year.

The Information Paper

General Feedback

AMEC is supportive of reforms to the *Northern Territory Water Act 1992* (the Act). Since the establishment of the Act in 1992, substantial reforms have occurred in the Northern Territory water policy. These reforms are welcomed as the broader regulatory environment shifts and the Act becomes more outdated. However, AMEC highlights a number of concerns in the Information Paper that could potentially have adverse impacts on Industry.

Policy and regulation that provides risk-based environmental protection is supported by AMEC. However, policy that is poorly implemented, and poorly managed can have significant adverse impacts on the mining and mineral exploration industry. A certain and transparent policy framework is vital to encourage investment into the Territory and support upcoming projects that will bring significant benefits to the Territory through royalties and job creation.

Hierarchy of Water Allocation

AMEC acknowledges the purpose of a hierarchy for water allocation in appropriately managing and prioritising water allocation, however we are surprised by the order of the Departments proposed hierarchy.

Ensuring that water resources associated with drinking water are maintained should be a priority for Government, so it is disappointing to see public water supply listed below rural stock and domestic use in the hierarchy for allocation.

AMEC notes that industries such as the pastoral industry are substantial water users and are much greater water users than the mining and mineral exploration industry. It is estimated that the daily water consumption for livestock can vary between 40L – 60L per cow.¹ Comparatively, one Reverse Circulation (RC) drill uses 1,000L – 2,000L a day. A typical cattle station of 19,000 cows is, therefore, estimated to use the same amount of water as 570 RC rigs in a day. It is unlikely that the Northern Territory has ever benefitted from 570 RC rigs operating in a year.

AMEC is also concerned that pastoral users remain exempt from water licencing under the new reforms. This is surprising as aligning reforms with national water industry best practice would include all water users.

Mining and Exploration

The Information Paper does not acknowledge the significant differences between mining and exploration activities, and their varying water usage requirements. As an example, mining activities traditionally operate in a fixed location, in high volumes and with a concentrated impact, whereas exploration occurs in itinerant locations, in low volumes, and with a distributed impact. AMEC suggests that mining and exploration be treated differently in the reforms, as this would be better representative of the significant difference in water needs and uses.

AMEC considers that water usage for mineral exploration should be permitted and managed through the Mines Management Plan. This would better align regulation with TERC Report's goal of a one-stop shop approach to engagement and regulation.

Review of Decisions

The Information Paper indicates that the power to review decisions will be transferred from the Minister to the Northern Territory Civil and Administrative Tribunal (NTCAT). AMEC considers the review of decisions to be a potentially complex and critical responsibility. This responsibility must therefore be held with the Minister, with the Minister's decision reviewable by NTCAT.

Definitions

The definition of a water resource is a concern for AMEC. The Information Paper provides the definition for a water resource as, *“surface water or groundwater; or a watercourse, lake, wetland or aquifer (whether or not it has water in it); and includes all aspects of the water resource (including water, organisms and other components and ecosystems that contribute to the physical stage and environmental value of the water resource)”*. AMEC considers that the definition's reference to all aspects of a water resources to be vague. Reference to organisms and other components and ecosystems that contribute to the environmental value of the water resource may create significant duplication with other existing legislation, such as the *Environment Protection Act 2019*. The Department must clarify what is covered under 'all aspects', as AMEC also questions whether this

¹ <https://futurebeef.com.au/knowledge-centre/water-requirements>

definition opens up to cultural aspects of a water resource. The potential inclusion of cultural aspects of a water resource will create a number of difficulties both for proponents and the Department, particularly when it comes to measurement and regulation of a water resource. This will also create further duplication of the *Environmental Protection Regulations 2020*, which require a cultural impact assessment to be included in an environmental impact assessment.

Additionally, AMEC finds the definition's inclusion of a water resource that does not have water in it to be too broad and will result in a great deal of confusion for Industry. This definition does not acknowledge the extreme seasonal variability in rainfall in certain areas of the Territory, specifically the Tanami region. During wet seasons, rainfall in the Tanami region can reach up to a total of 381mm in a single month.² Rainfall in this region varies drastically in both wet and dry seasons across years. In December 2020, the Tanami recorded a total of 281mm of rainfall in the month alone, compared to December 2019 when the region recorded on 26.4mm of rainfall in the month.² These extreme conditions lead to significant amounts of surface water and much of the region susceptible to flooding. However, in the drier seasons the Tanami is described as extremely arid. Between April 2020 and September 2020, the Tanami recorded only 21.2mm of rainfall.² For these areas of the Tanami, it would be inappropriate to consider arid areas as a water resource during periods where it does not contain water. It is important that a water resource is more clearly defined, so that Industry and Territorians are confident that water is properly allocated and does not result in over-allocation, such was the case for the Murray-Darling Basin.

The Murray Darling Basin Authority (MDBA) has identified that the challenging and highly variable climate in the Murray Darling Basin significantly affected the supply and availability of water. This, combined with water salinity issues, has resulted in high competition between water users and ultimately an over-allocation of water.³ In order to avoid a similar failure, it is important that the Department consider variable climates in the Territory when defining a water resource.

Furthermore, the Information Paper does not provide adequate definition for a 'material' change in reference to the definition of '*Interference with a waterway*'. AMEC urges the Department to provide more clarity regarding what is considered material. Similarly, the Information Paper does not provide any clarity on the definition of a waterway. Section 4 of the *Water Act 1992* currently defines a waterway to include a river, creek, stream or watercourse; a perennial or ephemeral natural channel; a perennial or ephemeral artificial channel that was constructed by altering or relocating a river, creek, watercourse or natural channel; a lake, lagoon, swamp or marsh in which water collects and that is connected to a river, creek, stream or watercourse; and a floodplain. While the Information Paper provides that a water resource is considered as a water resource whether or not it has water in it, the Information Paper is silent on how a waterway, that does not contain water, will be treated. Clarity is needed on what is required to trigger the determination of a waterway.

The current lack of information provided in the definition of '*material interference with a waterway*' is subjective, open to interpretation and creates both confusion and uncertainty for Industry.

² <http://www.bom.gov.au/jsp/ncc/cdio/cvg/av>

³ <https://www.mdba.gov.au/issues-murray-darling-basin>

Trade of Water

The trade of water is an important power to ensure that the benefits of water usage are maximised and encourage the most efficient usage of water resources. AMEC is supportive of the principles which promote the most efficient and beneficial uses of water, establish equitable allocation methods, and ensure markets are transparent in their operations.

It is important that a clear policy for water trading is developed to ensure that water is traded in fairness and good faith. This policy must align with the National Water Initiative's principles for water trading. However, if policy is poorly implemented it could potentially lead to complications. It is important the Department address these before the reforms are introduced.

AMEC is concerned that expanding the trade of water to occur outside of water allocation plans may result in private organisations with access to large amounts of water monopolising the market and being able to charge high prices. This will create a significant barrier for future market entrants. As identified in the TERC Report, '*projects and businesses needs access to water as a fundamental input and the cost of securing, transmitting and in some cases ensuring water is fit for its intended use impacts project economics and investment decisions*'.⁴ Water security is critical in ensuring that new market entrants can develop projects. Opportunities to monopolise the market will create significant barriers to future projects and impede growth in the Territory.

The current legislation does not treat all industries consistently. Pastoralism remains excluded from water licence requirements with water for stock bundled with domestic usage. It is unclear why residential usage of water and water for livestock, which is for a commercial business, are combined. A result of this definition is that water usage is not measured or even estimated. AMEC questions whether only a water licence holder will be able to trade water? This is unclear in the Information Paper. Given that water usage of some users is not measured, and thus not able to be accurately valued, this would create huge conflict and inefficiencies in the market.

The Information Paper is also unclear on how ownership will be recorded once water has been traded. The Department must clarify how the rights to water usage is recorded, and further how these rights are transferred when a property or tenement is sold or leased. The Northern Territory Water Regulatory Reform Directions Paper states that, '*Licence holders can trade water (within water allocation plan zones) and a water licence is deemed to have transferred with the sale of a property when the land title is transferred*', this is not elaborated in the Information Paper, nor is any detail given regarding if a water licence is transferred when land is leased or sold by the licence holder.

The case of the over-allocation of the Murray-Darling Basin is a prime example of the risks of poorly managed and inefficient water trading policies. The Australian Competition & Consumer Commission's Final Report on the Murray-Darling Basin water markets inquiry identified that market integrity and conduct were a key contributor to over-allocation of water.⁵ The Report made several recommendations to enhance the transparency, regulation, competitiveness, and efficiency of water trading markets. AMEC considers that water resources in the Northern Territory are already at risk of

⁴ https://ntrebound.nt.gov.au/_data/assets/pdf_file/0020/952301/terc-final-report.pdf

⁵ <https://www.accc.gov.au/focus-areas/inquiries-finalised/murray-darling-basin-water-markets-inquiry/final-report>

over-allocation, with reports that 38 of the 112 groundwater aquifers in the Northern Territory are over-allocated.⁶ It is critical that efficient safeguards are in place to ensure that water trading can occur efficiently without resulting in over-allocation, as currently safeguards and measures to protect water allocations in water trading markets are not addressed in the Information Paper.

Treatment of Water

The content of the Information Paper does not distinguish between different types of water, and therefore implies that all water is assumed to be equal. AMEC considers this to be a considerable flaw in the Information Paper. The Department must recognise, and clearly outline that not all water is equal in its potability, potential uses and allocation.

The quality of water has significant impacts on how water can be utilised. The mining and mineral exploration industry can, generally, use water that is of lower quality than what is required for domestic and agricultural use.⁷ The Information Paper does not seem to acknowledge that different water users require a different quality of water. Industry should be encouraged to use non-potable water through licence exemptions, leaving potable water for public consumption and agriculture uses.

Further, the Information Paper is silent on the use of recycled water. Water recycling systems are recognised as an intrinsic part of water efficiency in Australia. It is estimated that these systems have allowed for 80% of mine water to be supplied from recycled or low-quality water sources.⁸

AMEC recommends the Department review this to ensure that all water is not treated as equal in these ongoing reforms.

Transitional Arrangements

The transitional arrangement of new reforms is an ongoing concern for AMEC. It is critical that in implementing the significant number of reforms, that the Department ensure that the existing rights of explorers, developers and miners are not impacted.

The Information Paper provides little certainty as to how transitional arrangements will be managed, and how existing tenement holders will be impacted as this new impost on Industry is introduced. It is critical that companies who have developed business cases based on their current water rights are not affected.

Next Steps

AMEC would appreciate clarification from Government on what stage of the consultation process these reforms are in. The Information Paper omits timeframes for these reforms and, critically, further consultation prior to drafting is needed. As identified in our submission, there are significant gaps in the Information Paper, that have generated more questions than provided answers.

⁶ <https://www.abc.net.au/news/rural/2021-05-13/darwin-rural-water-aquifer-agricultural-development/100116664>

⁷ https://www.publish.csiro.au/ebook/chapter/9780643103283_Chapter_10

⁸ https://www.austrade.gov.au/ArticleDocuments/1358/water_in_mining_icr_webart.pdf.aspx

Closing comments

AMEC appreciates opportunities to work cohesively with the Department on the ongoing suite of Environmental Regulatory Reforms.

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