To: Environmental Protection Authority of Western Australia

Re: Reforms to Environmental Impact Assessment Procedures

31 May 2021

Introduction

AMEC appreciates the opportunity to provide a submission to the Western Australian Environmental Protection Authority (EPA) on the reforms to the suite of Environmental Impact Assessment (EIA) procedures. AMEC was engaged with the Department throughout the *Environmental Protection Amendment Bill 2020* consultation process, and requests continued engagement as the EIA processes are amended.

The grant of an environmental approval is the defining approval for the development of a mine. Without it, a mine cannot proceed. The environmental approval, more than almost any other, underpins a development's social license to operate.

Western Australia's environmental approvals framework is rigorous by global standards, and that rigor is supported by Industry as a competitive advantage. With this in mind, our commentary provided below does not seek to detract from the thoroughness and comprehensiveness of environmental approvals, but only to improve their transparency, efficiency and effectiveness.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry body representing over 375 member companies across Australia, with the majority having project interests in Western Australia. 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.

EIA Procedure Reforms

General feedback

AMEC appreciates the briefings the EPA has provided to our Association and members, on the proposed changes to the EIA procedures. Industry has a solid working history with the EPA and a range of other State and Commonwealth regulatory bodies, to maintain the protection of our environment, while permitting development of our natural resource projects.

Western Australia's legislative requirements are considered some of the most heavily regulated amongst mining jurisdictions, and there is often substantial overlap between State / Territory and Commonwealth requirements.

As an industry association, AMEC has longstanding objectives to:

1) Increase the State's economic growth through mineral exploration and mining activity, and

2) Reduce the cost of doing business in Western Australia.

The delivery of these objectives is contingent on a stable regulatory framework and policies that support growth and development of our sector. Industry complies with regulations and seeks to improve the way in which we can operate, to optimise opportunities for projects, the communities they are located within, and our overall State economy. Our ability to do so will be heavily influenced by due consultation processes that fully consider the vast potential impacts of changes, and the identification and careful implementation of a suitable path forward.

Broadly speaking, the current legislative and environmental regulatory framework is duplicative. This view has remained consistent across a number of Commonwealth and State-level reviews over a number of years. The Productivity Commission's 2020 Inquiry into Resources Sector Regulation found that "There is considerable scope to improve regulatory processes and reduce unnecessary burdens to encourage resources investment without diluting requirements to mitigate impacts on the environment, heritage, worker safety, landowners and communities[1]." These duplications and inefficiencies diminish certainty required for investment and project development, while increasing costs and prolonging the delivery of benefits that these projects provide. Industry welcomes the intent through the EIA reforms, to streamline processes, increase transparency, reduce duplication, and provide greater certainty for project proponents and investors.

Improvements to the Commonwealth – State environmental bilateral promise to alleviate some duplication. However, AMEC are concerned that the necessary Commonwealth legislative amendments will not progress and the sought State-Commonwealth environmental bilateral will not be achieved.

Another concern for Industry is the consistent backlog of applications to be processed by resource-constrained regulators continues to create extensive delays for industry. The addition of the planned significant reforms to the DMIRS and DWER workload will exacerbate the burden on their already constricted workforces, and likely result in further delays for industry. In AMEC's 2021 WA State Election Policy Platform[2], we recommended an additional 20 FTE for the Department of Water and Environmental Regulation to be able to meet current demand, and even more staff to implement reforms proposed under the Department's broader Streamline WA agenda. We are concerned that the boosting of complexity of reporting requirements will mitigate the positive affect of increased staffing.

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[1] https://www.pc.gov.au/inquiries/completed/resources#report (pg 2)
[2] https://secureservercdn.net/198.71.233.51/0h5.0cf.myftpupload.com/wp-content/uploads/2021/03/WA-Election-Platform-2021.pdf?time=1620829297

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In this submission we have provided responses to the 10 key questions outlined in the suite of documents from the EPA. Through these questions we have provided commentary on specific ideas presented in the 16 documents released for consultation.

10 QUESTIONS

1. Do you believe the amendments achieve the EPA's objective to have efficient processes and maintain strong environmental protection?

Western Australia's environmental framework has been highlighted as leading practice in the Productivity Commission's Resources Sector Regulation Report[3]. AMEC considers that the EPA, prior to these amendments, achieved the stated goal of maintaining strong environmental protection. However, there is room for improving this system to facilitate the development of projects in a more cost-effective manner, while meeting the EPA's environmental objectives. These improvements would focus on providing investment decision-making certainty, by conducting transparent processes which meet clearly defined timeframes, and efforts to reduce duplication.

Industry understands that EPA's primary objective is to ensure strong environmental protection is maintained and prioritised. Currently, we are legislated by a number of overlapping and often duplicative legislative requirements and practices, set by the Department of Mines, Industry Regulation and Safety (DMIRS), Department of Water and Environmental Regulation (DWER), Department of Primary Industries and Regional Development (DPIRD), Department of Biodiversity, Conservation and Attractions (DBCA), and the EPA at a State level. We are also regulated by Commonwealth legislation including under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) administered by the Department of Agriculture, Water and the Environment (DAWE).

Decision Making Authorities

The provisions regarding decision making authorities have potential to streamline these approvals and are a welcome addition. We hope that the theoretical potential of these provisions is met in practice. Industry has raised that it would be beneficial if an early indication is given as to whether another decision maker's decision will be deemed acceptable. This will support Industry allocating resources and planning through the approval.

The rapid growth of Western Australia's mining and mineral exploration sector is putting pressure on all Government approvals processes. The EPA backlog for Part IV assessments has continued to increase, and it is imperative that additional resourcing is prioritised to address this serious constraint. As the mining and mineral exploration sector continues to grow beyond 2021, it is anticipated that the volume of approvals will continue to increase, and experienced regulators with the capacity to meet timeframes, will be in even higher demand.

[3] https://www.pc.gov.au/inquiries/completed/resources/report

Approval timeframe delays were identified by the Commonwealth Government Productivity Commission as "costly for the proponent and the community, and typically dwarf other regulatory costs"[4]. The Commission observed, that "pushing out the start date of a project delays the receipt of revenue as well as the royalties and taxes that flow to the broader community."[5]

Decision and policy-making should be driven by good, current data. There is a fine balance between prescription and the use of risk-based regulation. We have continued to highlight that the lack of current, relevant, and historical data, hinders Industry's ability to meet the EPA's expectations. Without suitable baseline data, we are unable to see if the measures employed to date for environmental protection, have served their intended purpose, or if there would be more suitable opportunities to consider.

AMEC has welcomed recent and past efforts by multiple Governments to reduce administrative burden and streamline processes to more quickly realise the benefits that mining projects offer. However, key approvals Departments still do not have the capacity to meet current demand, let alone undertake significant reform or realistically maintain timeframes as demand increases into the future.

There is a direct correlation between the number of staff engaged in regulatory approvals and the speed of approvals. This underpins the logic of the 'Major project status'/Lead Agency frameworks employed by the State Government in the past which assign a case manager to a project, effectively guaranteeing resourcing will be focussed on a State-significant project. However, not all projects fall within the size required to qualify for the Major project / lead agency framework.

Increasing staffing must be coupled with the delivery of proposed regulatory reform to lift the effectiveness, efficiency and productivity of the Western Australian regulatory process.

2. Are there additional amendments you believe would ensure efficient processes and maintain strong environmental protection?

Definitions and guidance

The amendments to the EIA process have a heavy focus on three primary terms; 'significance', 'cumulative impacts', and 'holistic approach'. Other definitions required include "near the limit" which will reply to Sections 38, 43A and 45C; and "same character". Concerningly, none of these terms have been sufficiently defined.

Clarifying these definitions must be a priority for the EPA. We note that the Statement of Environmental Principles, Factors, Objectives and Aims of EIA mentions the inclusion of guidance on cumulative and holistic impacts but there is none provided (other than definitions of each concept in Section 6).

Throughout the suite of EIA documents, Industry feedback is that the definitions are too ambiguous, and this ambiguity and uncertainty is a key driver of Industry's concerns with the proposed reforms.

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[4] Finding 6.1, page 157,
Productivity Commission 2020, *Resources Sector Regulation*, Study Report, Canberra.
Available at: https://www.pc.gov.au/inquiries/completed/resources#report

[5] Pg. 157, Ibid.

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Essentially every element of change to the EIA process is focussed around interpreting these three key terms. In order for Industry to provide relevant feedback to the EPA on the reforms and their acceptance or alternative suggestions, it is crucial that as much detail and insight into decision-making of the regulator is provided prior to their introduction as the regulatory process. Without a tighter definition of these terms, and focussed guidance explaining how they will be determined in practice, the intent to streamline processes may have the opposite effect.

The term "significance" requires further definition. Proponents should be able to determine whether or not their project will potentially have significant impacts, how to calculate the values and sensitivity of the environment as per the new definition, and avenues for discussing with the regulator outside of formal processes, why a project would be deemed as significant, thus requiring the work that is triggered when significant impacts are present, using the EPA's guidance materials. A proponent should be able to do this prior to consulting with the EPA. In their current form, this is not possible.

It is understood that the significance test will be consistent across the EIA process, with the new process introducing three scenarios in which significance will be tested; the significance of an amendment on its own, the significance of an amendment combined with the project's overall impacts, and the significance of an amendment when combined with the project's overall projected impacts. Industry has raised concerns with the EPA, that while a project could be significant, the amendment in and of itself may not be significant, but under the 'holistic' approach, amendments which should not realistically require such extensive assessment could automatically default to requiring this process.

Cumulative impacts, how they will be calculated and how the EPA will consider this information as part of a holistic assessment methodology, has not been detailed with the granularity that would be expected of a new introduction to a longstanding, inherently important legislative process. As cumulative impacts are now included in the definition of 'environment' following the EP Act Amendments in 2020, it is important that industry has a clear understanding of exactly what this entails, so they can comply with their legal requirements.

Holistic impact assessments are proposed to consider the connectivity of impacts on the environment as a whole, and the defined environmental factors considered by the EIA. A recent EIA published by the EPA showed that in assessing a proposal as a whole, the EPA took into account the impacts to all key environmental factors, the EPA's confidence in the proponent's proposed mitigation measures, relevant EP Act principles and the EPA's objectives for the key environmental factors, and the EPA's view that impacts on the key environmental factors could be manageable, upon implementation of the recommended conditions.

The intent behind its introduction is acknowledged, but practically, without sufficient detail as to how proponents will be expected to track, declare and monitor impacts at a holistic-scope, companies may be at risk of non-compliance. AMEC recommends the EPA provides more details and how this will work in practice, for Industry to provide meaningful feedback.

Industry has raised concern of how the EPA are considering areas such as the Pilbara and the Goldfields which have historical mining activities. These are two engines of the State's mining economy that has underpinned Western Australia economically.

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Ultimately, we want to ensure that Industry and Regulator's expectations align, and there will be minimal risk of perceived non-compliance and delays. As AMEC continues to petition Departments, the higher the quality of guidance materials, coupled with consistent application of regulations, the higher the quality of Industry applications will be.

Timeframes

Similar to definitions, there is a need for transparent timeframes which can be met by all relevant parties. Complying with timeframes is needed to provide as much certainty to timely and complex processes as possible. When projects are going through the financing-to-development-decision - making process, they are reliant on a timely and efficient approvals process, to coincide with their financing cycle.

Industry has appreciated the candour of the EPA via Q&A sessions with AMEC and CME members, where these concerns continue to be raised. An important question arising from the forum on 11 May, was how stop-the-clock mechanisms will apply to subsequent information requests, including when the EPA is seeking more information, be it from the SSO or from Industry. It is important that these questions are answered and amendments made to the suite of draft documents, to mitigate potential complications that could arise should these timeframes not be clearly defined.

There is room for improving this provision of certainty, by clearly outlining timeframes for steps in the EIA process, to provide clarity and consistency to proponents and regulators at all stages of the EIA process.

Quinlan 5-year Review

The Independent Legal and Governance Review into Policies and Guidelines for Environmental Impact Assessments under the *Environmental Protection Act 1986* (Quinlan Review), made a sound suggestion to improve the effectiveness and efficiency of WA's environmental framework, via the introduction of non-statutory guidance materials.

The recommended hierarchy of documents provides regulators and industry with clear expectations. The greater the standard and clarity of guidance materials, the higher the quality of submissions from industry, and the more consistent regulation can be.

Allowing flexibility through being principle-based rather than prescriptive, is recommended to achieve the environmental objectives of the EPA. Principle-based and risk-based objectives should give due consideration to the different environmental conditions and biospheres across Western Australia, allowing for flexibility in the management of risks, while meeting the EPA's objectives.

AMEC understands that the EPA, during the 5-year Quinlan Review process in late-2021, will also review the progress of the new EIA process. Industry requests this feedback is communicated to us, and involvement in developing improvements to identified areas.

Proportionality of information

AMEC consistently communicates to all levels of Government, the need for regulations which consider the actual or potential level of risk posed, and subsequent requirements that are commensurate with this risk level. This directly relates to the acknowledgement that the

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proportionality of information required will be guided by the determination of significance. However, as previously stated, significance needs to be clearly defined for this process to be enacted effectively.

Low impact notifications are a long-term point of advocacy for AMEC, where the level of risk posed is minimal to low, so activity should be permitted through a streamlined notification process, rather than the typical approvals process. This negates the current practice of requiring disproportionate amounts of information, and regulator assessment for an activity that will ultimately be allowed, as the risk / potential risk level is nominal.

The delivery of these reforms will not in any way lower the standards of Western Australia's rigorous regulatory framework, they will however reduce the administrative burden for both companies and the Government.

3. Do you believe any amendments undermine the EPA's objective to have efficient processes and maintain strong environmental protection?

Without the adequate guidance and tightening of timeframes and definitions as already recommended, the EPA's efficient process aspirations through the EIA reforms, are unlikely to be realised.

Before the amendments can be accepted, we request clear definitions of significance, cumulative impacts, holistic approach, and means to determine these. Industry needs guidance on how these will all be measured. Our preference aligns with the EPA, in that processes should be efficient and maintain strong environmental protection. The two are not mutually exclusive and we consider that they can be achieved, in the right policy settings.

As discussed earlier, without sufficient approvals staff, the current approvals backlogs and processing delays are likely to continue to grow, especially as Industry is in an undefined period of growth. The cost to Industry to operate in Australia is comparatively higher than in competing jurisdictions. In WA, we have received anecdotal feedback that costs and excessive approvals process delays add a layer of unnecessary pressure and uncertainty to developing projects. Hampered by resourcing constraints, consistently increasing delays in processing applications, and the risk-averse pattern of regulation over recent years, these costs have continued to increase, reducing investor and project certainty and viability. To maintain our significant competitive edge over other resources jurisdictions, our regulatory framework needs to be robust and well-functioning.

<u>Introduction of cumulative and holistic impacts</u>

The introduction of these two new aspects to the EIA process have created significant concern across Industry, communicated to the EPA in multiple forums. To date, we are yet to receive a clear explanation of how these requirements will be met, and what they will mean in reality.

The formal inclusion of cumulative and holistic impacts as part of the EPA's consideration of significance are widely anticipated by Industry to reduce the efficiency of the process. There is little if any published guidance on how proponents might reasonably be expected to address cumulative and holistic impacts to the EPA's satisfaction. This lack of guidance is coupled with an absence of available environmental data, information and knowledge at the landscape/regional scales. This inevitably leads to requests by the EPA for further information and delays as proponents attempt to

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respond to such requests with information that is not readily available nor within the ability of the proponent to procure within any reasonable timeframe.

The second order consequences of the emphasis on these considerations is an increase in the reporting requirements to quantify these new impact categories across existing projects. Many projects currently face challenges in not only accessing historical data for their own site, but accurate information outside of a single project's scope.

The expectation that cumulative impacts will include the successive, incremental and combined impacts, from past, present and reasonably foreseeable activities could extend to well beyond what is reasonable to achieve specified environmental outcomes. Without clear examples of what the regulator's expectations will be, so applicants can prepare comparable applications, this new requirement could create significant delays and confusion.

EPBC NES

The recommendations outlined in the Samuel review have created concern across the sector, due to the multitude of findings and reforms recommended, that represent years' worth of work, but proposed to be implemented within a 2-year period. Industry questions how long the accreditation process to permit bilateral approvals and assessments will take, and what it will involve?

Once the NES have been released, there will need to be a relatively fast transition to State / Territory accreditation so targets can be met, and timeliness is maintained. We understand the jurisdictions have been contacted and are working with the Commonwealth on the development of NES, and request updates as the process continues, so Industry is prepared to meet potentially changing processes, without delay.

Although outside the scope of the EPA, we have noted through this process that amendments to the EIA process have been made in anticipation of the bilateral accreditation process. It is important that we are given the chance to review the amendments against the NES, in order to adequately answer this question.

Environmental Review Document (ERD)

The requirements of the new ERD appear similar to what the Environmental Scoping Document (ESD) currently requires, but the ERD will contain additional information. While we acknowledge the intent behind the new ERD is to minimise the duplication of information required in the ESD and ERD, the amended ESD is stated to be 'comprehensive'. Industry is concerned that in practice, they will be required to submit the same amount of information in both the ERD and the ESD, creating an unnecessary layer of duplication.

Section 40(2) can be read to suggest that the ERD and ESD processes will occur concurrently, but again, in practice, this is not expected to be the case. As such, we recommend the wording around this section is tightened to address the current ambiguity.

Amendments

Amendments to proposals during the ESD and ERD are not permitted, and it is proposed that proponents will need to engage in the S43A instructions, anticipated for introduction on 1 August 2021. The proposed backdating of amendments to require the use of this process for all relevant

applications since 3 February 2021, is acknowledged as a requirement under the 2020 EP Amendment Bill.

The wording in the requirement to "consult with other stakeholders if they are relevant to the amendment you're seeking" is vague and could create delays, if the consultation carried out does not meet regulator requirements, which have not been specified, or in the event the relevant stakeholders choose not to engage. Consultation requirements should not be subject to prescriptive requirements, but there is concern this requirement could create delays and unnecessary complications, at the discretion of the regulator.

S45C

Section 45C is underpinned by what is considered significant, and what is not. The lack of definition of significance in Section 6 of the *Statement of Environmental Principles, Factors, Objectives and Aims of EIA* makes it difficult for proponents to contemplate what will be considered and what will not be. The twelve listed areas of consideration are all sufficiently subjective and broad that there is a sense within Industry that they can be interpreted broadly. While we accept that what is relied upon largely amounts to a matter of professional judgement influenced by the characteristics of the proposal, the continued lack of objectivity around this crucial concept creates delays, uncertainty, and frustration.

A further concern is on page 62 of the Procedure Manual, the following statement is made:

> *The EPA Chair will not usually consider changes to proposals or implementation conditions more than every two years in the life of proposals, unless the proponent can show why additional changes are reasonable in its particular case*.

AMEC and Industry are concerned by this limitation: not only does it step beyond what the legislative framework considers, but it can be readily seen that it would be detrimental to the wider Western Australian economy. Industry do not want to be submitting S45C as they are costly and introduce further time delays. If circumstances change, the geology is unexpected, technology advances or the market adjusts, a proponent should be able to seek an amendment.

AMEC does not consider the argument (also made on page 61 of the Manual) that this is designed to prevent "*fragmented or future amendment applications which can undermine consideration of and decision-making for whole of proposal impacts*" as valid, particularly given the emphasis on holistic and cumulative impacts. The timebound limit of two years appears arbitrary and not based on science. Industry requests it is removed.

Impact Reconciliation Procedure - Pilbara

Offsets are only to be the last stage of the mitigation hierarchy, where impacts are unavoidable. As per the Instructions document, "How to prepare an Environmental Review Document", step 7 requires proposals within the Pilbara to provide an Impact Reconciliation Procedure (IRP). Industry has sought clarity as to whether proponents will be expected to update their IRP post-approval, in the event of a significant amendment to their application? Furthermore, clarity on how this process integrates with the Pilbara Environmental Offset Fund would be appreciated.

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4. Do you agree the EPA's key principles for EIA will ensure efficient processes and maintain strong environmental protection?

It is unclear what is referred to as the EPA's key principles for EIA: is it the Environmental Principles established under s4A of the Act, or is it the "Aims of EIA" as presented in Section 4 of the Statement of Environmental Principles, Factors, Objectives and Aims of EIA? Clarity is needed to identify these key principles and how they can be met.

Industry considers it an important acknowledgement that mitigation hierarchy remains the focus of the EPA in achieving their overall objective to maintain strong environmental protection. The notable proposed shift in the suite of consultation documents, indicates that the EIA process will now be driven by proponents, who must apply the mitigation hierarchy to their EIAs. The onus is on proponents to demonstrate that their proposal is able to meet the EPA objectives for environmental factors, by explicitly assessing impacts (current and residual), to demonstrate that if implemented, their environmental outcomes align with the EPA's objectives.

As per the How to prepare an ERD template guidance, "Assessment and significance of residual impacts", requires proponents to consider whether residual impacts are significant, and if offsets will be required.

The determination of residual impacts, similar to cumulative impacts, is contingent on available data, that is not currently accessible by the public, nor is it accessible by small companies considering whether to develop or not. Publicly available baseline data is needed to provide an understanding of an area and its history. This technical data is often collected by companies, and is a valuable asset, but constitutes their Intellectual Property (IP).

AMEC continues to call for sharing valuable data and information to increase Industry's ability to meet new requirements, which are reliant on this information, in an accessible and usable format. A concern for Industry is that the greater reliance on data will create a further barrier to enter the market, making it more difficult and costly for companies to develop mines.

The work required to prepare for each factor at a single, cumulative and holistic level is expected to significantly increase, as is the overall rigour behind this process. If the aim of this section is to enable proponents to effectively determine whether or not they will require an offset, we do not consider the suggested changes to be the most effective means of making this determination.

The assessment of residual impacts as presented in the draft document, will require proponents to quantify the benefits of their proposed mitigation strategies. This will inevitably introduce more reporting and assessment requirements. While the EPA has advised this is intended to shift steps in the process closer to the start to mitigate challenges later on in the process, based on how the current system works and the frequent requests for further information, we are concerned there will be a significant layer of additional work, created for all parties.

The shift from the "Instruction: key characteristics of a proposal" to the descriptive approach outlined in the "Instructions: how to identify the contents of a proposal" have been highlighted as a concern by Industry. The change has created uncertainty as it could potentially have a broad interpretation. The inclusion of examples in the new Instructions are appreciated, and Industry would appreciate further best practice example of how this document is drafted.

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In the Industry forum with the EPA, AMEC, CME and members, it was noted that applicants are including information in S45C, that would be better placed in S38, especially information pertaining Assessment on Referral Information. We have previously received limited feedback about this occurrence. Such feedback is useful, and needs to be ongoing, and can be informal. Industry seeks to comply with all regulations, and early indication of aspects they can improve ahead of time, rather than too late in the process is welcome.

5. Do you support the principle of proportionality of information – information needs are dependent on the nature and risk of potentially significant impacts?

AMEC and Industry support the proportionality of information. Proportionality of information underpins the implementation of risk based assessment, and has long been sought. In practice, it is hard to achieve, and many Governments have attempted to introduce aspects of proportionality, but consistently encountered challenges with the "precautionary principle"[6]. We expect that this will again occur unless the EPA can find a new mechanism to all approvals to progress with some risk. A path to allow approving staff to accept manageable risk is needed.

The increased emphasis on cumulative and holistic impacts is likely to also to be countervailing influence to the intent of this question.

It is also unclear how the EPA will determine what level of information is required at different stages of the EIA process, particularly the referral, validation and decision to assess stages. Without guidance on the linkage between potential environmental risk and minimum standards of environmental information this part of the process will remain discretionary and opaque.

Despite these concerns, and as continually advocated over the last decade, AMEC and its members are happy to work with the Government and the EPA to continue to develop avenues for streamlining processes. The tacit support of the EPA for increasing the proportionality of information is positive.

AMEC are also concerned with how proportionally will work in practice with the DMA process. In the event a proponent has a suitable DMA that can address the EPA's concerns without need for the EPA to require a similar assessment, it is still at the EPA's discretion as to whether or not the DMA has collected and reviewed enough information. This will be influenced by the risk-appetite and consistency in the application of regulations by the DMA. We recommend the EPA provides to proponents, a list of acceptable DMA processes that can be used to meet EPA requirements.

6. Do you support the EPA's preference for outcomes-based conditions?

The proposal for proponents to define their environmental outcomes that will lead to outcomes-based conditions is broadly supported. Proponents will be reliant on clear, practical guidelines and examples from the EPA in order to gain insight into what the regulator's expectations are, so this streamlining benefit can be realised. Without this guidance it is unlikely the desired outcome will be achieved. For

[6] The precautionary principle is derived from the United Nations' 'Rio definition', seek to ensure that uncertainty about potentially serious hazards does not justify ignoring them.
Precaution and the Precautionary Principle: two Australian case studies - Productivity Commission (pc.gov.au)

example, more guidance on Social Surrounds requirements, and what information will be required to support assessment by the EPA, is recommended.

The shift towards onus being on proponents to define their projects, significance of impacts and requirements aligning with the EPA's objectives, will require the element of flexibility that outcomes-based conditions can provide, in the right policy settings.

The instructions require proponents to define the environmental outcomes that can be met in implementing their proposal, using a measurable environmental state with clear limits and / or boundaries, relating to the EPA's objectives for environmental factors. It is important there is a shared understanding between industry and regulators of expectations required to demonstrate that environmental factors are being / will be met.

From an administrative perspective, the Instructions document pertaining to "How to identify the content of a proposal" directly references the GDA94 spatial data system. As GDA2020's implementation is expected within the next year, we suggest updating the wording to allow for an easy transition to the current geodatum system, for reporting purposes.

7. Do you believe the proposed definition and aims of EIA are helpful to provide guidance?

The proposed EIA Statement of Environmental Principles, Factors and Objectives now includes the 'aims of EIA'. This statement includes the proposed expectation that the proponent will consult with all relevant stakeholders, including other decision-making authorities (DMAs), Government agencies and the community. However, in this context, the 'community' has not been defined.

If it is the wider community with no direct interest in the proposal that is expected to be consulted with, a number of concerns immediately arise. These primarily include the potential that proposals may be blocked or significantly delayed by interest groups who do not support the industry, and the extent of 'wider community engagement' that is required has not been outlined. In the event the EPA does not consider sufficient community engagement to have occurred, a public review period may be imposed by the EPA. This broad requirement creates unnecessary concern across Industry, and needs direct addressing by the EPA, that projects will not be held up by unclear and uncommunicated expectations.

8. Do you believe proponents should have the primary role for defining and adaptively managing their proposals to meet EPA objectives and specific environmental outcomes?

The "Proposal Content Document" is a new document, proposed to replace "Schedule 1" of the Ministerial Statement, where the boundaries of the approved proposal are currently listed.

The Proposal Content Document is intended to be prepared by the proponent, to delineate the proposal boundaries, and must include all elements of the proposal that have the potential to have a significant effect on the environment.

This creates implications for amendments, as the Proposal Content Document will be required to replace the Ministerial Statement Schedule 1 for amended Ministerial Statements. As the Proposal Content Document will be defined in the Referral, it will not be able to be amended until the proponent has sought formal approval to amend the Proposal Content. This creates significant additional reporting requirements, which come at high cost and require additional resourcing.

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Proposal Content should allow for flexibility to account for changes to the proposal as design progresses, which is an accurate reflection of operating realities. The definition of a Development Envelope and the Disturbance Footprint within this Envelope, provide this flexibility, but the impact assessment then has to be based on the Envelope, which is typically a much larger area.

Another concern arising from the Draft documents, is the example Proposal Content Documents in the drafting instructions all included estimations of Scopes 1, 2 and 3 greenhouse gas emissions, during construction and operation of the project. While the greenhouse gas emission requirement has not been explicitly addressed in the amendments, there is substantial concern across Industry that these estimations will be required under the new process. Industry cautions against proceeding with this potential requirement in this format. This is a significant change with wide-ranging implications expected, and warrants its own separate, robust consultation process with industry involvement.

9. Should the EPA include its expectations about the timing of proposal amendments post-approval?

Transparent timeframes and decision making provide regulatory confidence required by project proponents and investors. The publication, and adherence to, these timeframes is particularly important for smaller companies that are developing mines. They lack a source of revenue and must raise the equity proportional to the costs.

The identification of timeframes through each step of the EIA process is needed. It is also important that there is a clear and consistent approach to the screening and assessment of Industry's applications, that meets transparent, clearly communicated timeframes.

Industry feedback was clear that that the statutory 28-day turn-around of the EPA's decision whether to assess a proposal; is in practice, unlikely ever be met. The delay at this point in the referral process is commonly attributed to the quality (or lack of content thereof) of referral documentation received. There is clearly an issue here in respect of mismatched EPA and proponent expectations on the required information to support a referral. In theory, the certification of environmental practitioners provided for under the Environmental Protection Act amendments in 2020, should mean that the 28-day turnaround is met.

The section on timeframes in the EIA (Part IV Divisions 1 and 2) Procedures Manual omits the verification process referred to in the revised EIA (Part IV Divisions 1 and 2) Administrative Procedures 2021. This verification process is a welcome addition to the process; but it needs an explicit timeframe.

The timeframe for Stage 5 – Decision on a proposal (S45) is perhaps misleading as it only refers to the period over which appeals on the EPA report are open (3 weeks). The timeframe for the Appeals Convenor's report to the Minister, the Minister's determination of appeals, and the Minister's decision on a proposal is considerably lengthier.

<u>Stop-the-Clock to be clarified</u>

During the AMEC and CME Q&A session with the EPA, an important question that arose was the use of stop-the-clock provisions. There is uncertainty as to how these provisions will apply, when they will apply, and the effect this will have on timeframes.

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Under the proposed process, the S38F requisition notice will specify the compliance period within which information must be provided. During this time, the 'clock stops', and restarts upon the receipt of information. If this period is not complied with, will the EPA contact the applicant to inform them their referral can potentially be withdrawn?

Another question that needs clarity, is with what timeframes the State Solicitor's Office (SSO) will adhere? It is not understood that the EPA can issue a stop-the-clock / requisition notice to the SSO, and given the resourcing constraints and competing priorities for access to SSO, industry is concerned with the likelihood of lengthy delays.

Additionally, in the event the information the EPA may rely on to base its decision is adverse to the proponent and the proponent has not had the opportunity to comment, the EPA will give the proponent an opportunity to provide comment. However, the timeframe for this commentary period has not been defined. Will a stop-the-clock provision apply?

Whole of Government timeframes

The documentation appears to reflect a view of the EPA as its own separate organ within the broader Government with responsibility for its own actions. For a proponent, the whole of Government timeframe, broader than the interactions with the EPA, to reach the needed approval are what actually matters. In a point related to the above, timeframes should be measured cumulatively (including time with the proponent), so that Industry has a realistic expectation of the process.

The cited 12 week of time savings in approvals raised during the consultation, if true, is supported by AMEC.

Cost recovery

Noting that Section 48AA "Fees and charges for referral and assessment of proposals" is not addressed in this documentation, it is however relevant. Industry is under no illusion that cost recovery will lead to a decrease in assessment and approval timeframes. It has been repeatedly demonstrated at both Commonwealth and State levels that cost recovery is yet to deliver the much promised more timely implementation of process and responses.

AMEC remains opposed to cost recovery in principle, due to its historical lack of delivery and because of the high taxes already paid by proponents.

10. Are there any areas where you think further guidance would be helpful, taking into account the EPA's need to provide procedures and guidance for all proposals, which then needs to be considered on a proposal-by-proposal basis?

AMEC's primary concerns with the proposed EIA reforms have been detailed extensively above. It is strongly recommended that clear guidance materials and examples of applications that meet the requirements of the EPA are readily available to all applicants, and consulted on, prior to implementation of the amended EIA process. If the EPA can show industry what "good" EIAs look like, Industry will be better placed to meet these expectations from the outset.

As these documents will provide clarity into the decision-making considerations and processes of the regulator, they should be transparently discussed with Industry, and we welcome opportunities for workshops and training sessions with the EPA and relevant training bodies. Industry supports the

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approach outlined by the EPA during the Industry Q&A session that there will be training provided to assessment officers, to ensure they are able to assess our applications in a consistent and methodical manner, and ideally avoid the current delays and backlog we are experiencing. The stronger the quality of the guidance materials provided, the better the quality of applications will be.

The inclusion of a glossary would be supported. Definitions should be as detailed as possible, to allow both experienced and less-experienced applicants to understand and meet their obligations and requirements.

Final comment

AMEC continues to welcome opportunities to engage with the EPA as regulatory reforms are undertaken, implemented, and monitored. The willingness of the EPA Chair and Vice Chair to meet and talk through on multiple occasions the drafting of these guidelines is welcome and supported by AMEC and Industry. We hope that this early indication of a consultative process going forward continues.

How the proposed suite of documentation is interpreted and acted upon will largely determine the effectiveness and efficiencies gained by these reforms. Noting that the treatment of initial proposals through the new system will determine the perception of its effectiveness and efficiency.

AMEC looks forward to working with the EPA as reforms continue to be implemented across these important processes.

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