

**To: Department of Foreign Affairs and Trade**

**Re: Regulator Performance of the Australian Sanctions Office**

**30 June 2021**

## Introduction

AMEC appreciates the opportunity to make a submission to the Department of Foreign Affairs and Trade's consultation on regulator performance of the Australian Sanctions Office (ASO). While we have had limited interaction with the ASO, AMEC has a direct interest in ensuring Australia's mineral exploration and mining industry can continue to attract investment, to further the development of new mining projects. As a national industry body, we work with State, Territory and the Commonwealth Government to reduce the cost of doing business in Australia and streamline regulatory burden for our Industry.

## About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry association representing over 375 members from all around 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.

## Regulator Performance of the Australian Sanctions Office

### General feedback

Resources are the largest source of export, accounting for over 58% of Australia's exports, to the value of \$239.3B in 2018-19<sup>1</sup>.

The mineral exploration and mining industry provides long-term, wide-ranging benefits to the communities in which projects are located, and the broader Australian community. These projects create jobs, inject local communities with money and business opportunities, upskill our workforce, and provide economic resilience, as demonstrated in the cushioning of our economy from the COVID-19 induced global recession. It is important that Industry is able to continue providing these benefits.

---

<sup>1</sup> <https://www.dfat.gov.au/publications/trade-and-investment/trade-and-investment-glance-2020#exports>

We cannot understate the importance of a robust, efficient and transparent regulatory framework. As identified through multiple reviews into best practice legislation, best practice regulation should include a whole-of-system perspective, risk-based and data-driven regulations, and transparent collaboration and engagement. These are long-term advocacy points for AMEC, consistently communicated to all levels of Government.

Proponents at every stage of the mineral exploration to mining cycle, are regulated against State, Territory and Commonwealth legislation. Recent reports, such as the Productivity Commission's 2020 Inquiry into Resources Sector Regulation have identified multiple layers of unnecessary regulatory duplication and burden. As submitted to the Department of Prime Minister and Cabinet's recent consultation on the Draft Regulator Performance Guide, through the Government's Deregulation Agenda, Industry is hopeful there will be an opportunity to address and remove some of this burden. With due consultation process, there now exists opportunity for Industry and Government to work collaboratively to reduce the cost of doing business in Australia.

### **Australia's mineral exploration and mining sector regulatory framework**

Australia's minerals sector is considered a stringently regulated jurisdiction, in comparison to competing minerals jurisdictions. The cost of compliance is comparatively much higher in Australia as a result. These costs are borne by proponents, who are reliant on attracting investment to further the development of their projects.

Concerningly, the high costs paid by industry for regulatory processes does not correlate with the timeframes for these processes. Delays across multiple agencies are a common issue encountered by our Industry, at a high cost. In 2019, AMEC estimated that the administrative costs necessary to operate a mineral exploration company area were \$400,000 per quarter. The cumulative impact of time delays is rarely appropriately measured. 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, and reducing the certainty that is required to attract investors.

### **Australian sanctions framework**

The establishment of the ASO in January 2020, in response to perceptions that Australia has a sound legal framework for the administration of sanctions, but lacks a dedicated regulator, was anticipated to provide guidance to proponents and potential investors, and monitor and enforce compliance.

Industry's concerns remain, that the complexities arising from operating in Australia, can serve as a barrier to investment. The recent extensive reforms to the Foreign Investment Review Board (FIRB) represent a seismic shift in the Government's approach to foreign investment. While the Government has maintained they are welcoming of foreign investment and recognise our nation's reliance on it, the extensive new requirements, as highlighted by AMEC in multiple submissions to the consultation process, say otherwise.

Similar to concerns raised through the FIRB reforms, the reliance of the ASO requirements on ultimate ownership, which is not always discernible, can create confusion. To navigate the new framework, it has been recommended that "a corporation should establish a sanctions compliance

program that accommodates for the complexities and nuances of the regime<sup>2</sup>." Within this regime, an entity's sanctions compliance program would likely include risk assessments, screening and transaction monitoring, alert generation, review and action, training and awareness, audit and assurance, and governance. These are large and complex areas which can require specialist knowledge, meaning companies will ultimately face higher costs. AMEC represents a broad scale of member companies, from junior explorers to producing miners, and a range of associate members providing services to the Industry. Complying with ASO requirements should not disadvantage those who do not have the cash reserves of larger companies, nor should it disadvantage new, less experienced entrants to the market.

Australian sanction laws can apply broadly, with the potential for extra-territorial effects for activities both in Australia, and by Australian citizens and Australian-registered bodies corporate overseas, and on board Australian-flagged vessels and aircraft. Sanctions can include restrictions on trade in goods and services, restrictions on engaging in commercial activities, targeted financial sanctions on designated persons and entities, and travel bans on certain persons. Restrictions on trade in goods and services prohibits imports and exports of certain goods and services. Again, AMEC's concerns raised in our FIRB submissions are that the interpretation of what could potentially constitute a threat to national interest, is too broad, and could preclude Industry from operating at full capacity. There is a fine line between perceived threats, implied threats, and actual threats. For the most part, our Industry complies with the regulations set by Governing bodies, and will continue to do so. AMEC is of the understanding there have been minimal examples of sanctions breaches since the introduction of the ASO, however if this is not the case, Industry requests greater insight into potential common issues, so they can be addressed expediently.

Further, as identified in a Deloitte report on the Rising Bar of Sanctions Compliance<sup>3</sup>, sanctions awareness among companies operating in the Asia Pacific can be limited for corporations other than bank and financial institutions. While companies have due diligence processes, not all exporters for example, would typically have a full appreciation of goods and trade sanctions, and given the rate at which sanctions lists are continually evolving, it can be difficult to navigate the full suite of compliance requirements.

### **Investment to the mineral exploration and mining sector**

Investment into our sector, particularly greenfield minerals exploration which is required to discover the mines of the future, can be considered relatively high-risk, and long term.

Investors favour jurisdictions which can provide regulatory stability, transparent processes and fees. The significant burden experienced as a result of lengthy delays and duplication across regulatory processes, delays the receipt of benefits that developing minerals projects affords. To meet our economic recovery targets, we need to ensure that Australia's regulatory frameworks welcome genuine investment and trade opportunities. To remain competitive in the global market, we need a responsive regulatory framework, which supports Industry and Government collaboration.

---

<sup>2</sup> <https://www.allens.com.au/insights-news/insights/2020/09/sanctions-regime-in-australia/>

<sup>3</sup> <https://www2.deloitte.com/au/en/pages/risk/articles/rising-bar-sanctions-compliance.html>

We need to ensure that beyond COVID-19, Industry can continue to meet growing demand, without additional costs, regulatory burden, and inefficient processes. AMEC considers this consultation process to be an opportunity to capitalise on Australia's minerals sector's competitive advantage, by implementing progressive streamlining reforms to our regulatory systems, in a considered and pragmatic manner that will not result in unintended consequences for Industry.

Through the Commonwealth's Deregulation Agenda, Industry welcomes the opportunity to work with regulators to identify areas of duplication that can be streamlined, to facilitate sharing of information at a Government-level, and reduce overlapping compliance burdens.

### **Improving regulator governance, conduct and performance**

A national approach to issues pertaining to the mineral exploration and mining sector would reduce some of the unnecessary regulatory burden and duplication that currently exists.

With mining subject to more regulatory requirements than any other Australian industry, producing comprehensive depictions of the regulatory landscape of each jurisdiction is challenging, particularly when considering the interaction of overlapping Commonwealth regulations.

The red tape and burden placed on businesses and Governments in the resources sector could be addressed by introducing more consistent laws, and the adoption of national harmonisation measures. While we understand this is outside the scope of this Report, the recommendation is one that cannot be overlooked when undertaking a holistic review of the resources sector regulations. The shift to a harmonised resources sector regulation framework will result in a reduction in the number of opaque regulatory requirements, to limit uncertainty and unnecessary costs for businesses and the community.

### **Final comment**

AMEC welcomes opportunities to work with the ASO as the feedback from the 2020-21 Regulator Self-Assessment report, findings and recommendations are released.

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

Samantha Panickar

Senior Policy Adviser

AMEC

0423 914 249