

To: Department of Mining, Industry Relations and Safety

Re: Streamlining (Mining Amendment) Bill 2021

25 June 2021

Introduction

AMEC appreciates the opportunity to provide a submission to the Department of Mining, Industry Relations and Safety (DMIRS) on the Streamlining (Mining Amendment) Bill 2021. AMEC strongly supports the intent of the Streamlining (Mining Amendment) Bill 2021 and its speedy introduction into Parliament. The proposed amendments include measures that AMEC has advocated for over a number of years, to streamline the legislative framework Industry complies with. The following comments are intended to assist the Department in finalising the draft Bill, ready for introduction.

The State Government's 2021 election commitment of additional funding for the Department's digital transformation was an important acknowledgement of the importance of our industry, and the need for streamlined processes. AMEC welcomes opportunities to continue engaging with DMIRS to develop and pragmatically implement streamlining measures, to support the continued growth of our sector.

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 2019/20, 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. In Western Australia, in 2020 the mining sector employed a record 140,940 workers, and generated \$148 billion from the sale of minerals.

Mine Closure Completion Guidelines

General feedback

AMEC has called for the implementation of the Streamlining Bill, particularly amendments to introduce Low Impact Notifications (LIN) for several years, and over multiple terms of Government. The simplification and increased efficiency of approvals processes is expected to deliver significant benefits to Industry. These benefits are widespread and delivered to the Western Australian community in the form of increased job opportunities, skilled workers, and royalties which are used to develop new schools, roads, and hospitals.

As continues to be acknowledged by State and Federal Governments, Western Australia's minerals sector cushioned our economy from the worldwide COVID-19 induced recession. Now is opportune

timing to implement amendments that will deliver long-term benefits to support economic recovery, and beyond.

The ability of our Industry to capitalise on heightened demand for Western Australian minerals, to strengthen our competitive edge, is contingent on a regulatory framework and policy settings that support development, by providing the certainty required to attract investment. This ability will be strengthened by regulatory reforms which reduce red tape and costly delays, to lower the cost of doing business in the State. The introduction of head powers, and subsequent detail in the Regulations of these changes, should deliver improvements to Industry's regulatory framework. AMEC requests continued engagement as the reforms are consulted on and introduced, to ensure there are no unintended consequences for Industry.

Currently, the lengthy delays for approvals processes and administrative burden created through duplicative requirements are disproportionately costly to our Industry. In order to attract investment to Western Australia, a stable and efficient regulatory framework, which reduces red tape and the costs required to operate, will be seen as an incentive by investors and project developers.

Low Impact Notification (LIN)

The introduction of the LIN through this Bill is a long-term advocacy item AMEC is pleased to see introduced. However, the details of what activities will be permitted under LIN, to be determined by the ensuing Regulations, will be an important next step in the consultation process. Our understanding is that activities with low impact on non-environmentally sensitive areas will meet the remit required to qualify for LIN, but we request consultation on the list of activities that will be permitted, as a priority. The definition of 'impact' for the purpose of this activity, will be critical.

In order for the intent of the Streamlining Bill to be met, there is need for risk-based regulation, where the level of potential risk posed is commensurate with the rigour of the approvals process. For low impact activities, where the risks are minimal and can be managed effectively, a straightforward and minimally intensive approvals process is welcomed. As Industry experiences a substantial period of growth and more applications are submitted to the Department, the timely approval of activities critical to the further development of minerals projects, is imperative.

However, as experienced in recent years, the introduction of cost recovery across approvals processes in Western Australia, has not resulted in faster processes, and Industry still faces lengthy delays. It is important that as stated in the Streamline Bill documentation, the fees identified are not new fees, and the intent not to introduce new fees is upheld. The cost to Industry to operate in Western Australia, partially due to the many layers of regulatory red tape, are comparatively high. These can be a barrier to entry.

To address these barriers, continued collaboration between Industry and Government is required, so we can identify and carefully implement measures such as the LIN, which should allow vital mineral exploration activity to proceed. The sooner we make more mineral discoveries, the sooner the Western Australian community can reap the benefits associated with developing mining projects.

During the briefings provided by DMIRS it was announced consideration was being given to a phased rollout of LIN for prospecting and exploration. Is there further detail as to this consideration available to Industry? A further question arising from the briefing related to excluded areas. It has not yet been

advised how those excluded areas will be communicated to Industry, and what will happen in the event there are modifications or changes to such areas?

Additionally, Low Impact Activities are also expected to be introduced through the *Aboriginal Cultural Heritage Bill 2020* (ACH Bill). They will have a very similar name, despite pertaining to two distinct Acts, and two very different applications. To mitigate confusion, AMEC recommends that the LIN introduced under the Mining Act Amendment Bill is renamed “Low Impact Notification (LIN) – Environmental”.

Approvals Statement

The intent behind the new Approvals Statement concept is noted, to function as a single source of truth for all approved mining operations and corresponding conditions, anticipated to be regularly updated through a project’s life. Industry seeks assurance that the updates that will be required to the Approvals Statement as operations or conditions change, will not result in more administrative workload and costs than is currently required under the existing process.

With tenement holders proposed to update the single approvals statement under the new process, rather than the current practice of multiple documents outlining tenement conditions, when changes are made to a specific tenement, will the whole approvals document need to be resubmitted for approval, or just the specific amendment?

Industry is concerned the requirements proposed within the new approvals statement process are too prescriptive, and this has the potential to create long-term issues. With prescriptive requirements, there is potential for clerical error, but constrained ability to enact amendments. Without the ability for Industry to work with the Department to ensure conditions are workable, we could face avoidable instances of non-compliance, by error. AMEC recommends reducing the prescriptive language relating to the approvals statement, to ensure proponents can work with the Department, to develop workable conditions and expectations.

As articulated in our Mining Legislation Committee meeting attended by DMIRS, more clarity on the modifications to the approvals process and associated documentation is requested. AMEC will commit to review the draft examples of the approval statement prior to introduction expeditiously.

Mining Development and Closure Proposal (MDCP)

The proposal description, baseline data, risk assessments and environmental outcomes required for submission currently, via the separate Mining Proposal and Mine Closure Plan processes, are costly to produce, and as identified in previous advocacy efforts, create an unnecessary element of duplication. In order for companies to seek approval to commence their mining operations, these lengthy documents for assessment are prepared. As mine closure plans are a statutory obligation, DMIRS’ conditions and obligations should align with other legislative requirements, as prescribed by the Environmental Protection Authority (EPA) and under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Will the MDCP, and the Mine Closure Plans which will still be required to be updated, address this interaction with other legislative requirements?

AMEC made a submission to the Department’s recent consultation on Mine Closure Completion Guidelines, supporting our consistent consideration that the environmental application process is

overly complex and costly. We made a recommendation that the mine closure process could be streamlined by DMIRS working with the EPA, DWER and DPLH to prepare a holistic document that will cover a project from operations through to closure and relinquishment, to avoid the onus of navigating the process resting solely on the proponent. Industry also questions if this recommendation can be addressed in the MDCP?

As it is likely considerations will need to be made on a case-by-case basis, as has been previously facilitated through AMEC, we again welcome opportunities for Industry and regulators to share information and expectations via a workshop format. Such activities provide Industry with more insight into the decision-making processes of the regulator, and provide an opportunity to address concerns or questions directly.

It is important to the ongoing viability of our industry that the cost to operate in Western Australia must be lower, and the complexity which causes significant delays reduced, in order to provide the level of certainty and predictability of outcomes that is required by potential investors. As stated above, AMEC requests to view the draft example MDCPs prepared by DMIRS, prior to introduction.

Best practice regulations

The Productivity Commission's 2020 Report into Resource Sector Regulation identified that "abrupt changes to Government policies and objectives, a lack of consistent long-term policy direction, as well as inconsistent application of existing legislation and policies can increase investors' perception of regulatory risk and impede investment"¹.

Best practice regulations are borne from robust consultation processes, phased, strategic implementation, and realistic transition periods. Clearly articulating the benefits of policy changes and engaging in meaningful, early, public consultation can mitigate concerns, and demonstrate a genuine willingness to understand the impacts reforms will have on industry.

However, we are concerned with the proposed ability for the Minister to cancel an approval, without providing a reason. This practice would oppose the progress made towards transparency, and diminish confidence across the sector. AMEC recommends this is not implemented, and the Minister should still continue to publish reasons why a cancellation has been issued.

AMEC supports a risk-based approach to regulation, where the level of potential risk posed is commensurate with the level of information required for assessment, aligning with the concept of proportionality. There has been an increasing drive by Western Australian regulators to implement this methodology through reforms, acknowledging the need to allow activities requiring more rigorous assessment to be prioritised by resource-constrained regulatory agencies.

Industry is hopeful that the freeing up of approvals officer workloads from the introduction of the proposed streamlining measures, will have a corresponding decrease in processing timeframes, as the focus of resources can be redirected to higher-risk issues.

¹ <https://www.pc.gov.au/inquiries/current/resources/draft> (Pg. 222)

Transition periods

The initial proposed six-year continuation of existing mining operations approved under a mining proposal from the commencement of this Bill was not supported. It is too short a timeframe, given the mining tenure length as prescribed by the *Mining Act 1978* (Mining Act) is 21 years. AMEC recommends the transition period for existing mining operations approved under a mining proposal is extended to 21 years, to align with the Act against which our industry is regulated. The more consistency that can be provided to statutory timeframes, the more certainty both Industry and the Government will be provided with.

We appreciate that following initial engagement, this recommendation has been reflected in the Further Information for Consultation that was released by DMIRS.

This option will allow companies with existing approvals the confidence required to continue operations following the commencement of the Bill, and for the remaining tenure of the mining tenement they were granted. When the updated Consultation Draft is prepared, AMEC requests sufficient time to review this document, with members, to provide meaningful feedback.

Mining Legislation Amendment Bill 2015

The proposed inclusion of a definition of 'environment' to be included in the Mining Act during the 2015 consultation process was not supported by AMEC. We were pleased that this consideration did not arise for the current Streamline Bill.

There are sufficient existing legislative frameworks which manage environmental impacts and risks, and the interpretation of environment can be broad and create ambiguity. To prevent the occurrence of duplicative requirements and widespread implications that could arise from the potential inclusion in the Mining Act of a definition of environment, industry will continue to support it remaining separate. Should the powers of environmental inspectors be open for consultation at any stage after this process, industry requests an opportunity for consultation.

Aboriginal Cultural Heritage

The Consultation that is currently ongoing with the Aboriginal Cultural Heritage Bill in Western Australia, also includes a low impact activity table. AMEC requests clarification that the two interpretations of what will constitute low impact activity, for the sake of each separate piece of legislation, will be clearly delineated from each other.

There will likely be confusion as to the application of these low impact activities, arising from concern they could be used interchangeably. AMEC recommends clearly identifying the low impact activities permitted for LIN by DMIRS, are clearly communicated as being for this intended purpose only.

AMEC understands that low impact activities in relation to the environment and low impact activities in relation to Aboriginal Cultural Heritage have very different requirements. Mining and exploration companies fully understand and accept they will need to comply with both legislative requirements.

Examples

Industry would welcome the provision of examples from the Department firstly for meaningful feedback on the proposed approvals statement and MDCP, and once the Bill has passed, to guide

their applications. The provision of such examples would provide more clarity into the decision-making processes of regulators, and the information that is necessary to support these decisions and reduce instances of requests for further information.

Requests for further information creates delays for industry. The clearer the guidance documents and procedures available to Industry, the more proponents will be able to address regulator expectations in the first instance. The provision of such documents will also reduce the disadvantage that those less experienced in the approvals process can face.

Timeframes

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. Transparent timeframes and decision making provide regulatory confidence required by project proponents and investors.

The identification of timeframes in this guideline would aid the proponent interpret the investment necessary in time and cost to achieve the desired closure.

Final comment

AMEC appreciates the Department's prioritisation of our recommendation to introduce streamlining measures to the approvals process. The LIN, single Approvals Statement and enabling administrative changes are anticipated to result in considerable benefits for Industry and regulators. The reduction of administrative burden should allow regulators to address approvals in a timely manner, without compromising the rigour of our legislative framework.

We continue to offer to facilitate workshops between Government and our members, to identify and develop improvements to the Department's approvals processes, and Industry's compliance. As the Bill progresses and consultation on the Regulations continues, AMEC looks forward to continued engagement with the Department so we can sooner realise the benefits of streamlining measures.

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