



10th April 2017

Senator Linda Reynolds
Chair, Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: ec.sen@aph.gov.au

Dear Senator

**REHABILITATION OF MINING AND RESOURCES PROJECTS AS IT RELATES TO
COMMONWEALTH RESPONSIBILITIES**

Thank you for the opportunity to provide input on the Inquiry into 'Rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities'.

The Association of Mining and Exploration Companies (AMEC) is the peak national industry body representing hundreds of mining and mineral exploration companies throughout Australia, some which have interaction with the Commonwealth administered *Environment Protection and Biodiversity Conservation Act* (EPBC Act).

AMEC's policy objectives are to stimulate greenfield and brownfield mineral exploration throughout Australia; and reduce the cost of doing business. A streamlined and cost efficient assessment and approvals process is a cornerstone to achieving those outcomes.

The EPBC Act requires actions that have, or are likely to have a significant impact¹ on a matter of national environmental significance to obtain approval from the Commonwealth Government Minister for the Environment.

The 'significant impact' threshold of the EPBC Act is a filter on the number of matters which 'trigger' the involvement of the Commonwealth Minister for the Environment. It is understood that since 2014 there have been over 600 project referrals to the Minister.²

Further analysis of the referral list indicates that mining related projects (excluding quarries, sand and energy) represented around 8% (50) of that total, of which half were for new mining projects; and the remainder for mine extensions / modifications, or

¹ DoEE website - A significant impact is an impact which is important, notable, or of consequence, having regard to its context or intensity. Whether or not an action is likely to have a significant impact depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts.

² Based on comments contained on p3 DoEE Consultation Paper – cost recovery exemption for small business.

Association of Mining and Exploration Companies

Offices located in Perth and Brisbane. Please address all correspondence to:
PO Box 948, West Perth WA 6872 | 6 Ord Street, West Perth WA 6005
P: 1300 738 184 | F: 1300 738 185 | info@amec.org.au | www.amec.org.au

infrastructure projects. AMEC member company projects represented around half of the mining sector referrals to the Minister for the Environment during that period.

It should be noted that even if the EPBC Act threshold is not triggered in individual cases, **all** assessment and approval processes are fully managed and administered through robust State and Territory legislative and regulatory regimes. This process can take several years before a decision is made.

It is in this context that AMEC makes the **attached** submission to the Inquiry. In doing so, AMEC notes that the Terms of Reference for the Inquiry are extremely broad and in several instances AMEC is unable to provide specific comment.

AMEC considers that the role of the Commonwealth Government should be one of oversight to ensure that the requirements of the EPBC Act and approval conditions are being met. There is no need for the Commonwealth to be duplicating existing State and Territory Government regulatory regimes. The 'one stop shop' environmental assessment and decision making model previously debated in Parliament should be fully implemented immediately.

AMEC also notes that Australia has a reputation of demonstrating world class environmental standards and many countries look to our industry for our expertise, commitment and rigour in environmental management. There is no case for additional regulatory intervention by the Commonwealth Government.

I would be pleased to appear before the Senate Committee to expand on any matters raised in the submission.

Yours sincerely

Simon Bennison
Chief Executive Officer



Submission to Senate Environment Committee

Rehabilitation of mining and resources projects as it relates
to Commonwealth responsibilities

ASSOCIATION OF MINING AND EXPLORATION COMPANIES

April 2017

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Prepared by

Association of Mining and Exploration Companies Inc (AMEC)

Head Office

6 Ord Street, West Perth WA 6005 (Offices located in Perth, Brisbane and Sydney)

Please address all correspondence to: PO Box 948 West Perth WA 6872

P: 1300 738 184 E: info@amec.org.au www.amec.org.au

1. EXECUTIVE SUMMARY

The Association of Mining and Exploration Companies (AMEC) is the peak national industry body representing hundreds of mining and mineral exploration companies throughout Australia, some which have interaction with the Commonwealth administered *Environment Protection and Biodiversity Conservation Act* (EPBC Act).

AMEC's policy objectives are to stimulate greenfield and brownfield mineral exploration throughout Australia; and reduce the cost of doing business. A streamlined and cost efficient assessment and approvals process is a cornerstone to achieving those outcomes.

The EPBC Act requires actions that have, or are likely to have a significant impact¹ on a matter of national environmental significance to obtain approval from the Commonwealth Government Minister for the Environment.

The 'significant impact' threshold of the EPBC Act is a filter on the number of matters which 'trigger' the involvement of the Commonwealth Minister for the Environment. It is understood that since 2014 there have been over 600 project referrals to the Minister.²

Further analysis of the referral list indicates that mining related projects (excluding quarries, sand and energy) represented around 8% (50) of that total, of which half were for new mining projects; and the remainder for mine extensions / modifications, or infrastructure projects. AMEC member company projects represented around half of the mining sector referrals to the Minister for the Environment during that period.

It should be noted that even if the EPBC Act threshold is not triggered in individual cases, **all** assessment and approval processes are fully managed and administered through robust State and Territory legislative and regulatory regimes. This process can take several years before a decision is made.

It is in this context that AMEC makes the following comments in relation to the Inquiry. In doing so, AMEC notes that the Terms of Reference for the Inquiry are extremely broad and in several instances AMEC is unable to provide specific comment.

AMEC considers that the role of the Commonwealth Government should be one of oversight to ensure that the requirements of the EPBC Act and approval conditions are being met. There is no need for the Commonwealth to be duplicating existing State and Territory Government regulatory regimes. The 'one stop shop' environmental assessment and decision making model previously debated in Parliament should be fully implemented immediately.

AMEC also notes that Australia has a reputation of demonstrating world class environmental standards and many countries look to our industry for our expertise, commitment and rigour in environmental management. There is no case for additional regulatory intervention by the Commonwealth Government.

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2. RECOMMENDATIONS

- 1. Implement the Mining Rehabilitation Fund Model in all jurisdictions as an alternative to existing financial assurance and environmental bonding systems**
- 2. Approval related Bilateral Agreements with accredited State and Territory Government should be resolved and implemented**
- 3. Remove the duplicative ‘water trigger’ requirements from the EPBC Act**
- 4. That the Senate Committee notes that the Australian mining sector is a world leader in environmental management**
- 5. Amend the EPBC Act to prevent vexatious appeals by third parties seeking to delay and block mining development.**

3. ROBUST STATE AND TERRITORY ENVIRONMENTAL REGULATION FRAMEWORKS EXIST

Western Australian framework

Although there is room for further improvements, AMEC considers that the environmental protection framework in Western Australia should be viewed as ‘world leading practice’, and used as a ‘benchmark’ by the Senate Environment Committee. Some of the key features of the framework include:

Robust assessment and approval processes

The independent and robust assessment processes undertaken by the WA Environmental Protection Authority (EPA) are critical in providing the Government and the community with assurance that it will use its best endeavours to protect the environment; and to prevent, control and abate pollution and environmental harm.

In order to achieve this the EPA policies, procedures and systems have recently been the subject of a high level third party legal and governance review, with the result that further improvements are being made to ensure contemporary environmental management practices are used.

Key components are the Environmental Impact Assessment (EIA) and the Public Environmental Review (PER) processes undertaken by the EPA which provides full accountability and transparency about the project to the community. These robust processes allow the EPA to provide strategic and unfettered advice to the Minister for Environment.

Significant residual impact mitigation strategies

In 2011, the WA Government implemented an Environmental Offsets Policy and metric calculator to 'improve or protect the environmental value of an asset elsewhere to compensate for the loss of environmental values as a result of the proposed project'.³ The Offsets Policy is applied as a last resort, after all steps have been taken to avoid, minimise and mitigate environmental impacts. The Policy has also been adopted by the WA EPA and a similar policy adopted by the Commonwealth Department of the Environment. The corresponding offsets cost calculators are comprehensive and complex.

The result of the implementation of the Offsets Policy is that several projects in the Pilbara region of WA have had an 'environmental offset condition' applied to them, which includes cash and indirect contributions. To efficiently and effectively receive and manage those funds the WA EPA has established a Special Purpose Trust Account⁴ to coordinate the delivery of the environmental offset projects.

This will allow payments for:

- the on-ground actions which offset the significant residual impacts of proposals;
- indirect actions, such as research, that are necessary to directly support on-ground implementation of offsets

Financial assurance strategies

Another aspect of the WA Government's regulatory framework is the establishment of the Mining Rehabilitation Fund (MRF) as a risk mitigation strategy for *Mining Act* projects. Larger and more complex projects established under *State Agreement Acts* are currently excluded from participation in the MRF.

The DMP Yearly Report 2016 indicates that there was over \$60m in the MRF as at 30 June 2016, and forecast to be \$94m by the end of June 2017. Interest earned on the Fund can be used to rehabilitate historical abandoned mines sites in WA. These are funds that were previously not available to the Government, other than using scarce taxpayers funds.

Money held in the MRF is available to rehabilitate abandoned mines across the State in circumstances where the tenement holder/operator has failed to meet rehabilitation obligations, and every other effort has been used to recover funds from the operator.

It is a Fund of the last resort, and has demonstrated its value in the Government being able to ensure safety and environmental risks were addressed at the Ellendale Diamond Mine in the West Kimberley region of WA.⁵

Extracts from the DMP report indicate that

Kimberley Diamond Company effectively abandoned Ellendale in October 2015 by lodging a 'Notice of Disclaimer of Onerous Property' under the Corporations Act 2001 (Cth).

³ www.epa.wa.gov.au

⁴ Pilbara Environmental Offsets Fund Account

⁵ [http://www.dmp.wa.gov.au/Documents/Environment/Mining_Rehabilitation_Fund_\(MRF\)_Yearly_Report_2016.pdf](http://www.dmp.wa.gov.au/Documents/Environment/Mining_Rehabilitation_Fund_(MRF)_Yearly_Report_2016.pdf) page 8

DMP has accessed MRF funds to immediately address significant safety and environmental concerns.

The tenements associated with Ellendale contain a substantial diamond potential. Based on an estimate of the remaining resource, it is highly likely that future mining will be conducted in this area.

Accordingly, the works undertaken to date do not directly relate to the closure or full rehabilitation of the existing Ellendale mining operations. The works undertaken within the Ellendale area to appropriately manage all significant safety and environmental risks have included:

Removing several tonnes of hydrocarbon-contaminated soil from plant and workshop areas

Cleaning up the industrial tip area.

Placing several tonnes of windblown rubbish into the domestic tip (Figure 7).

Re-establishing internal walls within the tailing storage facility (TSF) to reduce internal catchment areas

Surveying the TSF and investigating freeboard levels.

Installing signage and barriers to restrict access across the site.

This work was undertaken to ensure the site is safe, stable and non-polluting during the care and maintenance period.

As at 30 June 2016, DMP had undertaken this work at a cost of \$148k. Without access to the MRF, taxpayers would have had to meet this initial liability.

Rehabilitation works on two pilot historically abandoned sites has also commenced at Black Diamond in Collie and Pro-Force in Coolgardie.

The MRF is guided by the Abandoned Mines Policy⁶ which provides the framework for risk based prioritisation, management and rehabilitation of abandoned sites, the majority of which are historical sites which are several decades old, and in some cases over 100 years. It is further noted that the environmental liability transfers with the tenement and included within the due diligence process undertaken by the parties to the transaction.

AMEC is advocating for the implementation of the MRF model in all Australian jurisdictions as an alternative for the current environmental security bonding / financial assurance systems. A positive outcome from the MRF is that there is also a financial incentive for progressive rehabilitation during the life of the mine as the impact of the annual levy reduces when the estimated Environmental Liability falls.

It has also provided the Department of Mines and Petroleum with valuable and accurate details on mining tenements which are the subject of rehabilitation activities.

RECOMMENDATION

- 1. Implement the Mining Rehabilitation Fund Model in all jurisdictions as an alternative to existing financial assurance and environmental bonding systems**

⁶http://www.dmp.wa.gov.au/Environment/Abandoned-mines-projects-18193.aspx#toc_18201

Duplication in frameworks

State and Territory Government agencies manage their own application, assessment, decision making, enforcement and compliance processes through local mining and environment protection legislation.

If an individual project 'triggers' the EPBC Act it is referred by the relevant State / Territory Government for the additional consideration of the Commonwealth Government Minister for the Environment.

AMEC considers that this is an inefficient and costly duplication of resources, both from an industry and Government perspective. There are no additional environmental outcomes or benefits from this arrangement.

It is for these reasons that AMEC has been a strong supporter of the proposal to delegate the Commonwealth Minister's assessment and approval powers under the EPBC Act to accredited State and Territory Governments through the bi-lateral Agreements.

This delegation should also include compliance and enforcement matters, such as remediation, rehabilitation and relinquishment of mining areas.

State and Territory Government agencies already have local, on-the-ground and specialist experience and knowledge of each mining related project, and are in a far better position on which to manage and monitor a remotely located project which could be hundreds of kilometres from the nearest town.

The Department of the Environment has supported the view that unnecessary duplication exists under current arrangements. It also noted that high environmental standards will be maintained and appropriate checks and balances exist through an assurance framework.⁷

RECOMMENDATION

2. Approval related Bilateral Agreements with accredited State and Territory Government should be resolved and implemented

An additional area of duplication has been created as a consequence of the EPBC Act 'water trigger' requirements for coal seam gas or large coal mining developments. The approval trigger applies to an action which has, or is likely to have, a significant impact on water resources whether in its own right or when considered with other developments.

AMEC considers that the management of water resources has almost always been a matter for State and Territory Governments and not the Commonwealth Government, or an independent expert Scientific Committee.

⁷ <http://www.environment.gov.au/epbc/publications/regulatory-cost-savings-oss> - Regulatory cost savings under the one stop shop for environmental approvals.

In addition to this duplication, retention of the current provisions for coal and coal seam gas projects has the potential for broader application through the resources sector, and should be removed as it creates another level of uncertainty.

RECOMMENDATION

3. Remove the duplicative 'water trigger' requirements from the EPBC Act

4. INDUSTRY LEADING PRACTICE AND CORPORATE SOCIAL RESPONSIBILITY

Effective community engagement, base line studies, research and early planning are essential components of the whole mine cycle; from exploration through to final relinquishment.

Mining company`s fully accept, understand and are committed to meet their legal, social and environmental stewardship obligations whilst also meeting financial imperatives for their investors and shareholders.

Successful rehabilitation of a mined area is critically important to the process of complying with environmental and corporate social responsibility obligations. In recognition of this companies such as Sandfire Resources has released a comprehensive Sustainability Report⁸ detailing how they maintain their social licence to operate; and their environmentally sustainable operations.

This has included:

- ❖ Economic contribution
- ❖ Community investments and partnerships
- ❖ Supply chain
- ❖ Product lifecycle
- ❖ Community engagement and landowner consultation
- ❖ Native Title claimant group engagement
- ❖ Managing water
- ❖ Energy, carbon and renewable energy generation (De Grussa Solar Power Project)
- ❖ Waste
- ❖ Managing non-mineral waste
- ❖ Land management and biodiversity

In addition, industry has adopted a progressive technology and science based solutions approach to rehabilitation, remediation and rejuvenation of mining project areas. These have been highlighted at three 2 day Mine Closure / Rehabilitation and Environment related Conferences convened by AMEC since 2014.

The speakers have included a range of Ministers, Members of Parliament, Director Generals, senior bureaucrats, academics, environmental scientists and consultants, and mining companies.

⁸ http://www.sandfire.com.au/images/sustainability_report_2016.pdf

The presentations have been extremely broad and included a number of science and technical sessions, case studies and panel discussions, such as:

- How does Australian regulation compare to other jurisdictions?⁹
- Mine closure and relinquishment - case study
- Innovation in revegetating
- Seed accreditation
- Advanced waste rock management
- Topsoil tracking and management
- Rehabilitation at scale
- De-risking contaminated sites
- Remediation and closure of legacy tailings
- Integrated geo-environmental landform assessment, design and monitoring
- Managing groundwater impacts from tailing storage facilities
- Operating tailings storage facilities for closure
- Climate change and the mining industry
- Integrated planning to enhance mine closure - case study
- Towards more effective closure in the Pilbara
- Pilbara Restoration initiative
- Restoring for future prosperity
- Five years to go – development and implementation of a mine closure plan - case study
- Mine closure contracts - case study

Feedback from each of the well-attended Conferences has been very positive and provided a valuable insight into the pro-active work and innovation which is occurring in, and around the Australian mining sector. There was a strong view that Australia, in comparison to many overseas jurisdictions, has a robust environmental regulation framework.

They have also allowed an exchange of positive ideas, techniques and initiatives between delegates and presenters.

At the 2017 Conference there were several case studies and examples of where leading practice science, innovation, research and development have resulted in positive environmental outcomes, whilst also allowing mining activities to proceed.

These included the four finalists of the 2016 AMEC Environment Award. The environmentally responsible work done by the Award winner, Roy Hill Holdings was showcased through their presentation “Going above and beyond to minimise impact to mangroves in Port Hedland”.

Delegates also heard presentations about a range of topics across the full spectrum of remediation, rehabilitation and mine closure. This included research and development, planning, monitoring and measuring environmental outcomes.

⁹ <http://www.kasaconsulting.com.au/index.htm> Nick Croston, MD Kasa Consulting – Mr Croston is a RABQSA Registered Lead Environmental and Quality Management Auditor – stated that the Australian mining sector is a world leader in environmental management

Delegates were clearly impressed by the leadership taken by AMEC, and the forward thinking and strategic approach taken by many companies and their consultants in meeting, and exceeding environmental management and corporate social responsibility obligations.

Australian companies have a reputation of demonstrating world class environmental standards and many countries look to our industry for our expertise, commitment and rigour in environmental management.

RECOMMENDATION

4. That the Senate Committee notes that the Australian mining sector is a world leader in environmental management

An issue consistently raised through these Conferences and other industry forums is the increasing number of vexatious appeals and deliberate strategies to delay and block mining development.

There have been an increasing number of such appeals by sophisticated groups using the current provisions of Section 487 of the EPBC Act.

Noting that Australia already has robust and extensive assessment and approvals frameworks in place, third party objections should be limited to those with a 'direct' interest in a project.

AMEC considers that Section 487 of the EPBC Act should be amended accordingly.

RECOMMENDATION

5. Amend the EPBC Act to prevent vexatious appeals by third parties seeking to delay and block mining development