AMEC

To: Department of Mines, Industry Regulation and Safety

Re: Amendments to Regulation 169

Introduction

AMEC appreciates the opportunity to be consulted on this proposal and has been active in engaging with the Department of Mines, Industry Regulation and Safety since originally proposing these amendments at the June 2015 meeting of the then Mining Industry Liaison Committee.

The drafted amendments are supported by AMEC, with the exception of Regulation 168 (B) (2), which should either be removed, or the timeframe should be shortened to one to three days prior to the hearing.

About AMEC

The Association of Mining and Exploration Companies (AMEC) in the national peak industry body representing over 275 mining and mineral exploration companies across Australia, with the majority of member companies actively exploring, mining and developing projects in Western Australia.

The mining and mineral exploration industry make a critical contribution to the Western Australian economy, employing around 100,000 full time equivalents in 2018/19. These companies collectively paid over $6 billion in royalties and generated more than $107 billion in mineral exports.

In 2018/19, WA mining and mineral exploration companies invested $2.3 billion to discover the mines of the future.

Regulation 168 (B) (2)

It is unclear why the regulations need to specify 14 days to notify whether a lawyer or an agent will represent at a mention hearing. Industry considers a 14-day period as too long. It runs counter to the broader intention of streamlining these amendments, and the existing provisions regarding informality in Regulation 154 (1).

Please note, AMEC is supportive of Regulation 168 (C) which is for other hearings, but for a mention hearing the timeframe of 14 days is considered too long, and an unnecessary procedural burden. A shorter timeframe, such as 3 days would be considered appropriate, if a timeframe is needed.

Amendments are needed

The amendments to the Regulation are considered necessary to:

- Bring the Regulations in line with current practice in the Warden's Court. Agents commonly represent parties at mention hearings, especially if a negotiated outcome is anticipated. Matters that escalate and proceed to hearings (whether the hearing of an interlocutory matter or a substantive hearing) will continue to be briefed to lawyers, except where exceptional circumstances can be shown;

- Maintain the Warden's Court as a 'unique' jurisdiction, different from 'regular' courts. For example, regulation 154(1), which was introduced as part of the same amendment to the Regulations, provides that in the conduct of any hearing (which includes a mention hearing), the Warden is to act with as little formality as possible.
- Alleviate the need for unnecessary expense of parties formally engaging lawyers where a relatively quick, negotiated outcome is anticipated:
  - Thereby facilitating the resolution of routine matters in an expeditious and cost-efficient manner; and
  - allowing company staff/agents familiar with the relevant ground/tenements and issues to manage routine matters.
- Clarify the matters for which it is more appropriate for legal representation to be engaged and when it is required for agents to prove to the Warden that exceptional circumstances are such that they may represent a party before the Warden.

Amendments are needed

In the intervening five years since changes to Regulation 169 were first proposed at the Mining Industry Liaison Committee the need for these amendments remains undiminished.

The amendments are sensible, necessary and broadly supported by AMEC. The tightening of Regulation 168 (B) (2) would streamline the procedures in the Warden's Court.

For further information contact:

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