

**To: Department of Water and Environmental Regulation**

**Re: Waste not, want not: Valuing waste as a resource**

**17 December 2020**

## **Introduction**

AMEC appreciates the opportunity to provide a submission to the Department's Discussion paper 'Waste not, want not: Valuing waste as a resource', and the proposed legislative framework for waste-derived materials.

## **About AMEC**

The Association of Mining and Exploration Companies (AMEC) is a leading national industry association representing over 350 members from all around Australia. Our members are explorers, emerging miners, producers, and a wide range of business working in and for the industry. Collectively, these companies account for over \$100 billion of the mineral exploration and mining sector's capital value.

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.

## **Discussion Paper**

### **General Feedback**

AMEC welcomes opportunities to engage with the Department on the important issue of waste as demand for circular economies increases. This year we have also made submissions to the Department's Closing the loop consultation process, and the review of the Waste and Resource Recovery Act 2007. The ideas provided in both submissions remain relevant and consistent with our submission to this discussion paper.

The discussion paper proposes significant legislative amendments and reforms to achieve long-term objectives. We note there is no mention of proposed timeframes for conducting further consultation or development of the waste-derived materials Regulations and associated guidelines. AMEC would appreciate the opportunity to be involved in the development and implementation of these documents, which will underpin the regulatory framework industry will be regulated in accordance with, once assented.

### **Definitions**

The proposed amendment to the definition of waste to clarify that waste-derived materials (WDM) are waste, unless used in accordance with a relevant WDM declaration made by the CEO, is welcomed.

It is a necessary amendment to explicitly reference waste-derived materials in the two pieces of legislation which regulate waste.

The proposed expanded definition of waste, however, raises concern about the potential impact and unintended consequences that will arise for activities under the *Mining Act 1978*, and the coexistence of various definitions across other relevant pieces of legislation. These changes will have a conventional flow on effect to the levy. Has a cost-benefit analysis been undertaken to quantify this flow on effect?

As we have previously highlighted to the Department, clarification of the treatment of co-mingled waste is required, as this distinction will also have an impact on the administration of levies.

Additionally, the note on Page 5 of the Paper that “the wording for the new clause (c) is provided to describe the policy intent behind the amendment and may be subject to refinement and/or amendment in the drafting of legislative amendments” is conditionally supported by AMEC.

Should the wording be refined or amended, we request appropriate consultation be undertaken to ensure a holistic view of the changes and the ramifications of their implementation have been given due consideration by those likely to be impacted.

### **Resourcing**

AMEC continues to raise concerns with the Department about the capacity to resource current business operations. The overstretched resources within the Department creates significant delays, regulatory uncertainty and increased costs for industry across the State. We do not believe it is within the Department’s existing resourcing capacity to deliver the amount of proposed changes in this discussion paper, without impacting the Department’s day to day operations.

As the guidelines and Regulations are developed, it is recommended the Department increases its resources to meet expected increased demand. This resourcing should be maintained post-introduction, to enable the Department to meet approval and compliance timeframes.

### **Timeframes**

There is a notable absence of timeframes in the Discussion Paper. When creating Regulations and guidelines, industry requests the publication and consultation of proposed timeframes. The lack of timeframes or rationale behind timeframes is concerning for industry. For example, what will the time limits under which the storage of a WDM that would not trigger the requirement to hold a category 61A or 62 license be based on? To provide clarity, it is requested timeframes are discussed early in the consultation process.

Further, as addressed in the resourcing paragraphs, as the Department will be held accountable by all relevant stakeholders to the published timeframes, implementing reasonable, measurable and achievable timeframes that do not disadvantage any party is recommended.

### **Penalties**

The proposed penalties for breaches of conditions of a WDM are severe, at a \$50,000 fine and/or a daily penalty of \$10,000 for a breach for individuals, and a \$100,000 fine or a daily penalty of \$20,000 for a body corporate.

The monitoring and enforcement of environmental issues relating to waste in Western Australia are considered quite relaxed compared with other jurisdictions. From 2020-21, the maximum penalty

applied in Western Australia for illegal dumping was \$5,000. Most fines ranged from \$1,000 to \$5,000<sup>1</sup>. To increase that amount tenfold for an individual seems disproportionate. Industry questions the intent behind this increase, and is concerned that the substantial increase will not serve its intended purpose of disincentivising non-compliance, but will instead result in overzealous compliance requirements that add significant administrative burden.

AMEC recommends a more balanced approach to fines and penalties is adopted, with penalties commensurate to the level of noncompliance, and the impact of the noncompliance in question.

### **Cost recovery**

AMEC continues to oppose cost recovery to fund core Government activities. If cost recovery is used to fund the costs of assessing an application of a WDM determination as proposed, there is an expectation that applications will be assessed in a tight timeframe.

### **Geological repositories**

As recommended in our submission to the WARR review, geological repositories should be acknowledged in Australia's waste legislation. There are currently two operational facilities already within Western Australia, and this recognition will be prudent given the increasing demand for circular economies.

These facilities, such as Tellus Holdings' Sandy Ridge Facility, which has recently been cleared for 100,000 tonnes per annum of Class IV and V waste, serve the public interest and should be exempt from levies such as the waste levy. The work undertaken at this site to minimise Australia's hazardous waste, should be incentivised instead of subject to levies. We consider there is scope within the remit of this discussion paper and the subsequent review process to undertake these important reforms as new technologies and processing mechanisms emerge.

### **Final comments**

AMEC continues to engage with the Department on important regulatory reforms which will impact the framework which industry is regulated in accordance with. When undertaking reforms, it is important that stakeholders are actively engaged in consultation, so changes can be given due consideration and the practicality of their implementation can be robustly assessed. AMEC appreciates the opportunity to consult on this review, and requests ongoing involvement as the Regulations and Guidelines are developed.

#### **For further information contact:**

Neil van Drunen  
Manager, WA, SA, NT & Industry Policy  
AMEC  
0407 057 443

or

Samantha Panickar  
Policy & Research Officer  
AMEC  
08 9320 5150

---

<sup>1</sup> [Summary of Prosecutions - Department of Water and Environmental Regulation \(der.wa.gov.au\)](https://der.wa.gov.au)