20th September 2013

Richard Sellers
Director General
Department of Mines and Petroleum
100 Plain Street
East Perth WA 6004

Dear Richard

Proposed amendments to the mining legislation, Consultation Paper

Thank you for the opportunity to provide input to the Consultation Paper – *'Proposed amendments to the mining legislation', August 2013.*

The Association of Mining and Exploration Companies (AMEC) is the largest and most successful national industry body for mineral exploration and mining companies within Australia. The membership of AMEC comprises hundreds of exploration, mining and service industry companies, many of which have projects in Western Australia.

AMEC's strategic objective is to secure an environment that provides clarity and certainty for mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

It is in this context that the **attached** submission is made.

I look forward to further consultation on the exposure draft of the Amendment Bill prior to referral to the Parliamentary process.

If you have any queries on the content of the submission please do not hesitate to contact Graham Short or myself.

Yours sincerely

Simon Bennison
Chief Executive Officer

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Submission to:

Department of Mines and Petroleum of WA

Re Proposed amendments to the Mining Legislation

ASSOCIATION OF MINING AND EXPLORATION COMPANIES (AMEC)

September 2013

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1. Introduction

Thank you for the opportunity to provide comment on the Department`s Consultation Paper – '*Proposed amendments to the mining legislation.*'

The Association of Mining and Exploration Companies (AMEC) is the largest and most successful peak industry body for mineral exploration and mining companies within Australia. The membership of AMEC comprises hundreds of exploration, mining and service industry companies, many of which have projects in Western Australia.

AMEC's strategic objective is to secure an environment that provides clarity and certainty for mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner. It is in this context that this submission is made.

AMEC looks forward to further consultation on the exposure draft of the Amendment Bill prior to referral to the Parliamentary process.

2. AMEC responses to proposed amendments

The following specific comments are made on the proposed amendments described in Section 3 of the Consultation Paper:

Recovery of Mining Rehabilitation Fund expenditure

The Proposal

DMP proposes that the *Mining Rehabilitation Fund Act 2012* (MRF Act) be amended such that monies spent from the MRF Account can be recovered from responsible parties and that no timeframe limitations be applied.

Practical Application of the Proposal

From a practical perspective it would be an unacceptable risk to not be able to correctly and accurately identify a prosecution liability when contemplating the purchase of an entity / project, and to have suitable recourse when an unknown offence arises.

While the concept of recouping lost funds is not objected to, consideration needs to be paid to the manner, method and timeframe of registering action.

Ultimately, the *Limitation Act 2005* sets a standard six (6) year term for registering offences. This takes into the account factors such as the diminishing accuracy and completeness of records and witness accounts over time.

Increasing the time limitation to commence action against a party has several shortcomings, not the least of which is the unintentional assumption of liabilities by a party through actions such as entity / project acquisition, and an inability to build a comprehensive defence case due to the lack of accuracy and fullness of records and witness accounts.

AMEC also considers that recovery should be from the current tenement holder and not the party that has sold the tenement and environmental liability.

Concluding Statement

It is considered that maintaining the actual MRF balance will contribute to reducing MRF levies imposed on stakeholders.

On that basis, the concept of recouping monies spent from responsible parties is not objected to, subject to further review of intended parameters, not limited to the above considerations.

Recommendations

It is therefore recommended that:

- **The proposal be restricted to recouping funds spent on disturbances which were subject to the reporting requirements of the MRF Act; and**
- **Claims must be made within the standard six (6) year period provided for under the Limitation Act 2005.**

Mining Rehabilitation Fund Infringement Notices

The Proposal

It is proposed that the implementation of a $4,000 infringement notice, subject to the *Criminal Procedure Act 2005* and *Fines, Penalties and Infringement Notices Enforcement Act 1994* would be more suitable than imposing penalties of up to $20,000.

Such an infringement notice would be issued for non-lodgement, or late lodgement, of disturbance data.

Practical Application of the Proposal

Denying an operator's right to appeal to the Minister prior to the implementation of penalty is in contradiction to procedural fairness and natural justice.

The concept of an infringement notice is out of context of usual mining legislation and operations, in that it does not allow for appropriate discussion between the offending and enforcing party to correctly determine whether or not the penalty is appropriate to the circumstances.

AMEC considers that lodgement of a 'nil' disturbance report the day after it falls due does not justify a $4,000 infringement. Nor does it seem fair and just to impose a mandatory penalty on an entity not able to comply for circumstances outside their control.

Current practice allows a period (generally 30days) for the stakeholder to make a submission as to the circumstances surrounding the offence, such that the Minister, or other delegated authority, may consider the type and level of penalty appropriate to the circumstances, if any.

Concluding Statement

In view of the above, this proposal cannot be supported. Further clarification on how the *MRF Act* and the *Fines, Penalties and Infringement Notices Enforcement Act 1994* interact would be useful.

The Minister requires flexibility to exercise his powers justly and fairly. To remove the ability to align penalty to offence is far from procedural fairness or natural justice and goes against the stated objective – being that of addressing offences at the 'lower end of the scale'.

Recommendation

It is therefore recommended that the proposal to implement an infringement notice not be implemented in the current form.

Mining Rehabilitation Fund Assessment Notices

The Proposal

The Consultation Paper contemplates a single report and single assessment, adjustment and withdrawal notice being issued where multiple holders exist, although liability for such notice will remain with all parties jointly and severally.

This seeks to address the issue of administrative overburden caused by matters such as dual payments.

Practical Application of the Proposal

Where multiple holders exist, the acceptance a single disturbance report is of benefit to the parties, subject to the ability for an alternate holder to report, however the issue of a single notice results in liable parties being denied the information necessary to ensure compliance and meet their fiduciary duties.

Implementing the policy of one (1) holder reporting disturbance data on behalf of all holders is beneficial to stakeholders, both DMP and holders alike, although there should be measures in place to allow an alternate holder to report where the primary party, for any reason, is not able to do so.

There is a noticeable risk where only one (1) holder is to receive notices required for compliance, in that other parties may not be aware of the incurrence, and extent, of their joint and several liability.

It is noted that some other communication from DMP, whether in hardcopy or electronic format, should make allowances for copies to be issued to alternate parties.

Concluding Statement

Although managing and reducing administrative costs is commendable, it should not be undertaken in a manner that increases risk to the stakeholder/s.

For this reason, while a primary holder is required to report, alternate holders must also be provided the ability to lodge in their place.

Further, although a notice may be issued to the primary holder, the other parties must receive a copy in order to be able to manage their risks and meet their fiduciary duties.

Recommendations

It is therefore recommended that:

- **One (1) disturbance report per tenement be accepted as compliance with the MRF legislation;**
- **Implemented policy should allow other parties access for lodgement; and**
- **The non-reporting tenement holders continue to receive copies of all notices issued pursuant to MRF legislation.**

Streamlining authorisation processes

The Proposal

It is proposed that the Director General be authorised to approve Mining Proposals and Mine Closure Plans, and for the Director General to delegate these powers appropriately within the Department.

Practical Implementation of the Policy

AMEC supports the intention of the proposal to streamline the authorisation processes by way of increased delegation to skilled and experienced staff.

To assist in this process it is essential that clear escalation protocols support this process.

In addition, and in order to avoid any degree of bias or subjective assessment, it will be essential that consistent criterion and transparent decision making processes are implemented.

Concluding Statement

AMEC supports the use of 'delegated authority' to Department staff provided that clear escalation protocols exist, and that consistent criterion and transparent decision making processes are implemented and adhered to at all times.

Improving transparency

The Proposal

It is proposed that work approval documents (Programmes of Work, Mine Proposals and associated Mine Closure Plans) be released for public viewing.

While portions of Annual Environmental Reports are released immediately to open file, other documents are to be transitioned in a similar manner to annual mineral exploration (technical) reporting, whereby a five (5) year limitation applies.

Practical Implementation of the Policy

Work approval documents should be made immediately available to the current tenement holder, regardless of the retrospective nature of the proposed policy and the timeframe indicated therein for public release.

As a tenement holder is responsible for disturbance, it is important that the holder be able to identify those disturbances for which they are responsible through examination of work approval documents.

It is acknowledged that provision exists under Freedom of Information with respect to data recovery, however the time and expense incurred by both the holder, the reporting party and DMP in recovering the data is considerable, and not in the best interests of timely reporting by the holder.

The proposition needs, therefore, to be amended in order to address a holder's requirements.

The proposal also refers to the Director General having the option to make the information publicly available, and be guided by DMP policy. AMEC would welcome the opportunity of commenting on such a policy prior to implementation.

Concluding Statement

Given that environmental management and rehabilitation is the responsibility of the holder, it seems illogical that pertinent data would be withheld for any reason.

This proposal should be adjusted to accommodate a holder's right to obtain information on their current holdings without being subject to delay, or screening of relevant information.

AMEC welcomes the opportunity of commenting on the proposed DMP policy concerning the public release of commercially sensitive plans/information/ data.

Recommendations

It is therefore recommended that:

- **That irrespective of the timing of lodgement and release of data to open file, that the current holder be able to immediately access environmental data on that tenement;**
- **The proposal be implemented inclusive of the above provision; and**
- **AMEC be provided the opportunity to comment on DMP policy on release of information and data.**

3. Other required legislative change

Native Vegetation Clearing permits

During the Reforming Environmental Regulation process, the issue of Native Vegetation Clearing (NVC) permits was extensively discussed in working group meetings, with the result that AMEC (with support from the Chamber of Minerals and Energy of WA) recommended in November 2012 the following:

> ***"Fully incorporate native vegetation clearing assessments (for the resources sector) as part of Mining Act and Petroleum Act approvals processes.***
>
> *Outcome - Should this recommendation be implemented in full it will lead to:*
>
> - *A reduction in duplication of process,*
> - *Shorter timeframes for approvals (as there will no longer be the 60 day NVC assessment process), and*
> - *Freeing up DMP FTE's for other activities (efficiencies).*
>
> *Rationale - Reduce duplication, improve effectiveness and efficiency of DMP's environmental regulatory role.*
>
> *Further explanation - Industry has showed strong support and made recommendations for removing duplication and inefficiency created by the clearing permit process in the Industry Working Group report (April 2009) and Middle Review (December 2009). Since then, for various reasons, work has not been substantially progressed by government to implement the recommendations.*
>
> *The requirement to get a clearing permit (EP Act) and Mining Proposal (Mining Act) creates multiple sets of conditions (tenement conditions, permit conditions and commitments in Mining Proposal) and obligations for industry to monitor, comply and*

report against. This is unnecessary duplication for no clear demonstrated environmental benefit/outcome.

The Mining Proposal process provides for environmental impact assessment and management of the resources industry so why duplicate this with a clearing permit?

Industry must submit AER's (Mining Act) and a separate annual clearing report (EP Act). This is duplication because disturbance is already reported in the AER.

The Clearing permit process delays decisions on mining proposals. DMP does not approve mining proposals until permits are granted and have become live (after the statutory appeals period has closed and appeal finalised – if subject to appeal).

Clearing permit process is still paper-based. Applications cannot be lodged or tracked online through EARS. DMP must continue to use DEC's Clearing Permit System (CPS) database. This is clearly inefficient.

Clearing permit approval performance timelines are considerably longer than PoW's and MP's and continue to be below industry expectations, despite DMP's best efforts to "streamline" the process and implement elements of risk-based assessment and "fast-tracked" applications into the process. Statutory public advertising, appeal periods and labour-intensive assessments limit the ability to streamline to any great effect (only 62% of NVC permits are processed in the statutory timeframe).

DMP's re-structure to remove its Native Vegetation Assessment Branch and merge it with the Minerals Environment Branch from January 2013 appears to be a positive step. However, it does not fully solve the problems above. DMP Environmental Officers will now have to assess PoW's, Mining Proposals, Mine Closure Plans and review AER's (and annual clearing reports). The same officer doing a permit assessment and a MP for a project might improve efficiency slightly, but they will still have to write 2 separate assessment reports, prepare 2 sets of approval documents, two sets of conditions etc. under 2 different Acts. This is not best practice environmental regulation!"

Unfortunately, at that time some RER working group members considered that the proposal was outside the scope of the RER process as it related to operational aspects of other approvals agencies, and should be brought up independent of the DMP RER process.

AMEC remains of the view that the following recommendation is still valid.

Recommendation

The Mining Act should be included on Schedule 6 of the Environment Protection Act as a matter of priority.

This recommendation was also made by the Industry Working Group - Review of Approval Processes in WA, April 2009 (recommendation #14).