

To: Department of Mining, Industry Relations and Safety

Re: Departmental Procedure – Minutes of Programming Directions (MOPDs)

15 March 2021

Introduction

AMEC appreciates the opportunity to provide a submission to the Department of Mining, Industry Relations and Safety (DMIRS) on the departmental procedure for the receipt and review of Minutes of Programming Directions (MOPDs). This is an important procedure which will directly impact the hearing of mining tenement applications and the future consideration of non-standard conditions and excisions.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry association representing over 350 members from all around Australia, with the majority of our members having project interests in Western Australia. Our members are explorers, emerging miners, producers, and a wide range of businesses working in and for the industry. Collectively, AMEC's member 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, and in 2018/19 collectively paid over \$39 billion in royalties and taxation. In 2019/20 resources companies invested \$35 billion in new capital and generated more than \$176 billion in mineral exports. \$2.8 billion was spent on minerals exploration in 2019/20, representing an 18% increase from the previous year.

Proposed MOPDs Departmental Procedure

General feedback

AMEC appreciates the Department's willingness to engage with Industry on the MOPDs Departmental Procedure.

We are not clear on the intent of the Department in introducing the new procedures. We broadly support measures to streamline processes and reduce duplication, but would like to request more clarity into the intent behind this reform, and if other similar reforms are currently being considered. The release of this document has highlighted some concerns that we consider needs further consultation prior to the implementation of this Procedure. Consequentially, AMEC cannot support the adoption of this procedure in its current form.

Administration and application of proposed amendments

Under current procedures and Part IV of the *Mining Act 1978*, the Mining Registrar conducts the due administration of MPODs with support from the Warden's Court Team within DMIRS.

The Warden determines whether a MOPD is valid.

Industry is concerned that the proposed process will create an additional layer of administrative burden, adding pressure to an already constrained agency. More clarity is requested as to who in the Department will be responsible for the review of MOPDs, and the criteria to be used to determine key contentious issues and identified inconsistencies.

The answers to these questions, the interpretation and application of these factors could lead to delays and increased costs to businesses and Industry. This outcome would be counterintuitive to the move towards streamlined processes, for no clear benefit.

Of greater concern than the increased clerical burden is that the Department will pre-emptively assume the role of the Warden by administratively removing “identified inconsistencies” and “contentious issues”. Firstly, the determination of these matters is within the remit of the Warden, not the Department; and secondly, if these areas are due to a perceived weakness in the Act, then steps should be taken to remedy the legislative framework.

Industry requests to be consulted on what Government has deemed to be the “contentious issues” and “identified inconsistencies” prior to the implementation of this procedure.

Excisions

It has become common practice for DMIRS to refuse excision of land from tenements. This creates the strange situation where the Government demands that a company pay rent on a part of the tenement, it would happily surrender, that it has applied to surrender, and is not being allowed to due to a new, but not explained, interpretation of the Act.

Industry does not consider that Mining Act Regulation 92, which pertains to the shape of tenements as being able to stop excisions from occurring. The phrase “other boundaries” as a reason for excision gives sufficient leeway of interpretation. An amendment of this Regulation, and of Section 57 should be prioritised by the Department, with due consultation procedures followed.

Warden’s Court

A review of the listed Warden’s Court hearing dates for 2021 found that there are usually three or four scheduled hearing dates in Perth courts per month, while regional courts have only one scheduled hearing date per month. The amount of matters listed for discussion at these regional hearings is generally quite high, creating long waiting times for new matters to be listed and granted a hearing date.

It is unclear from the provided documentation that the proposed MOPDs procedure will alleviate some of the pressure currently experienced by the Warden’s Court? As future Mention Hearings wait times continue to grow, Industry would welcome measures to address and improve these wait times, to provide more certainty to minerals projects and investment attractiveness.

Final comment

The proposed MOPDs Departmental Procedure has raised concerns amongst Industry, which the Department seems to tacitly acknowledge, of ‘inconsistencies’ and ‘contentious issues’. The

procedure does not resolve these issues, instead it delineates an administrative pathway to remove them from presentation and subsequent consideration by the Warden.

Industry requests that these issues be discussed and handled directly.

AMEC would welcome a further opportunities to work with the Department in an effort to streamline processes so we can sooner realise the many benefits that mineral exploration and mining projects offer to the community.

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