Sub #30

AMEC ASSOCIATION OF MINING AND EXPLORATION COMPANIES (INC)

18th July, 2002
Our Ref: G.19

The Committee Secretary
House of Representatives
Standing Committee on Industry and Resources
Inquiry into Resources Exploration Impediments
Parliament House
CANBERRA ACT 2600

Dear Sir

It is with pleasure that I enclose the Association of Mining and Exploration Companies' Submission to the House of Representatives Standing Committee on Industry and Resources.

We enclose as requested, a disk containing the full Submission for your convenience, as well as hard copy of both the Submission and the separate Appendices document. Unfortunately, I am not able to include all of the Appendices Papers on the disk as they were, in some cases, sourced from outside of our own system and were never electronically stored. We have included all of the material we have available.

Should the Committee elect to conduct public hearings, AMEC would appreciate the opportunity to be included in that process, to enable us to expand on some particulars of our Submission and to answer any questions the Committee may wish to ask.

Please do not hesitate to contact me at any time on any matters raised in our Submission or this letter.

Yours faithfully

George Savell

George Savell
Chief Executive Officer

INCORPORATED IN WESTERN AUSTRALIA
3rd Floor, 33 Ord Street, (P.O. Box 545), West Perth, W.A. 6872
Ph: (08) 9321 3999 Fax: (08) 9321 3260
E Mail: amec@amec.asn.au Home Page address: http://amec.miningworld.com

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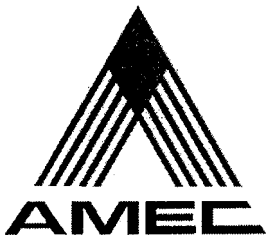

SUBMISSION

TO

THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON INDUSTRY & RESOURCES INQUIRY

INTO

RESOURCES EXPLORATION IMPEDIMENTS

FROM

ASSOCIATION OF MINING AND EXPLORATION COMPANIES (INC)

JULY, 2002

INCORPORATED IN WESTERN AUSTRALIA
3rd Floor, 33 Ord Street, West Perth WA 6005
Phone: (08) 9321 3999 Fax: (08) 9321 3260
E Mail: amec@amec.asn.au Home Page Address: http://www.amec.asn.au

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7.0 GEOSCIENCE AUSTRALIA: ITS INDUSTRY AND COMMUNITUY ROLE, ITS FUNDING NEEDS AND ITS ABILITY TO STIMULATE MINERAL INVESTMENT.

RECOMMENDATION

That Government prepare a strategy which would involve cooperative project work involving the Commonwealth through Geoscience Australia and the States through their respective Geological Surveys, to jointly produce basic geological data from remote and prospective areas of Australia, which will enhance interest and mineral investment in those areas and produce information of State and Federal importance on continental water resources.

8.0 ABORIGINAL AFFAIRS

8.1 FINDING A WORKABLE SOLUTION TO NATIVE TITLE

RECOMMENDATIONS

1. *In the first instance, the Act should be amended to prohibit native title claimants from negotiating separately with developers if their claim forms part of an amalgamated claim. Amalgamated claims should operate as such, ie., negotiations with mineral developers should take place on an amalgamated basis.*

2. *The Federal ALP and minor parties should accept the Wik amendments and cease trying to mitigate their perceived losses by blocking moves to establish State/Territory native title regimes that adhere to the parameters prescribed by the amended Act.*

3. *AMEC is also committed to ensuring that the Federal Parliament is not afforded an ongoing ability to scrutinise and disallow subsequent legislative amendments to State and Territory native title regimes, once established. Given that Section 43A of the amended Act provides the Commonwealth Minister with an ability to revoke Federal Parliamentary approval of State native title regimes that, through amendment, no longer meet the regime criteria stipulated in the Act, ongoing Senate scrutiny of State regimes is unwarranted.*

4. *Finally, AMEC has long argued that mineral exploration tenements should be exempted from the right to negotiate due to the low impact nature of such tenements, coupled with the fact that a tiny percentage of mineral exploration tenements ever result in a mine. Mineral exploration represents the Australian industry's future. The establishment therefore, of State/Territory regimes under Section 26A of the Act that exempt mineral exploration from the right to negotiate process, should be progressed by the Commonwealth with State and Territory Governments as a matter of urgency.*

   The Native Title Act has not worked since its enactment in 1993 and the 1998 Wik amendments have done little to improve the legislation. AMEC remains committed to making the Act work and in so doing ensuring the industry's ability to access land for mineral development, while simultaneously delivering economic and social benefits to native title claimants and holders.

8.2 INDIGENOUS PROTECTED AREAS

RECOMMENDATIONS

1. *That, in accordance with normal democratic procedures, all such biodiversity protection measures in the future be implemented by legislation which requires the scrutiny of the Federal Parliament.*

2. *That the declaration of Indigenous Protected Areas be suspended until a full public assessment of the worth of the program and its implications for productive industries such as the mineral exploration and mining industry, oil and gas interests, and for Australia's States and Territories, is carried out.*

3. *That any public Inquiry provide ample opportunity for submission of views by all major stakeholders and all other interests.*

4. *That the inquiry's terms of reference be determined by the Council of Australian Governments and that any subsequent reports be delivered to that Council.*

5. *As the instigator of the problem, the Commonwealth provide all funding for an effective inquiry to be conducted.*

8.3 ABORIGINAL HERITAGE

RECOMMENDATIONS

That the Aboriginal and Torres Strait Islander Heritage Protection Act be assessed and amended where necessary to ensure:

a) That Bilateral Agreements can be drawn up between the Commonwealth and the States, to allow the States to undertake investigatory functions associated with applications for protection under the Commonwealth Act;

b) That there is requirement for sufficient evidence to be produced at time of application by an applicant for protection of a site, object or cultural material, to validate the application as genuine;

c) That the Federal and relevant State Minister be required to confer on any issue raised under the Federal Act, which has an ability to affect a State's Development;

d) That where possible, the provisions of the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act, be aligned with State provisions to provide a more standard Commonwealth/State approach and to remove obvious anomalies and leverage points, which could promote misuse.

9.0 ENVIRONMENTAL ISSUES – THE ENVIRONMENT PROTECTION AND BIO-DIVERSITY CONSERVATION ACT

RECOMMENDATIONS

AMEC proposes that the Act be amended to incorporate the following recommendations:

1. The term significant impact should be defined in the legislation according to established scientific protocols and following Commonwealth consultation with all State and Territory governments.

2. *That the proposal to add a greenhouse trigger to the list of matters of national environmental significance be abandoned. The existing six triggers are broad enough to ensure that all developments of national environmental significance come within the Commonwealth sphere of influence.*

3. *Failing the abandonment of the greenhouse trigger, the proposed amending regulations be re-drafted to remove firstly, any discrimination against the resource and development sector and secondly, against the States of Western Australia and Queensland and the Northern Territory, which largely produce the nation's mineral wealth.*

4. *That the heritage legislation currently before the Parliament be withdrawn or extensively re-drafted to provide for, firstly, broad community and business input into the nomination and assessment process, secondly, for the Minister to be made fully accountable to the Federal Parliament for his heritage listing decisions and, thirdly, that an appropriate appeals mechanism be put into place to accord with the principles of natural justice*

5. *That nuclear actions, ie, the mining and milling of uranium ore, not comprise a matter of national environmental significance and therefore not be classified as an automatic trigger for Commonwealth assessment.*

6. *That any addition to matters of national environmental significance be made by legislative amendment, opposed to regulation, following agreement by all States and Territories.*

7. *That any further referral of projects to the Commonwealth be suspended (the relevant States and Territories to make the project assessments), until such time as bilateral agreements have been finalised with all States and Territories wishing to conclude such agreements.*

8. *The Commonwealth Environment Minister should explain, as a matter of urgency, how Commonwealth duplication of State and Territory environmental approval process will be avoided in the permanent absence of bilateral agreements between the Commonwealth and some States and Territories.*

9. *That decisions to grant or otherwise treat a project approval, should comprise a joint decision of all relevant Commonwealth Ministers. In the event that a Ministerial consensus proves unattainable, Federal Cabinet should make the final decision.*

10. *That Section 176 of the EPBC Act be amended to provide for the agreement of the States and Territories to bioregional plans which affect them.*

10.0 WATER RESEARCH, MANAGEMENT AND ALLOCATION

RECOMMENDATIONS

That a Commonwealth / State programme be established to investigate the major sedimentary Basins which represent a critical water resource for development, both currently and in the future.

The aim should be to establish the structure of the reservoir, volume of water resource, recharge rate (if any), and water quality.

The data obtained would be entered into a discrete section of a database and be publicly available.

11.0 STATISTICAL SERVICES

RECOMMENDATIONS

- *That the Mining Industry's basic statistical needs be ascertained and that the funding needs of the ABS to collect, process and produce the data related to those needs, be identified with a view to making possible the satisfaction of the programmes agreed between stakeholders and government.*

- *That as part of the process, State Departments administering the Mineral and Energy industries be consulted, to determine whether they are able to assist in the production of the necessary information from their own sources.*

12.0 ENERGY GRANTS (CREDITS) SCHEME

RECOMMENDATIONS

1. *That the entitlements currently flowing from the Diesel Fuel Rebate Scheme and the Diesel and Alternative Fuels Grants Scheme be retained at present levels, consistent with the undertaking given by the Commonwealth Government, when these two schemes are subsumed by the introduction of the Energy Grants (Credits) Scheme.*

2. *That the Commonwealth Government reassert the principle that taxes should not be levied on business inputs and intermediate goods in order to facilitate the global competitiveness of export oriented sectors, including the mining industry.*

3. *That the Energy Grants (Credits) Scheme not be used as a legislative measure to undermine the entitlements currently afforded to Australia's export oriented sectors by so qualifying the eligibility of companies and individuals to receive the rebates/grants that the entitlements made available through the present schemes, the DFRS and DAFGS, are effectively eroded.*

4. *That the introduction of the Energy Grants (Credits) Scheme be seen by the Commonwealth Government as an opportunity to enhance administrative and compliance systems and to correct deficiencies in the DAFGS, notably to deem as eligible diesel used in light vehicles off-road.*

4. *That the introduction by the Commonwealth Government of emission control standards and low-sulphur fuels be phased in over reasonable time frames to allow the mining industry to make the appropriate financial and operating adjustments, without damaging the viability of mineral exploration and mining companies.*

13.0 TAXATION

RECOMMENDATIONS

1. *In order to address the 'Supply of a Going Concern Issue' adequately, AMEC strongly recommends that Government direct the resources of the ATO to providing a detailed view of how the "Supply of a Going Concern" provisions of the GST legislation apply to the variety of joint venture transactions conducted in the exploration and mining industry.*

   To the extent that there are any deficiencies with respect to providing the type of relief the section originally contemplated, that Government enacts appropriate amendments to the GST legislation.

2. *With regard to the issues related to precious metal products, AMEC recommends that the relevant sections be amended to address the issue of partially refined ore/dore being treated as taxable on its provision to a refiner.*

   This would remove the need for the special arrangements the ATO has put in place to assist in removing the effects of the GST legislation as it currently stands. In so doing, it would save both the industry and Government considerable resources.

13.2 INCOME TAX CONSOLIDATION

RECOMMENDATION

That Government amend the current provisions of the new Business Tax System (Consolidation, Value shifting, Demergers and other measures) Bill 2002, to ensure that the bias between share and asset purchases is removed.

14.0 Nuclear and Related Matters

RECOMMENDATION

That the Federal Government consider what powers are available to it to prevent State Governments from passing legislation which is not in the National interest and which will damage investment perceptions and economic outcomes beyond State jurisdictions.

16.0 A Means of Increasing Mineral Investment Levels

16.1 Flow Through Shares

RECOMMENDATIONS

AMEC recommends that:

1. *The Commonwealth Government seriously examines the Flow through Shares mechanism contained in the Canadian taxation system, with a view to implementing a similar regime in Australia.*
2. *The scheme be trialed on a five year basis with an appropriate sunset clause attached to ensure a full review of whether the scheme was cost effective, met its objectives and resulted in positive outcomes in a national sense.*
3. *If an affirmative decision to proceed is reached that implementation be treated as a matter of urgency and that necessary amendments to the Taxation Act, to implement the system, be contained in a priority Bill and not left for inclusion with other amendments to the Act which may be pending.*

1.0 IDENTIFICATION

The Association of Mining and Exploration Companies (Inc) (AMEC) was formed in 1981 to represent companies engaged in mineral exploration and mining in all matters impinging on their business interests.

AMEC is an issues-based lobby group which operates at a State, Federal and Local Government level.

AMEC represents more than 200 mineral exploration, mining and associate member companies (which supply goods and services to the minerals industry) and individual members.

While AMEC represents some national and multinational mining corporations, the bulk of AMEC's full members are medium-sized to small production and mineral exploration companies.

2.0 FOCUS AND PHILOSOPHY

The purpose for which the Association was incorporated is encapsulated in two Constitutional objectives.

To promote in general the interests of the Mineral Exploration and Mining Industry in all its branches.

To assist in any lawful manner in the growth, stability and economic well being of the Mineral Exploration and Mining industry.

3.0 CONTACT

Mr G A Savell Chief Executive

Association of Mining and Exploration Companies (Inc)
PO Box 545
West Perth WA 6872

Phone: (08) 9321 3999
Facsimile: (08) 9321 3260
Email: jan@amec.asn.au
Web Page: www.amec.asn.au

4.0 INTRODUCTION

There are multiple impediments in place which affect resources exploration investment in Australia in 2002.

No one existing impediment is likely to be judged as significant enough to seriously impede mineral investment. Collectively however, the impediments with which we will deal in this submission, are certainly a major disincentive to companies seeking to access Australia as a destination for mineral investment, and companies already operating here.

Some impediments arise from commercial or market-driven developments, while others are the result of legislation, Government policy initiatives or community-inspired requirements. Both the States and the Commonwealth bear responsibility for these impediments to a greater or lesser extent.

Some impediments could be removed by positive Government action. For example, the risk capital drought experienced by the mineral exploration industry over the past four years, could be immediately relieved through the establishment of a taxation effective incentive scheme for individual taxpayers, to mobilise risk capital from the community.

Other impediments result from legislation which deliver land access problems to industry and inevitably raise compliance costs while contracting the land area to which industry has access.

Some impediments result from a conflict between Commonwealth and State legislation, jurisdiction and process. Examples of this are the Environment Protection and Biodiversity Conservation Act, 2000, and the Native Title Act, 1993. Duplication of process results from the first Act and unworkable process from the second Act.

There is a serious lack of a seamless, formal programme, to gather Geoscientific data in a cooperative way, which would greatly enhance mineral exploration. Geoscience Australia and each State's Geological Survey by working in a complementary way within a formal programme structure, could deliver improved results in a more cost-effective manner to both the Commonwealth and the States, than is possible at present.

One of the issues that must be seriously addressed is the cross-jurisdictional problems (impediments) which Commonwealth legislation and policy initiatives almost always deliver at State level where the on-ground affect becomes evident.

There is a consistent failure to track the real effect of legislative provisions and to consider likely outcomes in the commercial sense for those who will be affected before an Act is promulgated. In this way, the legislative process can in itself, become an impediment to mineral investment through a failure to put practical, commercially acceptable practises in place, which can be easily complied with by developers in a win/win sense.

There is an increasing awareness with respect to both the Commonwealth and the Western Australian Governments of just how serious the recent four year downturn in Mineral Exploration investment really is, in terms of future mineral production.

This is evident from this Inquiry and from the Western Australian Government's Inquiry into Greenfields Exploration headed by John Bowler MLA.

There has also been an Inquiry into methods of improving the Western Australian Project Approvals Process, headed by Dr Michael Keating, a retired Commonwealth Public Service Officer.

Inquiries have also been held into a means of clearing the huge backlog of Mineral Title Applications, which stands currently at approximately 10,500 and into Forms of Agreements, which might be suitable for use with Native Title Claimants to free-up the Native Title Claims determination process by the Western Australian Government.

This Inquiry needs to familiarise itself with these State Inquiry outcomes and the implications for this investigation, as the impediments are often of a cross-jurisdictional nature.

AMEC has made comprehensive submissions to all of these State Inquiries and would be happy to make available copies of these papers on request.

In the following paper AMEC has outlined perceived impediments to resource exploration and has offered positive solutions to these problems wherever possible.

5.0 THE STATUS OF MINERAL EXPLORATION IN AUSTRALIA AND WESTERN AUSTRALIA

Mineral exploration in Australia has been falling at a time when the investment is needed to sustain national economic development. The mining industry underpins the Australian economy and sustains our living standards.

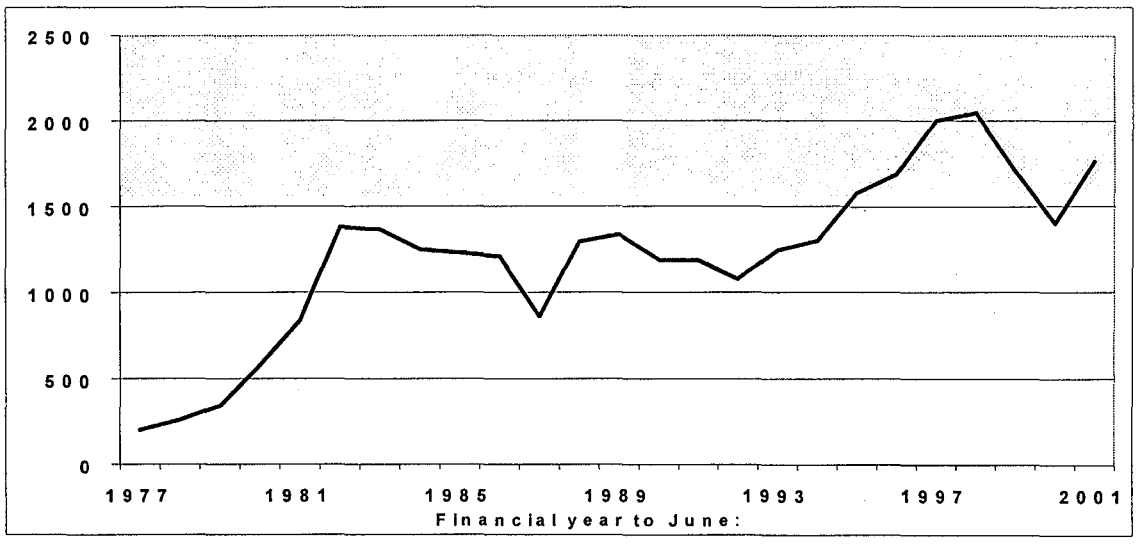
It is vital that Governments act to inhibit further falls and restore confidence in this sector. There are options available and they must be reviewed as a matter of urgency.

5.1 EXPLORATION – THE REALITY

Exploration is the first stage of resource extraction and mineral use. Most of the surface geology in Australia has now been searched and we need to invest in more sophisticated techniques to locate commercial orebodies underground. Only exploration can maintain existing production levels and discover new mines.

Exploration investment has fallen since a peak in 1997 after two decades of generally rising expenditure (Figure 1). It has now recovered back to 1996 levels but there is considerable concern that it will again decline for the reasons set out in the following section of this submission.

FIGURE 1: MINERAL EXPLORATION EXPENDITURE IN AUSTRALIA ($MILLION)



Source: ABARE; Australian Commodity Statistics and Australian Commodities

5.2 THE CAUSES OF THE INVESTMENT SLUMP

The causes of the reduction in exploration effort are varied. Low commodity prices were a significant factor, especially for Gold, and the consolidation of the resource industry has reduced the number of large mining houses, with many now having a global portfolio to spread risk. Overseas countries have also moved to improve their investment climate and attract exploration expenditure.

Secondary contributing factors in Australia include access to land for exploration. This is exemplified by the fact that Australian companies spent an estimated 25% of their exploration budget overseas in 2000-01.

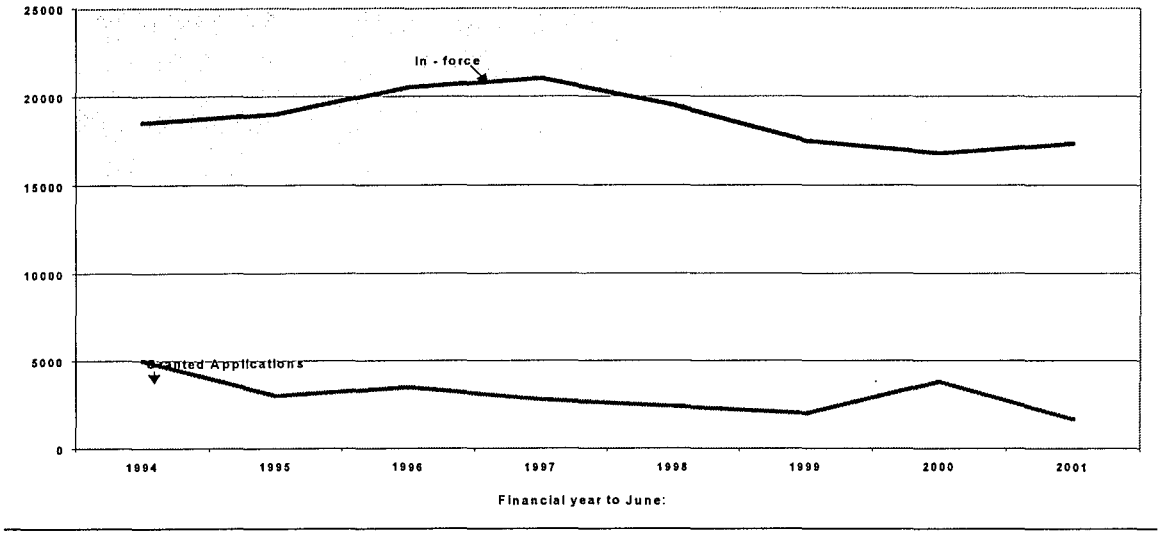
The exploration process requires access to land for preliminary assessment and mapping and for subsequent drilling when potential is thought to exist. Native title constraints have either dramatically reduced land access or increased access costs, in most Australian States. Western Australia has been one of the States hardest hit by native title claims and recent figures show disturbing trends, which indicate the position may worsen. AMEC has therefore used WA to illustrate the effect on a State which produces a large part of Australia's mineral wealth.

Since December 1993 when the Commonwealth Native Title Act was passed and proclaimed, native title claims have multiplied at an alarming rate. As at March 2001, there were 575 active native title claims Australia wide with 133 of those in Western Australia. Since 1993, there has been only 4 "full approved determinations" of native title and only 3 of these are in Western Australia. Progress is painstakingly slow.

The escalation in the number of claims has in turn impacted on the status of Mining Lease, Prospecting License and Exploration License application approvals. The number of titles granted has declined in every year bar one since 1994 (Figure 2 – Pg.6). The number of mining titles in operation has remained relatively stable but clearly growth has not occurred.

In 1989-90, 5,076 applications were received, 4,195 were granted and 17,247 tenements were in force in Western Australia. Eleven years later in 2000-01, only 3,530 applications were received, 1,675 were granted and 17,326 tenements were in force.

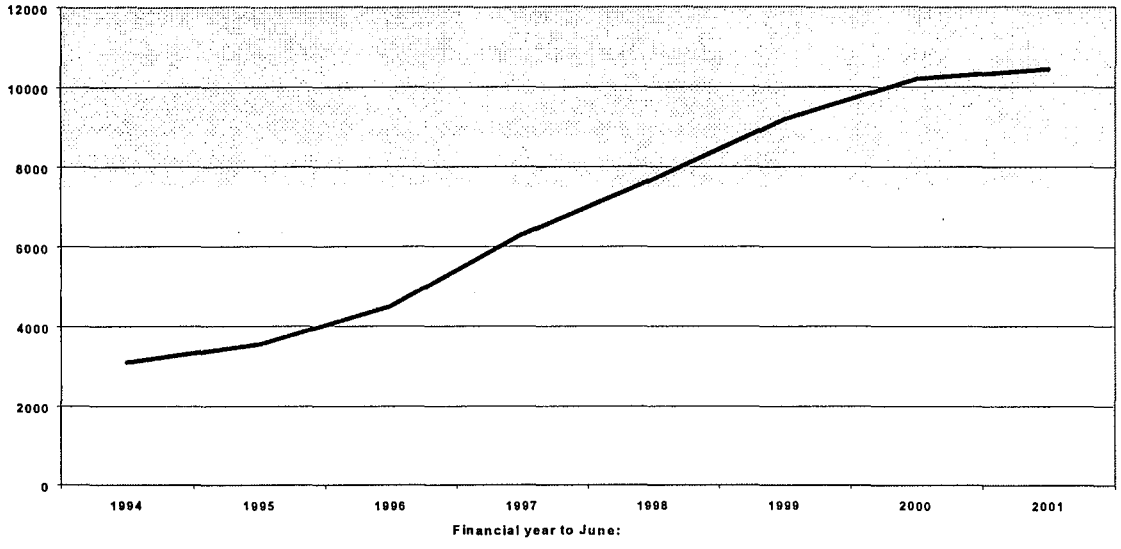
FIGURE 2: WESTERN AUSTRALIAN MINERAL APPLICATIONS GRANTED AND TENEMENTS IN FORCE



Source: WA Department of Mineral and Petroleum Resources

In addition, the total backlog of pending exploration, prospecting and mining lease applications in process has gone from approximately 2,700 at any one time prior to the implementation of the Commonwealth Native Title Act to over 10,500 at June 2001, an increase of 290 per cent (Figure 3).

FIGURE 3: WESTERN AUSTRALIAN APPLICATIONS PENDING



Source: WA Department of Mineral and Petroleum Resources

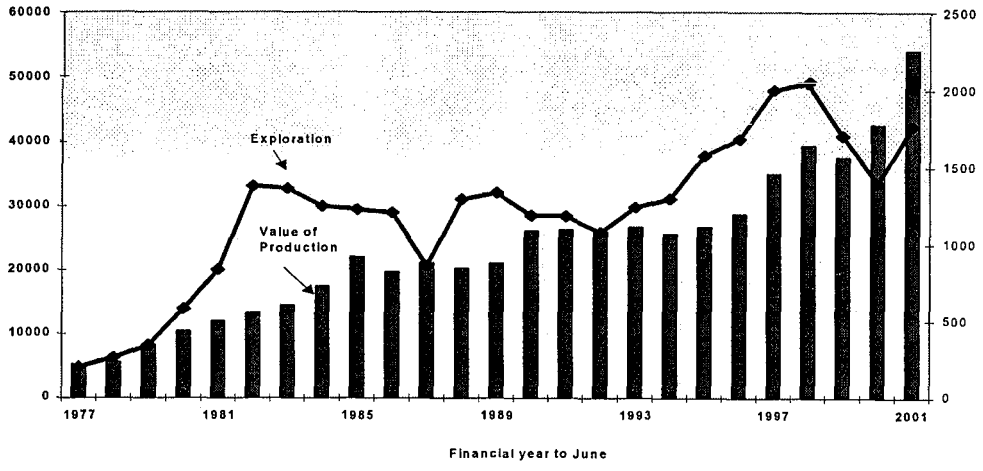
The statistics reflect an industry in crisis. If the trend in outstanding mineral tenements is not reversed, then the mining industry will continue to be severely affected. Mineral investment has been consistently lost over many years and the position is not improving. It is time for governments to take this issue seriously and to act with urgency.

The importance of this issue means that all possibilities need to be reviewed. This includes direct measures to encourage exploration investment as well as a renewed effort to improve the resolution of native title issues and the operation of the Native Title Act 1993..

5.3 THE IMPORTANCE OF EXPLORATION

Exploration is the foundation on which the mining industry builds. Expenditure levels have a direct correlation with the value of mineral production and thus the net worth of the mining industry to the Australian economy. Over the last 23 years, there has been a reasonably consistent three to five year lag in the effect of exploration expenditure on the value of resource production (Figure 4).

FIGURE 4: AUSTRALIAN EXPLORATION AND VALUE OF MINERAL AND PETROLEUM PRODUCTION, ($MILLION).



Source: ABARE; Australian Commodity Statistics and Australian Commodities

The mining sector has become the backbone of the Australian and particularly the Western Australian economies in the last three decades with the gross value of minerals produced increasing from $5 billion in 1977 to $54 billion in 2000-2001.

Mineral and energy exports currently represent 36 per cent of Australian exports. The next most important sector is farming with just over half of this level at 18 per cent of total exports.

Over the last 5 years, Western Australian mining alone has generated more than $99 billion in mineral and energy production and $2.8 billion in mineral exploration expenditure (excluding petroleum). In the same period, Australia as a whole has generated $190 billion in mineral and energy production and $9 billion in mineral and energy exploration expenditure. This is an impressive financial performance and the industry's impact on the economy is correspondingly significant.

If Governments want to retain the benefits the mining sector delivers, they must assist the mineral exploration industry and those companies that service it. They can do this by reducing the impediments to exploration and by ensuring that the investment climate does not prejudice investment when compared with our main competitors.

5.4 GOLD EXPLORATION

Depressed gold prices over a sustained period have continued to take their toll on gold exploration in Australia. The US dollar gold price remained low throughout 2000-01, averaging $270 an ounce. Market conditions have changed significantly in 2002 resulting in improved prices.

Coupled with other pressures such as native title and issues associated with Aboriginal Heritage and the environment, gold has, and will continue to suffer more proportionately than other minerals. In terms of exploration expenditure gold fell by 47 per cent ($343 million) between 1996-97 and 2000-01, compared with a 37 per cent fall ($427 million) for all minerals.

For much of the 1990s, gold dominated non-petroleum exploration expenditure and in 2000-01, gold still accounted for 53 per cent of the total. However, the continued low prices and price outlook, land access problems, falling levels of investment funds, takeovers and the increased attractiveness of overseas locations will continue to suppress the viability of gold exploration and therefore the gold production industries. **Gold production has fallen for the third consecutive year and is forecast to fall again in the 2001-02 financial year.**

This forecast goes to the heart of the problem. **Between 1997 – 2002 there has been a preoccupation with Brownfields exploration (on or associated with production sites) as opposed to Greenfields exploration (areas which are distant from existing mines).**

The drop in production results from few new mines being brought into production and the termination of some production facilities due to the exhaustion of deposits.

Mineral exploration must be increased to reverse this trend.

One central reason that must be recognised and kept in perspective, is the role gold played, in determining the extent of the reduction in mineral exploration investment in WA in the period 1997 – 2001. A big proportion of the reduction represented the rapid drop in gold exploration investment, which in turn was the result of what was happening to the global gold market. Other metals were affected but not to the same extent.

The drop in Gold exploration was driven by:

Depressed global prices for gold during the period. This caused a drop in gold exploration investment levels of 47% ($343m) between 1996/97 and 2000/01, compared with a 37% ($427m) drop for all minerals.

World events such as a depressed world economy and the market disruption associated with economic conditions experienced in South East Asia and more latterly by Japan added to the events influencing the industry's outlook during the period. (There are early signs of recovery commencing late 2001 and continuing in early 2002 although Mineral exploration expenditure continues to fall).

Pressure on gold prices (which maintained a remarkably flat price range over a long period) from Central Bank selling from a variety of countries prevented a demand premium being built into the price as a result of demand exceeding mine supply. Central Bank selling appeared to be tailored to filling the supply/demand gap to maintain a stable price. (There is a gap of an estimated 1,000 – 1,500 tonnes of gold per annum between mine supply and global demand).

A subsequent fall in availability of risk capital due to emerging competition for such funds from the Biotech and IT industries and because the continual fall in gold prices over a sustained period made gold exploration an unattractive investment destination.

The association between mineral exploration, expenditure and production levels is illustrated in Figure 4 Page 7 of this submission.

5.5 OVERSEAS EXPLORATION

Overseas exploration expenditure by Australian based companies remained high in 2000-01. According to an annual survey of the minerals industry by the Minerals Council of Australia[1], offshore mineral and petroleum exploration expenditure totalled $180 million in 2000-01. This represents 26 per cent of total exploration expenditure by Australian based companies in the sample.

A large proportion of Australia's overseas exploration dollars are spent in North and South America. South America accounted for over 38 per cent of the total overseas exploration expenditure by companies in the MCA survey in 2000-01. This was followed by North America (24 per cent) and Africa (17 per cent).

5.6 THE ROLE OF JUNIOR RESOURCE COMPANIES

Many so-called junior resource companies begin life as an Exploration Company. They are usually "floated" and listed on the Australian Stock Exchange under strict rules.

An important feature of this process is that because a relatively small amount of initial capital is raised ($M4 - $M10 usually), the onus is on the company to perform. This means adding value to the company's land assets (mining tenements) to show that they are worthy of further investment.

A study out of London some years ago established that a considerable percentage of the world's mineral deposits (and subsequently mines) were discovered by junior companies.

This indicates the vital role that junior companies play in the industry. They provide the dynamic that drives the industry.

In recent years many (but not all) National and Multi-National companies have re-invented their place in the industry through the following process:

- By downsizing their in-house exploration divisions and in some cases, virtually closing them altogether, as a result of that decision.
- By investing in small, professional exploration companies. This took a range of forms from joint venturing, to direct investment.
- By moving to buy projects, rather than develop projects from within their own company.

[1] Minerals Industry 2001 Survey Report, Minerals Council of Australia

The interesting part of this decision is that:

a) Large companies obviously believed that projects would continue to be available to purchase which

b) Acknowledges the pre-eminent role junior companies have in "mine finding".

The only obstacle to the process was the supply of money to smaller companies to allow them to function at an optimal level. The bigger companies became that money source during the 1997 – 2002 downturn.

Junior resources companies not only provide this vital mineral exploration role they also provide the means for small investors to obtain a growth stake in the Resources sector.

Junior companies usually base their initial Public Offers (IPO's) on 20 cent shares which then find their own level dependent on company fortunes.

These junior companies are therefore a catalyst for investment in resources and many grow into sizeable resource companies over time.

They are truly the real dynamic that drives the Mining Industry.

6.0 THE AUSTRALIAN MINING INDUSTRY

The development of a nation's strengths and competitive advantages should form the basis of any economic strategy. Such a strategy should focus on industries with high growth potential. Clearly, considerable opportunities to further develop and expand Australia's mineral and energy processing industries currently exist.

Mineral exploration and mining contributes significantly to all aspects of the Australian economy and in particular, the Western Australian economy. In addition to generating substantial employment opportunities, investment and income, the mining industry has become one of the country's major export earners and an effective weapon in the ongoing Federal Government strategy to reduce the national debt.

Despite record levels of mineral and energy production in the 2000-01 financial year, it is with some caution that this success is celebrated. At the other end of the process, mineral exploration expenditure levels have still not recovered and remain at levels equivalent to the mid 1990s. Gold production continues to fall even despite the recent increase in its price since the September 11, 2001 events.

Given the heavy dependence of the industry on exploration and new investment for its success, these statistics continue to issue a strong warning of a severe downturn in the industry if the trend is not reversed. This will have a multiplier effect on both the Australian and Western Australian economies given their significant contribution to both of these export incomes, government revenues and both direct and indirect employment.

6.1 EXPLORATION

It is important to recognise that the ability of Australia's minerals and energy sector to maintain medium to long term growth and continue its contribution to national economic performance, is vitally linked to the levels of investment in mineral exploration. While we continue to see strong growth in mineral production, this is due primarily to the output of major resource projects developed over the last decade, recent increases in overseas demand and a lower Australian dollar. The continuing low levels in exploration expenditure over the last 3 years, will not be realised in falling output for 5 or more years hence in most metals, but they are an alarming warning of a downturn in an industry which is a pillar of the Australian economy.

In 2000-01, Australian mineral exploration expenditure (excluding petroleum) totalled $721 million. Although this represents an increase of approximately 7 per cent from the previous year, it is still 14 per cent below 1998-99 levels and equivalent to exploration levels experienced in 1993-94.

Australia's energy exploration expenditure recovered in 2000-01, increasing by 44 per cent. This is largely a response to recent hikes in petroleum prices.

With average prices for most other metals expected to be lower in 2001-02, mineral exploration as a whole is not expected to recover quickly. Continued uncertainty in the gold industry, ongoing problems with resource access (namely native title), and falling real metal prices are all likely to ensure that the mineral exploration industry remains fairly stagnant in the short to medium term.

6.2 MINERAL PRODUCTION

In 2000-01, Australian mineral and energy production increased dramatically to $54,204 million. This represents a 27 per cent increase in the value of production since 1999-2000. This increase reflects higher average world prices and export volumes and a lower average Australian exchange rate.

In 1999, Australia produced 49 per cent of the world's rutile, 35 per cent of the world's zirconium, 31 per cent of the world's alumina, 27 per cent of the world's diamonds, 25 per cent of the world's ilmenite, 23 per cent of the world's lead, 16 per cent of the world's iron-ore, and 23 per cent of the world's uranium. [2]

6.3 EXPORTS

Perhaps the most important role mining plays in the Australian economy is in the export sector. The value of mineral and energy exports has increased by 55 per cent since 1996-97 with 27 per cent of that increase occurring in the past financial year.[3] Mineral and energy exports currently represent 46 per cent of Australian merchandise exports and 36 per cent of total exports.

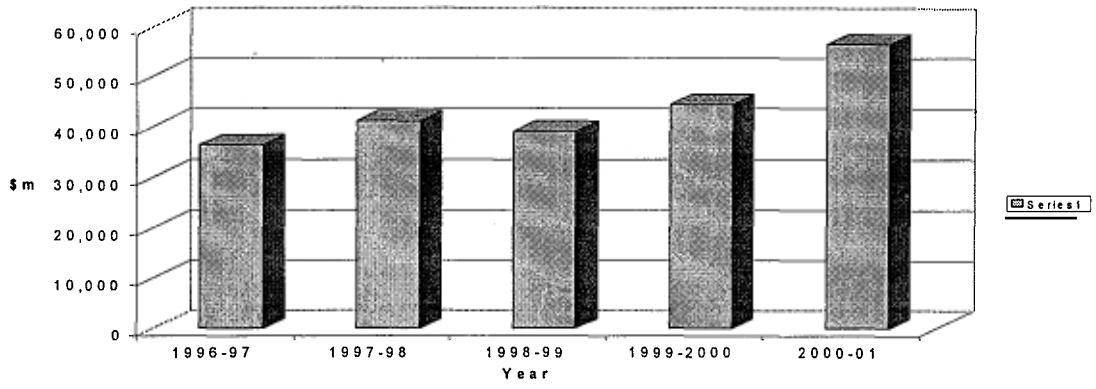
Figure 5 displays the value of Australian mineral and energy exports since 1996-97. Australia's mineral and energy exports in 2000-01 increased significantly from the previous financial year due in most part to sharply higher world prices, a lower Australian exchange rate and increased overseas

2 1999 figures are the latest available data.

3 The value of Australian mineral exports may be higher than the value of Australian mineral production due to variables such as current exchange rates, transport costs and/or international commodity prices. The export figure quoted above was sourced from the ABARE Commodity Statistical Bulletin.

demand. Export earnings are forecast to rise only modestly (1.5 per cent) in the coming year, reflecting lower increases in average prices of metals, with the exception of coal.

FIGURE 5 – VALUE OF AUSTRALIAN MINERAL AND ENERGY EXPORTS, 1996-97 TO 2000-01



Source: ABARE Quarterly Mineral Statistics

The Asian region continues to be Australia's primary mineral export destination. This region absorbs 61 per cent of Australian mineral exports. Japan and the Republic of Korea continue to be the largest individual importers of Australian mineral products accounting for 42 per cent and 16 per cent respectively of total Australian mineral exports to the Asian region.

Australia's next most important trading region is Europe which purchased 7.5 per cent of Australia's mineral exports in 2000-01, down from 14 per cent in 1998-99. North and South America purchased approximately 4 per cent.

It is evident from this data that Australia is dependent on the Asian region for its mineral exports market. Economic and political strategies must focus both on the sustained development of Australia's trade and commercial activities within the Asian region as well as diversification of trade to other parts of the world market.

6.4 THE ECONOMIC IMPORTANCE OF THE AUSTRALIAN MINING INDUSTRY

6.4.1 CONTRIBUTION TO GROSS DOMESTIC PRODUCT

In 2000-01, the Australian economy slowed its growth with an increase in real gross domestic product of only 2.5 per cent, down from 4.4 per cent in 1999-2000. The mining industry contributes significantly to Australian economic growth. In 1999-2000, it contributed over $26 billion (4.2 per cent) to GDP and this figure is expected to be higher for 2000-01.

6.4.2 TOTAL PRIVATE CAPITAL EXPENDITURE

While mining is important to GDP, it also makes a significant contribution to total private capital expenditure. In 2000-01, private new capital expenditure on mining totalled $5.3 billion. Although substantial, this represents a slight decrease from the previous year and a 53 per cent decrease since 1997-98. The mining sector made up only 13 per cent of total private new capital expenditure in 2000-01, compared to 23 per cent in 1997-98. Private new capital expenditure is expected to increase significantly in 2001-02 (by 28 per cent to $6.8 billion).

6.4.3 CONTRIBUTION TO GOVERNMENT REVENUE

The Australian community benefits from growth in the mining industry through contributions to government revenues in the form of mineral royalties, direct taxes such as income tax, and indirect taxes such as stamp duty, sales and payroll tax.

A survey by the Minerals Council of Australia[4] showed that the industry paid $2.7 billion in total direct taxes and $460 million in indirect taxes to State and Federal governments in 2000-01. Total government revenue including taxes levied on lenders and shareholders as well as rail and port charges totalled $5.2 billion in 2000-01, which is 9 per cent higher than the previous year.

The community also benefits substantially from the social contribution made by the industry. A large proportion of the public and private infrastructure in remote areas was built and is maintained by the mining industry. Many regional centres and remote towns are heavily dependent on the mining sector.

4 Minerals Industry 2001 Survey Report, Minerals Council of Australia

6.4.4 EMPLOYMENT

The mineral and energy resources industry also directly employed over 78,000 persons in 2000-01[5]. It is estimated that for every one person employed in the industry, another 3.5 jobs are created elsewhere in the Australian economy. The industry thus provides another 273,000 jobs Australia wide.

6.4.5 CONTRIBUTIONS TO REGIONAL DEVELOPMENT

The Mineral Exploration and Mining Industry role in driving regional development, is well established.

The classic example is the Pilbara iron ore industry. There are many others throughout Australia. The Pilbara region at the start of the 1960's, was mainly a pastoral region with very basic infrastructure and with mainly coastal population centres. Forty years later the region is now well provided with railways (albeit private), roads, communications and community services of all types, and has several inland population centres associated with mine sites. The region's ports are well-developed modern facilities capable of taking the giant ore carriers employed in the iron ore trade. The area's population has increased dramatically.

At a lesser level, companies employed in the business of exploring for and mining a diverse range of metals, are a prime economic driver of regional centres throughout Australia.

Some of the best examples perhaps, are found in Western Australia where Kalgoorlie, Leonora, Laverton, Mt Magnet, Menzies, Coolgardie and Norseman are reliant on the Mining Industry for their economic health and growth opportunities.

Mineral Exploration provides a steady cashflow for isolated towns and communities. The real effect of the downturn from 1997 – 2002 referred to in other parts of this submission, has largely fallen on these regional areas.

More than $400M has been removed from these regional economies and centres. The effects in many areas are reduced incomes for local merchants, reduced employment opportunities and a flow of people to bigger centres, as a result.

5 ABARE, Australian Commodity Statistics.

Removal of impediments to mineral investment and provision of a means to mobilise risk capital from the community, is a very cost-effective way of revitalising Mineral Exploration in regional centres.

Upturn in the industry will have the effect of improving growth opportunities, employment and the general economies of these small regional centres, thus reversing the negative trends evident between 1997 – 2002.

7.0 GEOSCIENCE AUSTRALIA: ITS INDUSTRY AND COMMUNITY ROLE, ITS FUNDING NEEDS AND ITS ABILITY TO STIMULATE MINERAL INVESTMENT

The Geosciences are fundamental to the success of the Mining Industry from the Exploration stage, through production and during the closure of spent mines.

It is a well accepted fact that there is a direct linkage between the level of private mineral exploration expenditure and the value of mineral production in a region, state or country.

It is also well established that wise governments make public investments to provide basic geological data (known as pre-competitive information) to stimulate the interest of mineral exploration companies and to entice them to invest in a given area.

This data is used not only for mineral search purposes, but increasingly of late for environmental questions, seismic assessments (earthquakes), land use planning, the correction of dry land salinity and for sundry other purposes across the spectrum of government, including domestic and industrial supply of groundwater.

7.1 COMPETITION FOR THE EXPLORATION DOLLAR

In the past few years South Australia, New South Wales, Queensland, Victoria and more recently the Northern Territory, have increased their spending on high-tech geological initiatives. It is also clear, that those States and Territories instituting well thought out strategic programs, to achieve long-term objectives, are simultaneously strengthening their geological surveys as a part of their strategy, the exception being Queensland.

All of these stratagems are ultimately targeted at winning an improved share of available mineral investments, but the core element remains the production of state-of-the-art geoscience data.

7.2 GEOSCIENCE – THE FOUNDATION OF THE FUTURE MINING INDUSTRY

AMEC has long held the view, that successive Commonwealth and State Governments have consistently underrated the importance of obtaining and providing geoscientific data as a means of stimulating mineral investment, and have relied to too great an extent on the very high mineral prospectivity of some States to attract those investments.

Government support spending on geoscience and research and development generally remains deficient. In critical areas such as the production of public geoscientific information the investment has been patchy with some States and Territories funding crash programmes to stimulate interest in their jurisdictions, with others just maintaining a steady outlay. In terms of future royalties to be earned and general economic advantage to be gained this is less than sensible.

Perhaps worse still, is the frightening lack of a formal Commonwealth / State approach through coordinated programmes to produce high net-worth products in a cost-effective way.

One issue that cannot be left to the States and Territories, is the question of cross-jurisdictional issues and programmes.

The "rocks don't stop" just because a State boundary has been drawn on a map.

Geoscience Australia is the only agency which can effectively coordinate cross-jurisdictional work on a whole-of-Australia basis.

The Commonwealth must assume responsibility for continental geoscience programmes and provide leadership in a coordination role to ensure the proper geological mapping of Australia.

The States and Territories, if left to their own devices, will tend to work on issues of immediate value in terms of the Mining industry, or water supply issues, to quote just two examples.

Geoscience Australia can take a continental view in planning collection of data.

Benefits in terms of geoscience data which will be useful to both the Commonwealth and the States and Territories, will result.

In this way Government can ensure the continuation of the benefits the industry delivers by judicious public investment in the geosciences.

Australia is riding on the back of the mining industry and the time has come for Government to make a serious strategic investment in the continuation of that industry.

The rate of growth in the minerals industry has therefore probably been less than optimal during many periods of Australia's history as a result. Irrespective of that, Australia has developed a world class mining industry.

In Section 5 of this submission it has been shown that exploration expenditure has collapsed due to a variety of reasons.

In light of these events and the reality of a 50% reduction in mineral exploration spending, Australia cannot take for granted that without considerable effort, this drop will be re-addressed any time in the short to medium term.

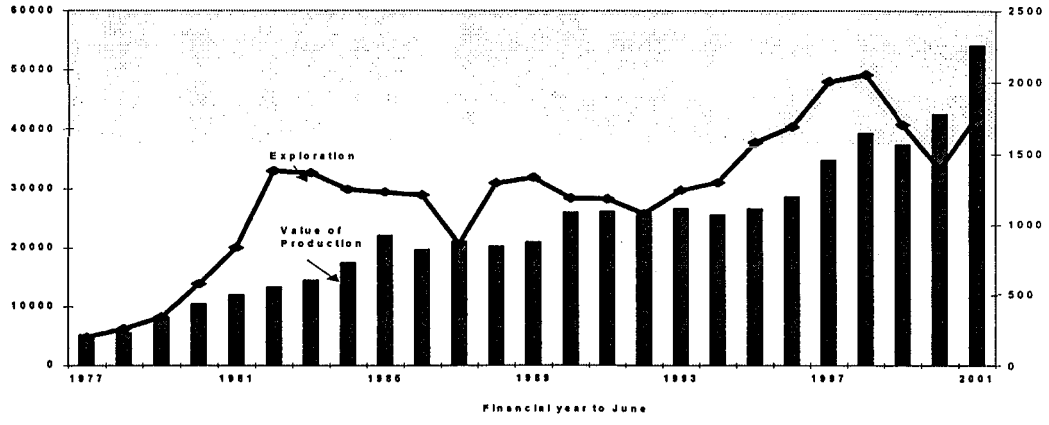
Investment in future mineral exploration will go to those States and Countries that earn it.

One of the best ways of attracting the people who control mineral exploration expenditures, is for Australia to signal its intention to provide ongoing public geological data at a level of excellence beyond that offered by our competitors, (other countries). There is a secondary benefit in that positive action of this nature may reclaim investment that may otherwise be lost overseas.

7.3 AN ASSURED RETURN ON PUBLIC INVESTMENT

Government is assured of a return on any public investment in collection of geoscientific information. There is an undeniable linkage between mineral exploration expenditure and mineral production. ***(See Figure 6 – repeat of Figure 4 Page 7).***

FIGURE 6: AUSTRALIAN EXPLORATION AND VALUE OF MINERAL AND PETROLEUM PRODUCTION, ($MILLION).



Source: ABARE; Australian Commodity Statistics and Australian Commodities

Anything which increases mineral exploration will ultimately produce a return to Australia or a State, in the forms of direct royalty collection and direct and indirect tax collection, and from increased downstream economic activity resulting from exploration, mine development and the ongoing operation of mineral production facilities. This is particularly important to Regional areas.

Secondary guarantees arise because:

- **Modern society is dependent on the mining industry's products** and will increasingly need those products as society evolves into the future.

- **Global populations are growing,** so there is an assured and growing export market.

- **So called third world countries (the developing countries) provide not only the promise of new mining initiatives in their own jurisdictions, (which Australia is well-placed to drive and service) but new growth markets as their populations seek a higher standard of living.**

- **The Australian mining industry is state of the art in its approach to its business.** It is therefore good business for governments to invest public monies in collection of geoscientific data, to strengthen and assist this core industry.

- **The Australian Mining Industry also leads the world in rehabilitation of mined areas.**

This intellectual property is now exported as a discrete export product, together with other advanced technology developed by the industry in recent years.

7.4 THE ESSENTIAL COMMUNITY ROLE OF GEOSCIENCE AUSTRALIA

There is an ongoing problem in educating the community, Governments and all groups outside of the Mining industry, on the importance of gathering geoscientific information as a means of stimulating mineral exploration and subsequent mineral development and for other essential community uses.

Denial of the worth of geoscientific data is simplistic in nature and ignores the multiple scientific uses to which information gathered by Geoscience Australia can be put and the enormous benefit this delivers to the entire community.

Some of the positive community uses of geoscientific information include:-

1. **Stimulating mineral exploration and, thus, future mining developments.**

2. **Focusing and optimising mineral exploration expenditure** by providing a bank of public geoscientific information, which obviates having to start each exploration effort from scratch.

3. **Development of regional minerals and petroleum prospectivity profiles** to target the most prospective areas for exploration.

4. **By identifying area prospectivity, allowing informed choices in terms of various community uses between, eg, National Parks, Conservation Zones or Development.**

5. **Monitoring, predicting and recording seismic activity and events.**

6. **Identifying and providing information on the most suitable areas and soil types for development of large-scale agricultural developments.**

7. **Identification of likely future salt prone areas in terms of dry land salinity and farming needs.**

8. **Interpreting the geology of existing salt affected areas, to reveal which corrective method is most appropriate.**

9. **Planning use in terms of siting of new towns and allied facilities, services and infrastructure.**

10. **The discovery and definition of ground water resources on a whole of community basis.**

11. **Providing a central geoscientific contact point for the wider geoscientific community** including Universities and the CSIRO.

12. **Providing a baseline platform of geoscientific knowledge upon which the scientific and commercial community can develop ongoing research in geoscientific matters.**

This list is indicative of an evolving relevant geoscientific agency, producing data **with a wide spectrum application and a highly relevant community role.**

7.5 STATE / COMMONWEALTH ISSUES

In terms of geoscientific value-adding, one untapped means of leveraging value, is to design formal, interfaced Commonwealth/State programmes which will deliver enhanced outcomes in measured timeframes.

This approach was tried in the National Mapping Accord. The programme was terminated for a number of reasons, not the least of which was reluctance by the Parties to honour funding formulas. The National Geoscience Agreement replaced the Accord. Unfortunately this agreement is also rather informal and does not formally commit to an ongoing programme with stated objectives, funded accordingly.

It is AMEC's view that this joint approach to geoscientific work is of critical importance and should be restructured to become a coordinated, effective means of improving collection of geoscientific data.

The Commonwealth and the States would need to formally commit to a properly planned initiative and allocate funds to an agreed programme to produce a range of data..

AMEC has supported and promoted a project which fits very well in a State and National sense with both mineral and water issues and is an excellent example of the coordinated Commonwealth / State approach advocated.

The Australian National Seismic Imaging Resources (ANSIR) is an important national research facility which operates a programme to image the nature and structure of the continental crust. Most programmes are interfaced with Geoscience Australia.

Specialised, mobile, truck-mounted Seismic units are used in the field work.

The proposal is to use this unit to undertake a seismic traverse across the West Musgrave area (which is an emerging Western Australian minerals province) and to incorporate in this traverse, the Officer and Amadeus Sedimentary Basins, to produce water resource data.

The twin purposes of collection of mineral data and data related to the form and structure of the Officer and Amadeus Basins in terms of water data, would be achieved.

The funds spent would have been efficiently applied for maximum return.

RECOMMENDATION

That Government prepare a strategy which would involve cooperative project work involving the Commonwealth through Geoscience Australia and the States through their respective Geological Surveys, to jointly produce basic geological data from remote and prospective areas of Australia, which will enhance interest and mineral investment in those areas and produce information of State and Federal importance on continental water resources.

8.0 ABORIGINAL AFFAIRS

8.1 NATIVE TITLE – FINDING A WORKABLE SOLUTION

BACKGROUND

On 3 June 1992, in its Mabo (No.2) decision, the High Court of Australia recognised a form of customary native title, which it said had existed for "time immemorial". The doctrine of terra nullius, that the land belonged to no-one before European settlement, was rejected. In the process of deciding in favour of the Meriam people, who occupy the Murray Islands situated in the Torres Strait, the Court established a doctrine of native title which now has effect throughout the whole of Australia.

In response to the High Court ruling, the Keating Labor Government drafted the Native Title Bill 1992. Following considerable Parliamentary and public debate, the Native Title Act was passed by both houses of the Federal Parliament on 22 December 1993 and came into effect on 1 January 1994.

The Western Australian Coalition Government enacted its own legislation, the Land (Titles and Traditional Usage) Act 1993 (WA) on 2 December 1993. The Act was successfully challenged in the High Court by Aboriginal plaintiffs. In a decision handed down on 16 March 1995, the Court held that the Western Australian legislation was inconsistent with the Racial Discrimination Act 1975 and effectively struck it out.

The highly political debate associated with the passage of the Native Title Act (the NTA) focused primarily on social justice questions relating to rural and urban Aboriginal groups. Little attention was paid to the implications of the legislation for the wider Australian community and future economic development of the nation.

Despite accusations by uninformed commentators, the Australian mining industry does not oppose or reject the concept of native title, nor does it have a philosophical or political objection to awarding Aboriginal Australians native title. The industry's grievances in relation to the legislation stem entirely from the Act's unworkable processes, most notably those relating to the claim determination and 'right to negotiate' processes.

As anticipated by AMEC in 1993, the NTA has become the most significant statutory disincentive to domestic mining industry investment ever encountered by the industry. The lodgement and registration of native title claims has steadily increased in recent years. Currently, over one third of Australia's land mass is under claim, while in Western Australia, 90 per cent of the State is under claim.

The *Wik* amendments introduced by the current Commonwealth Coalition Government in June 1998 to rectify the legislation's major shortcomings, have failed to deliver the results sought by the mining industry due to their heavy reliance on State-based native title regimes. The establishment of State native title regimes has proved very difficult, due to the Federal Attorney-General's approval of State regimes being subject to Federal Parliamentary disallowance.

The Federal Parliament's ability to disallow proposed State and Territory native title regimes has, unfortunately, transported native title to a new level of politicisation. The ALP and minor parties in the Senate have obviously resolved to claw back their perceived losses in relation to the *Wik* amendments by disallowing or amending, so as to neutralise the effectiveness of the State and Territory regimes proposed to date, despite decisions by the Attorney General which certify that the State and Territory legislation complied with the NTA.

Efforts respectively by the Northern Territory Government and latterly by the Western Australian Government to have Territory and State regimes implemented in accordance with Section 43A of the Native Title Act have been defeated by the Opposition and minor parties in the Senate. The only State where the Senate has allowed any form of State regime to become operational is Queensland, and this Act has now been further altered by the Federal Court, striking out some parts of the legislation.

The Senate gutted the original Queensland Act and the net effect is that the right to negotiate dominates. The Section 43A scheme for pastoral leasehold land was disallowed by the Senate. The scheme now applying in Queensland is actually more restrictive than the Commonwealth legislation it replaced. The Queensland legislation is so restrictive in terms of mineral exploration that exploration for minerals in Queensland has virtually come to a complete standstill, even before the recent Federal Court judgement.

To demonstrate the problem, from mid-2000 and throughout 2001 over 11,000 Western Australian prospecting, exploration, mining and mining infrastructure tenement applications were stalled in the Department of Mineral & Petroleum Resources system, awaiting grant due to the difficulties associated with native title. Furthermore, a significant number of the 11,000 tenement applications in the system at that time were lodged up to five years previously. The *Wik* amendments have done little, if anything, to reduce the application backlog. The current State Labor Government is now seeking a way to reduce the backlog. In early 2002 The Technical Taskforce chaired by Native Title Tribunal member, Bardy McFarlane, presented a report on ways to deal with the backlog, which is currently being considered by Government.

In contrast, before the passage of the NTA, approximately 2,500 tenement applications could be found in the Western Australian system at any one time awaiting grant.

In November 1998, the Miriuwung-Gajerrong people, whose traditional country crosses the border between Western Australia and the Northern Territory, had their native title claim recognised by a single Federal Court judge. The case went on appeal and in May 2000 The Full Court found that native title had been extinguished over significant parts of the claimed area including certain pastoral leases. In the light of this decision, the WA Department of Mineral and Petroleum Resources (DMPR) sought to reduce the backlog of mining tenement applications. The total number of applications in the DME system was reduced to about 10,500. Following the election of the Gallop Labor Government, however, this process was suspended. At the time of the preparation of this submission, the new State Government's policy intentions remain unclear.

The Full Federal Court decision in the Miriuwung-Gajerrong case is currently the subject of an appeal to the High Court. A decision on the appeal is expected some time in 2002.

THE ISSUES

Despite the *Wik* amendments to the Native Title Act in June 1998, many historical problems associated with the legislation remain unresolved, while a number of new difficulties have materialised subsequent to the passage of the amendments.

1. The claim determination process prescribed by the Act does not readily interface with the land title systems operated by the States and Territories, or with established commercial processes

which form society's basis for commerce and trade. The claim determination process naively assumes that changes to land usage and proposed developments can be halted indefinitely pending the resolution of native title claims and, as such, ignores the commercial realities faced by the mining industry.

For example, many native title negotiations in train between claimants and miners for up to five years have made little progress due to the difficulties associated with multiple overlapping claims and/or exorbitant and unrealistic 'compensation' demands made on the part of some, or all of the claimants involved. Unfortunately, the commercial timeframes explorers and mine developers must adhere to provide extraordinary leverage to claimants in their efforts to extract financial and other benefits from developers, desperate to commence a project to access a global market "window".

2. "Native title" is not defined by the Native Title Act, nor are the rights and responsibilities it confers clarified. The absence of a clear and practical definition of native title in the Act has fuelled a considerable degree of speculation as to what native title is and has created a climate of acute investor uncertainty.

To illustrate, Justice Malcolm Lee's November 1998 decision in relation to the Miriuwung Gajerrong native title claim in the northern region of Western Australia and the Northern Territory, raised more questions than answers in relation to what rights and responsibilities native title holders can expect to have recognised.

The Federal Court's March 2000 decision substantially clarified the position and overturned Justice Lee's determination. In turn, the native title holders, the State of Western Australia and other parties appealed the Federal Court's decision to the High Court. This makes a mockery of the widespread belief that native title determinations would, over time, progressively unveil what specific rights and responsibilities comprise 'native title' and create a regime of certainty for the mining industry.

In short, although statutorily required to negotiate with native title claimants, nine years after the passage of the Native Title Act mining companies remain just as uncertain of whether native title is merely the right to pass over, hold ceremonies on, and take sustenance from, claimed areas, or alternatively, the exclusive possession of and mineral rights associated with such areas, or both.

3. While the introduction of a strengthened claims registration test via amendment to the Act is routinely described as a big advance in terms of the Act's workability, it has in practice delivered very little tangible benefit to the industry. This is due to a growing number of native title claimants amalgamating their claims merely to ensure formal registration by the Tribunal and therefore access to the right to negotiate. Following registration, many claimants party to amalgamated claims simply revert back to individual negotiations with mineral developers, rather than undertake negotiations as an amalgamated group.

   Clearly, this situation is not the outcome sought by the Federal Government and the industry. As the Native Title Act is silent on the issue, however, the legislation cannot stop the practice, which is commonplace in proven mineral provinces such as the Eastern Goldfields in Western Australia.

   Further compounding this problem is the fact that since introduction of the revised registration test, a number of appeals have been lodged in the Federal Court by native title claimants and State Governments alike, disputing Tribunal decisions to accept or reject claims. This situation has produced ongoing developer uncertainty pending the appeal outcomes, while a claimant's ability to repeatedly amend and re-lodge their claim, has only added to the confusion.

4. Almost four years after the passage of the *Wik* amendments, not a single State native title regime has been established apart from a regime of dubious merit in Queensland. This is due solely to the need for Commonwealth Parliamentary endorsement of State and Territory native title regimes and, more specifically, the ALP and minor parties attitudes to the composition of proposed State legislation. It now appears certain that without major Senate amendment, State and Territory attempts to establish native title regimes will prove futile.

   The Senate's treatment of Western Australian's native title legislation, which saw the ALP and minor parties combine to ensure the legislation's disallowance, was all the more disappointing given that the proposed State regime had, according to the Federal Attorney-General, satisfied the criteria applicable to State native title regimes as prescribed by the amended Act under Section 43A.

5. While AMEC has never supported the process of disallowance of legitimate State legislation by the Commonwealth Parliament, a suggestion that the Commonwealth Parliament be afforded an ongoing right to scrutinise, seek amendment to and disallow subsequent amendments to State and Territory native title legislation, as enacted by State and Territory Parliaments, has seriously increased AMEC's concerns.

   As repeatedly demonstrated, new legislation, regardless of its nature, will almost always require subsequent refinement to achieve workability and to resolve unforseen problems that only become apparent once an Act is in force.

   AMEC is also concerned that should the Commonwealth Parliament be afforded the ability to vet later amendments to State native title legislation, the ALP and minor parties may then seek broader ranging Federal involvement in other aspects of a State or Territory's legislative affairs.

6. The extreme uncertainty generated by the Native Title Act has prompted many mining companies to reassess investment policy with respect to their Australian operations. The imposition of lengthy native title timeframes and escalating compliance costs on an industry that must contend with volatile global markets, long development lead times and huge capital investments, is a recipe for economic disaster.

   (For further information, see AMEC's 'Essential Data for Australia's Mining Industry' and the 'Core Issues Paper – Mineral Exploration, A Crisis Realised'.)

   In relation to mineral exploration particularly, recent years have witnessed a growing number of Australian mining companies committing substantial percentages of their mineral exploration budgets offshore. In Australia today, the majority of domestic exploration expenditure (which has plummeted in recent years) is being spent on granted mining leases, ie., 'brownfields' exploration, while over ninety per cent of Australian money going offshore is spent on grassroots or 'greenfields' exploration programs. Given that greenfields mineral exploration represents the research and development sector of the industry, and is the source of future mines, these statistics are a source of major concern.

Although Section 26A of the amended Native Title Act permits the establishment of State regimes which exempt mineral exploration from the right to negotiate process, negotiations between State and Commonwealth Government officials on the form such regimes should take have become deadlocked on the question of allowing drilling, an essential exploration activity.

The Section 26A scheme that has been allowed by the Senate in NSW and the scheme proposed for Queensland allow for titles to be granted but actually prohibit on-ground exploration activities without first obtaining the consent of native title parties. This effectively limits exploration to private land where only landholder consent is required.

7. The State legislation enacted in Western Australia, subsequently disallowed by the Senate, relied on a 'right to consult' rather than a 'right to negotiate' in order to provide a means of indigenous involvement in a dialogue with mining industry project developers. A 'right to consult' normalises the current legislative process which is seriously flawed in that granting a statutory 'right to negotiate' to persons who have not been awarded any rights to the land in question is a nonsense in commercial terms.

No other potential 'landholder' in Australia has such a legislative privilege.

While there is a legal difference between a 'right to consult' and a 'right to negotiate', the end result in terms of compensation is exactly the same, but critically for the mining industry the timeframes, and hence costs, are considerably reduced.

Compensation is in the hands of the mining company and will be governed by the commercial ability of a project to carry costs. If the costs of compensation are too great, the mining company will walk away, resulting in no compensation being received by Aboriginal claimants.

The 'right to negotiate' acts as a real disincentive to investment in Australia's mining industry and has been a major impediment to industry development since 1993.

8. Clearly, the Native Title Act has failed both the mining industry and Aboriginal Australians. While the establishment of a workable administrative system which provides greater certainty, equity and consistent, timely outcomes for native title claimants/holders and mineral developers

is desperately needed, it will not be achieved without further changes to the Act and a major change in the attitude of the Federal ALP and minor parties.

RECOMMENDATIONS

1. ***In the first instance, the Act should be amended to prohibit native title claimants from negotiating separately with developers if their claim forms part of an amalgamated claim. Amalgamated claims should operate as such, ie., negotiations with mineral developers should take place on an amalgamated basis.***

2. ***The Federal ALP and minor parties should accept the Wik amendments and cease trying to mitigate their perceived losses by blocking moves to establish State/Territory native title regimes that adhere to the parameters prescribed by the amended Act.***

3. ***AMEC is also committed to ensuring that the Federal Parliament is not afforded an ongoing ability to scrutinise and disallow subsequent legislative amendments to State and Territory native title regimes, once established. Given that Section 43A of the amended Act provides the Commonwealth Minister with an ability to revoke Federal Parliamentary approval of State native title regimes that, through amendment, no longer meet the regime criteria stipulated in the Act, ongoing Senate scrutiny of State regimes is unwarranted.***

4. ***Finally, AMEC has long argued that mineral exploration tenements should be exempted from the right to negotiate due to the low impact nature of such tenements, coupled with the fact that a tiny percentage of mineral exploration tenements ever result in a mine. Mineral exploration represents the Australian industry's future. The establishment therefore, of State/Territory regimes under Section 26A of the Act that exempt mineral exploration from the right to negotiate process, should be progressed by the Commonwealth with State and Territory Governments as a matter of urgency.***

The Native Title Act has not worked since its enactment in 1993 and the 1998 Wik amendments have done little to improve the legislation. AMEC remains committed to making the Act work and in so doing ensuring the industry's ability to access land for mineral development, while simultaneously delivering economic and social benefits to native title claimants and holders.

8.2 INDIGENOUS PROTECTED AREAS

This matter is part of the Commonwealth's jurisdiction and is administered by Environment Australia.

In November 1999, the Indigenous Policy Coordination Section of Environment Australia prepared a discussion paper entitled "Options for development of law enforcement powers to indigenous protected area managers in Western Australia."
The paper was not released for public comment, but nevertheless AMEC secured a copy of the document.

It was the first disclosure that such a concept as "Indigenous Protected Areas" (IPA's) existed. The mining industry, which had not, *and still has not,* ever been consulted on how the concept might affect the process of mineral exploration and mining on land so proclaimed, is seriously concerned about the potential effect the initiative will have on land access across a range of land tenures.

The paper disclosed that IPA's were a component of the National Reserve System (NRS), that the program was funded from the National Heritage Trust and that it aimed to enable indigenous land holders to manage their properties for conservation, particularly Biodiversity Conservation.

The method of securing IPA's is based on voluntary action by indigenous land holders who apply to participate.

The discussion paper canvasses the view that IPA's will be managed in accordance with internationally recognised protected area standards and guidelines. The standards and guidelines are not identified.

The paper then states - "In order for IPA's to be effectively managed by indigenous land holders for Biodiversity Conservation, indigenous land holders must have the means to effectively control activities within IPA's such as visitor access and activities."

Devolution of law enforcement powers from the State to IPA managers was proposed.

Environment Australia has proposed the use of State laws to achieve its purpose of controlling entry to IPA's because the Commonwealth does not itself have any means to achieve this function.

The laws to achieve this end cover diverse areas such as Trespass, Power of Arrest, Wildlife Conservation, Law Enforcement, Aboriginal Heritage, Fisheries and Aboriginal Community matters and by-laws.

These proposals highlight the fact that IPA's created by the Commonwealth by policy and not by statute, are an artificial and questionable use of power.

The paper raised so many questions that AMEC wrote to the Prime Minister in February 2000 raising nine questions to which we sought answers.

On 18 April 2000 a completely unsatisfactory reply was received from Senator the Hon Robert Hill, Minister for the Environment and Heritage.

AMEC then wrote to Senator Hill on 14 August 2000 seeking definitive answers to the questions raised in the February letter to the Prime Minister.

Finally, on 20 September 2000, a detailed reply to AMEC's questions was forthcoming from the Minister which is attached as Appendix A.

AMEC was alarmed to read in the Minister's reply that a total of 33,908,936 hectares (throughout Australia) had already either been declared as IPA's or identified as potential IPA's.

Significantly the bulk of this total lies in Western Australia where 28,435,000 hectares is projected for proclamation or 83.85% of the total area contemplated to date.

THE ISSUES

1. The declaration of IPA's is a policy process, not a statutory system, and this alone raises questions which go to the motives driving this initiative.

   By linking indigenous interests (land holdings) with Biodiversity Conservation, the Commonwealth has, by using two areas in which it has a central interest and influence, successfully intruded into State and Territory affairs in terms of land management.

2. By bringing international standards and guidelines into the IPA process, the Commonwealth has further shored up its position under its Foreign Affairs powers.

3. While assurances have been given that land access to declared areas will not change, when the answers to AMEC's questions are analysed, the contrary position is revealed. (See answer at Question 8, Appendix A)

4. **As IPA's can be declared over any land type and title** (and the system is not confined to just indigenous land holdings), pastoral leases and fee simple lands owned by any landowner can be included.

   In Western Australia alone indigenous interests hold more than 50 pastoral leases. No doubt other States such as Queensland and the Northern Territory have similar potential problems.

   When and if an IPA is declared over a Pastoral Lease held by an Indigenous person, persons or corporation, an immediate conflict of land use will be created.

   A Pastoral Lease is offered and held for the purpose of depasturing animals and the rights conferred include a right to remove and use timber for stockyards, fences and buildings, the right to establish roads and airstrips and indeed to do such things as are consistent with a working pastoral station.

   The IPA in contrast, is declared to preserve biodiversity conservation, which is clearly at odds with the productive use of the land (hence the question 8 response).

5. Because the declaration process depends only on agreement between the Commonwealth and the land holder, there is no formal process for the greater public interest to be considered, nor is there a way for State or Territory Governments to have meaningful input on socio-economic issues, or future development needs. Nor are there any independent appeal processes, contrary to the principles of natural justice.

   The mining industry has no way of knowing when or over what land a declaration is being considered and consequently is denied any opportunity to protect its land access interests. Other industries are in a similar situation.

6. A system has been created which can easily be exploited by anti development and conservation groups, which could vitally affect access to areas where IPA's have been declared. It would be relatively simple for a dedicated lobby group to create a public perception that because IPA's involve both indigenous land and biodiversity conservation, that no commercial development can proceed or even be contemplated.

   This form of manipulation of public perceptions has already proven successful in creating National Parks, Wilderness Areas, World Heritage Lands and some Conservation Reserves, which effectively become "no go" areas for mineral exploration and mining.

   The answer to question 8 in Appendix A says it all:-

   "In circumstances where exploration or mining activities approved through existing (State) procedures significantly impact upon Biodiversity Conservation on an Indigenous Protected Area, the status of the area would be reviewed. Note that up to 25% of a protected area may be used for other purposes, providing those activities do not compromise the conservation values of the whole area."

   Again, the answer does not specify under what Act, treaty or international instrument such a process would be managed or even justified.

7. **By the creation of another barrier to land access for mineral exploration and mining, Australia's interests are not being served.**

Mineral investment is being further restricted at a time of greatest need. Mineral exploration upon which future mining depends has slipped in terms of investment dollars from $1.048B per annum in 1996/1997 to $721M per annum in 2000/2001, a drop of $327M. Australia as a destination for the high risk investment which drives the mining industry, is now less attractive to global investors, for a number of reasons resulting in Australia being by-passed by investors in favour of other countries.

8. The Environmental Protection and Biodiversity Conservation Act is being used as a means of encroaching on State and Territory affairs. Recent moves to include a greenhouse trigger and to bring Heritage issues under this Act, evidences this disturbing trend.

RECOMMENDATIONS

1. ***That, in accordance with normal democratic procedures, all such biodiversity protection measures in the future be implemented by legislation which requires the scrutiny of the Federal Parliament.***

2. ***That the declaration of Indigenous Protected Areas be suspended until a full public assessment of the worth of the program and its implications for productive industries such as the mineral exploration and mining industry, oil and gas interests, and for Australia's States and Territories, is carried out.***

3. ***That any public Inquiry provide ample opportunity for submission of views by all major stakeholders and all other interests.***

4. ***That the inquiry's terms of reference be determined by the Council of Australian Governments and that any subsequent reports be delivered to that Council.***

5. ***As the instigator of the problem, the Commonwealth provide all funding for an effective inquiry to be conducted.***

8.3 ABORIGINAL HERITAGE

The Mining Industry supports the preservation of Aboriginal sites, and cultural objects and material, as an important part of Australia's heritage.

The Federal Aboriginal and Torres Strait Islander Heritage Protection Act and State Aboriginal Heritage Acts however, are capable of being used to delay projects where some sort of dispute has arisen over Aboriginal Heritage values.

While Aboriginal Heritage is an important matter in its own right, it is also assuming increasing importance of late in terms of its relevance in Native Title claims, as a means of demonstrating "connection to the claimed land".

There is therefore an increased need to ensure that a system exists, backed by legislation to ensure that Aboriginal issues generally, are dealt with in an efficient and timely manner.

A beneficial outcome to all will result.

Aboriginal Heritage has the ability to affect mineral exploration, particularly in terms of costs, when a company reaches a point where ground-disturbing activities are contemplated.

At that point some form of "clearance" survey may need to be undertaken under the State Aboriginal Heritage Act, a suitably qualified consultant may be required and several indigenous people may be needed to assist and therefore paid and provisioned, for the duration of the survey fieldwork.

While a once-off procedure on a given piece of land may be reasonable, indigenous people have often forced surveys over the same ground on several occasions, as new companies conduct new programmes.

In such a duplicated procedure large amounts of exploration funds are wasted and lost to productive use.

AMEC is of the view that once-only surveys should be enforced and that data collected should be stored for future use by an independent authority.

While to date only isolated occasions have arisen, whereby having failed to use a State Act to prevent progress of a project, individuals have resorted to using the Federal Act, the potential exists for mischievous misuse of the Federal Act to create delays, while the processes of the Federal Act are undertaken.

There needs to be a review of the interfaces between the Federal legislation and State Acts, to ensure that duplication of process and conflict of requirements, are removed.

RECOMMENDATIONS

That the Aboriginal and Torres Strait Islander Heritage Protection Act be assessed and amended where necessary to ensure:

a) ***That Bilateral Agreements can be drawn up between the Commonwealth and the States, to allow the States to undertake investigatory functions associated with applications for protection under the Commonwealth Act;***

b) ***That there is requirement for sufficient evidence to be produced at time of application by an applicant for protection of a site, object or cultural material, to validate the application as genuine;***

c) ***That the Federal and relevant State Minister be required to confer on any issue raised under the Federal Act, which has an ability to affect a State's Development;***

d) ***That where possible, the provisions of the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act, be aligned with State provisions to provide a more standard Commonwealth/State approach and to remove obvious anomalies and leverage points, which could promote misuse.***

9.0 ENVIRONMENTAL ISSUES

9.1 THE COMMONWEALTH ENVIRONMENT PROTECTION BIO-DIVERSITY CONSERVATION ACT 1999 – PROMOTING DUPLICATION AND UNCERTAINTY

In June 1999, following months of political debate and public conjecture, the Federal Parliament passed the Environment Protection and Biodiversity Conservation Act 1999, (the EPBC Act). The Act came into force on 16 July 2000. The deferral of the commencement date was designed to give the States and Territories time to establish bilateral management agreements with the Commonwealth, as prescribed by the Act.

The EPBC Act, in Section 45, provides that the Minister may enter into bilateral agreements on behalf of the Commonwealth. A ***bilateral agreement*** is defined as a written agreement between the Commonwealth and a State or Territory that :

- provides for the protection of the environment;
- promotes the conservation and ecologically sustainable use of natural resources;
- ensures an efficient, timely and effective process for environmental assessment and approval of actions;

and

- minimises duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the State or Territory.

The open opposition by the States and Territories to the EPBC Act generally, resulted in there being no bilateral agreements signed with the Commonwealth by the time of the July 2000 commencement date. The States and Territories by and large viewed the legislation as an unnecessary and unwarranted incursion into their rightful land use and environmental management responsibilities. (At the time of the preparation of this submission, to the best of our knowledge, only Tasmania has negotiated an agreement with the Commonwealth.)

The EPBC Act identifies six areas of national environmental significance that can trigger the Commonwealth Government's involvement in the environmental assessment and approval of proposed actions.

These are:

- World Heritage properties;
- Ramsar wetlands of international importance;
- Listed threatened species and ecological communities;
- Internationally protected migratory species;
- Commonwealth marine areas; and
- Nuclear actions, including uranium mining.

To date, AMEC understands that more than 400 projects have already been referred to the Commonwealth under the provisions of the Act, resulting in significantly increased workloads for companies involved in assessments and producing a financial bonanza for environmental consultants and ecologists.

Moreover, the then Minister for the Environment and Heritage, Senator the Hon Robert Hill, made it plain that the Commonwealth intends to add greenhouse and heritage to the six existing "triggers" in the Act.

On 16 November 2000, the Minister released draft regulations and a discussion paper which confirmed his intention to amend the EPBC Act to provide for a 'greenhouse trigger'. Under the draft regulations, the EPBC Act would be triggered by major new developments if they were likely to result in greenhouse gas emissions of more than 0.5 million tonnes of carbon dioxide in any 12 month period. A project exceeding the trigger threshold would be automatically subject to an environmental impact assessment process.

On 7 December 2000, legislation was introduced into the Senate to amend the EPBC Act to provide for the national listing of heritage places. A ***place*** in the Environment and Heritage Amendment Bill (No. 2) 2000 is defined to include a location, area or region, a building, or group of buildings, their fixtures and fittings and their immediate surroundings. The intention is to list nominated ***natural, historic and indigenous*** places of outstanding significance to the nation, either on a National Heritage List or a Commonwealth Heritage List, following an assessment by a proposed Australian Heritage Council. The 2001 Federal election caused these Bills to lapse when the Parliament was prorogued. (The reintroduction of three Bills to the Parliament on 27th June, 2002 dealing with future Heritage matters signals a continuation of Government's commitment announced by Senator Hill in December, 2000. AMEC is currently reviewing the Bills).

AMEC's understanding of the attitudes of the State and Territory governments to the Commonwealth's intended addition of greenhouse and heritage triggers to the EPBC Act is that they are strongly opposed to the proposed legislative amendments providing for these additional triggers and have made their views known in blunt terms to the previous Minister, Senator Hill.

Even before the Act came into force in July 2000, Environment Australia was seeking ways to extend its application through a policy device which would link lands held by Aboriginals to the conservation of biodiversity using national heritage trust funding.

The EPBC Act, in Section 176, provides that the Minister may prepare a plan for a bioregion that is within a Commonwealth area. The Minister may also, on behalf of the Commonwealth, co-operate with a State or Territory, or a State or Territory agency, or any person, in the preparation of a bioregional plan that is not wholly within a Commonwealth area.

The Minister, in preparing the plan, must carry out public consultation on a draft of the plan. A bioregional plan may include provisions concerning the components of biodiversity, the importance of economic and social values, objectives relating to biodiversity, priorities, strategies and actions, measures for community involvement and mechanisms for reviewing and monitoring the plan.

(For more information on AMEC's views on biodiversity, please refer to AMEC briefing note – Biological Diversity – Conservation and Sustainable Use – Appendix B.)

The reach and impact of the EPBC Act was demonstrated to the Queensland farming community in a recent decision of the Federal Court. In what was described by legal commentators as a landmark case, the Federal Court granted an injunction to restrain Cardwell lychee grower, Mr Rohan Bosworth, from using an electric grid system to protect his crops from spectacled flying foxes. The injunction was successfully obtained on the application of Dr Carol Booth, a wildlife researcher and member of the North Queensland Conservation Council, on the grounds that the grid system was killing the foxes.

ISSUES

1. While AMEC welcomes the reform of Commonwealth environmental law, the implementation of the Act has introduced an unacceptable degree of industry uncertainty and exposes the mining industry to significant additional operational risk. The potential for duplication of environmental process, longer project approval timeframes and increased industry compliance costs are considerable.

2. The effectiveness and efficiency of the EPBC Act can only be achieved by the existence of Commonwealth and State/Territory bilateral agreements. AMEC is deeply concerned that should the mainland States and Territories decide not to enter into bilateral agreements with the Commonwealth, the result will be significant additional ongoing compliance costs accruing to the mining industry, and a widespread and wasteful duplication of environmental process. (This state of affairs has already occurred in the absence of bi-lateral agreements over 2 years).

   Additionally, the Act makes no attempt to explain how a long-term duplication of environmental process will be avoided in the permanent absence of bilateral agreements being signed between the Commonwealth and the States / Territories.

3. While AMEC supports the Commonwealth's desire to become involved only in matters of national environmental significance, the term ***significant impact***, although used extensively in relation to matters of national environmental significance, is not defined in the Act. AMEC is concerned that the legislation's failure to define such an important term will enhance the Commonwealth's ability to further expand its involvement in State and Territory environmental approval processes and in so doing, increase investor sovereign risk levels, promote developer uncertainty, increase compliance costs and lengthen project timeframes.

4. The proposal to amend the EPBC Act to provide for a greenhouse trigger discriminates against the mining industry. The proposed regulations deliberately target the resource and development sector to the exclusion of all other private and commercial activity that results in greenhouse emissions. The amendments as drafted also discriminate between States and Territories in that it is the States of Western Australia and Queensland and the Northern Territory which mainly produce the nation's mineral wealth and which will therefore bear the brunt of the Commonwealth's intervention.

5. The heritage Bills introduced into the Senate are supported by AMEC to the extent that they propose to establish two national heritage listings, a National Heritage List and a separate Commonwealth Heritage List, designed to preserve for future generations Australia's unique heritage. AMEC's concerns with the Bills are that they do not expressly provide for any input into the nomination and assessment process which would serve to advise the Minister on the social and economic ramifications of listing any particular place that has been nominated.

   The composition of the proposed Australian Heritage Council is restricted to persons with experience or expertise in matters of heritage and the amending legislation as drafted expressly prohibits the Council, when making its assessments, from considering any matter that does not relate to a place's heritage values.

   Furthermore, the Minister, having made his or her decision to include a place on a national heritage list, is not accountable to the Federal Parliament or to anyone else for the decision. Neither is there, contrary to accepted principles of natural justice, any independent appeals process available to affected persons whereby assessments made by the Australian Heritage Council or decisions made by the Minister, can be challenged.

6. AMEC has long argued that there is no environmental reason to disassociate the mining and milling of uranium ore from the mining and milling of other minerals such as gold, mineral sand, nickel and iron ore. The classification by the EPBC Act of uranium mining and milling as a matter of national environmental significance and as such, an automatic trigger for Commonwealth environmental assessment, is a provision AMEC considers to be discriminatory, misleading and unwarranted.

7. Section 25 of the EPBC Act allows additional matters of national environmental significance to be declared by the Commonwealth via regulations created under the Act. The Act stipulates that the Commonwealth Minister must 'invite the appropriate Minister of each State and self-governing Territory to give the Environment Minister comments on the proposal within a specified period of at least 28 days.

   The legislation does not however, require the Environment Minister to reach agreement with the States and Territories. In fact, the Act expressly states that regulations may be made even if no agreement is reached with the States and Territories.

8. Part 9, Section 131, of the Act enshrines a dramatic departure from the decision making process prescribed by the previous Commonwealth Environment Protection (Impact of Proposals) Act 1974. Under the 1974 Act, project approvals were made by the 'Action' Minister, who, in the case of mineral development proposals, was the Minister for Resources. The Action Minister was, however, statutorily required to take into account any considerations of an environmental nature suggested by the Commonwealth Environment Minister.

Under the 1999 Act, however, the Minister for the Environment is the final decision-maker on development approvals. Although Section 131 of the EPBC Act provides for a degree of consultation between the Environment Minister and other "relevant" Ministers during the decision making process, the Environment Minister will nevertheless have the ability to disregard the comments of the other Minister(s) in relation to a project, veto a project, or impose on a project conditions which are not supported by the other relevant Minister(s) in question.

Given that environmental assessment represents only one aspect of the project approval process, which incorporates a range of other factors including the economic and social implications of a development, AMEC views Part 9 of the Act as unlikely to deliver balanced, workable outcomes for the mining industry.

9. With respect to the development of bioregional plans, the EPBC Act provides for public consultation, but there is no requirement for the Minister to invite the participation and agreement of the States and Territories in the formulation of these plans.

RECOMMENDATIONS

AMEC proposes that the Act be amended to incorporate the following recommendations:

1. ***The term significant impact should be defined in the legislation according to established scientific protocols and following Commonwealth consultation with all State and Territory governments.***

2. *That the proposal to add a greenhouse trigger to the list of matters of national environmental significance be abandoned. The existing six triggers are broad enough to ensure that all developments of national environmental significance come within the Commonwealth sphere of influence.*

3. *Failing the abandonment of the greenhouse trigger, the proposed amending regulations be re-drafted to remove firstly, any discrimination against the resource and development sector and secondly, against the States of Western Australia and Queensland and the Northern Territory, which largely produce the nation's mineral wealth.*

4. *That the heritage legislation currently before the Parliament be withdrawn or extensively re-drafted to provide for, firstly, broad community and business input into the nomination and assessment process, secondly, for the Minister to be made fully accountable to the Federal Parliament for his heritage listing decisions and, thirdly, that an appropriate appeals mechanism be put into place to accord with the principles of natural justice*

5. *That nuclear actions, ie, the mining and milling of uranium ore, not comprise a matter of national environmental significance and therefore not be classified as an automatic trigger for Commonwealth assessment.*

6. *That any addition to matters of national environmental significance be made by legislative amendment, opposed to regulation, following agreement by all States and Territories.*

7. *That any further referral of projects to the Commonwealth be suspended (the relevant States and Territories to make the project assessments), until such time as bilateral agreements have been finalised with all States and Territories wishing to conclude such agreements.*

8. *The Commonwealth Environment Minister should explain, as a matter of urgency, how Commonwealth duplication of State and Territory environmental approval process will be avoided in the permanent absence of bilateral agreements between the Commonwealth and some States and Territories.*

9. *That decisions to grant or otherwise treat a project approval, should comprise a joint decision of all relevant Commonwealth Ministers. In the event that a Ministerial consensus proves unattainable, Federal Cabinet should make the final decision.*

10. *That Section 176 of the EPBC Act be amended to provide for the agreement of the States and Territories to bioregional plans which affect them.*

10.0 WATER RESEARCH, MANAGEMENT AND ALLOCATION

Given that Australia is the driest continent on Earth and that mining is totally dependent on an adequate supply of water of suitable quality, to process ore being mined, research, management and allocation of water is critical to mining developments.

Dependent on the ore type being mined and the extraction process being employed, water quality requirements vary.

Gold for example, can be processed using hyper saline water in the Carbon in Pulp and Carbon in Leach process, whereas at the other end of the scale, Laterite Nickel Ore using an Acid Pressure Leach process, needs relatively high quality water to work effectively.

While management of water resources has traditionally been a State issue, there has increasingly been instances where the Commonwealth has entered into arrangements with States to manage and improve water quality as a result of salinity effecting river systems such as the Murray Darling system for example.

It is fair to say however, that for a variety of reasons, no cohesive plan has yet been drawn up to investigate the major underground supplies held in various major sedimentary basins throughout the continent, to establish volume, quality, recharge potential, sustainable use parameters and thus cross-generational as well as cross-jurisdictional affect as these reservoirs often lie across State boundaries.

There is a need to establish a programme involving Geoscience Australia initially, in defining the geological profile of the various Basins in conjunction with State Geological Surveys, and to then involve other Commonwealth and State Agencies in finalising the capture of data relevant to volume estimates and associated matters outlined.

This is a matter of national importance and should be given a high priority given its ongoing importance in terms of sustainability of the resource, cross-generational issues and the ability to develop the Mining Industry in a sustainable way.

RECOMMENDATIONS

That a Commonwealth / State programme be established to investigate the major sedimentary Basins which represent a critical water resource for development, both currently and in the future.

The aim should be to establish the structure of the reservoir, volume of water resource, recharge rate (if any), and water quality.

The data obtained would be entered into a discrete section of a database and be publicly available.

11.0 STATISTICAL SERVICES

The flow of information from The Australian Bureau of Agricultural & Resource Economics (ABARE) and the Australian Bureau of Statistics (ABS) is a vital component in the industry's operations.

The primary data collected by the ABS particularly, enables the industry to track its progress and outcomes in a range of critical areas.

The information provides ongoing comparative data, which is in constant use by economists, industry organisations, Government Departments and Agencies, Universities and Planners, right down to local community level.

The data allows informed decision making, makes tracking of impacts of events and projections of likely outcomes possible.

In recent years due to budgetary cuts, the ABS has been increasingly forced into the "User Pays" mode for some of its activities and is required to recoup a set percentage of its activities or certain tasks are not undertaken, irrespective of their importance to the community.

This is not good public policy and removes in some cases, vital information from public usage.

Recently for example, AMEC sought statistical information for Metres of Exploration Drilling on a State basis, only to be told the information was not available because it was no longer collected. Apparently it had previously been collected with financial support from private companies which had now withdrawn their support.

Exploration drilling is an indicator statistic which should be collected in the industry's interests as well as for public use. The use and importance of statistics in attracting mineral investment is usually not raised, but is nevertheless important.

RECOMMENDATIONS

- *That the Mining Industry's basic statistical needs be ascertained and that the funding needs of the ABS to collect, process and produce the data related to those needs, be identified with a view to making possible the satisfaction of the programmes agreed between stakeholders and government.*

- *That as part of the process, State Departments administering the Mineral and Energy industries be consulted, to determine whether they are able to assist in the production of the necessary information from their own sources.*

12.0 ENERGY GRANTS (CREDITS) SCHEME

BACKGROUND

In a letter dated 28 May 1999 to the former leader of the Australian Democrats, Senator Meg Lees, the Prime Minister, John Howard, agreed to an Energy Grants (Credits) Scheme (EGS) to replace both the Diesel Fuel Rebate Scheme (DFRS) and the Diesel and Alternative Fuels Grants Scheme (DAFGS).

The DFRS was introduced in 1982, replacing a similar scheme that had been in operation since 1957. The scheme provides for the rebate of excise to eligible purchasers of diesel fuel used in off-road vehicles and equipment. The objective of the DFRS is to refund to businesses the payment of a tax (excise) on an intermediate good, namely diesel and like fuels, and to enhance the global competitiveness of export oriented industries, including mining, agriculture, forestry and fishing. In the financial year 2000/01 $ 1.9b was rebated under the DFRS.

The DAFGS was introduced in July of 2000 as part of the Howard Government's *New Tax System.* Under the Scheme a cents per litre grant is made available to users of diesel and alternative fuels in on-road vehicles, with the exception of vehicles having a GVM of between 4.5 tonnes and 20 tonnes which are used for trips solely within defined metropolitan areas. The objective of the DAFGS is to lower transport and production costs for businesses. The total of the grants paid in the financial year 2000/01 under the DAFGS was $ 558m.

The legislated purpose of the Energy Grants (Credits) Scheme is to provide active encouragement for the move to the use of cleaner fuels while at the same time maintaining entitlements equivalent to those available under the DFRS and DAFGS. Originally scheduled for introduction on 1 July 2002, the Scheme's commencement date has since been deferred to 1 July 2003.

In a discussion paper dated May 2001, the Australian Democrats canvassed five options concerning how the EGS might work in practice. These options may be summarised as follows:

1. The diesel fuel rebate received by an individual or company could be replaced with 'credits' that have the same total value as the rebates and grants, but cashing them in would depend on a proportion being spent on designated activities that reduce diesel or alternative fuel usage and are 'greenhouse gas friendly'.

2. An EGS could be designed to increase the rebate for alternative fuels relative to that for diesel, in order to directly encourage the use of cleaner fuels.

3. A third option would be to reduce the rebate given to diesel and alternative fuels to create a pool of funds for expenditure on measures such as subsidising vehicle conversions to cleaner fuel usage and improving the efficiency of existing diesel operations.

4. Another option would be to allow the conversion of the current rebates and grants to lump sums whereby recipients could borrow in advance against their entitlements to create funds for capital investments in cleaner fuel conversions and equipment.

5. A rebate schedule could be introduced where the level of rebate is determined by the pollution standard met by the particular diesel engine, eg vehicles with Euro 111 engines would attract the maximum rebate once Australia had the necessary low-sulphur fuel.

On 8 July 2001, the Treasurer, Peter Costello and the then Minister for Industry, Science and Resources, Senator Nick Minchin, announced the terms of reference for an inquiry into fuel taxation.

The task of the Committee of Inquiry, chaired by the managing director of ACIL Consulting Pty Ltd, David Trebeck, was to examine the total existing structure of Commonwealth and State taxation of petroleum products, including the proposed Energy Grants (Credits) Scheme. The Committee was required to report to Government by March 2002.

ISSUES

1. AMEC's members predominantly operate in remote locations and consequently consume large quantities of diesel fuel in off-road mining vehicles and equipment and in the generation of power to maintain these remote exploration and mine sites. In many locations access to alternative fuels (ie. LNG, CNG) is restricted due to geographical and economic constraints. For many mineral explorers and producers there is no choice but to use diesel fuel. Few mines are serviced by electricity grids or gas pipelines. Where gas has become available, mining companies have taken the opportunity to switch from diesel to gas for their energy needs where this has been shown to be cost-effective.

2. Leading off-road vehicle manufacturers are predominantly focusing on ensuring the latest models of off-road mining equipment comply with European emission standards and are capable of operating using the latest breeds of low-sulphur diesel fuel products.

Additionally, there are moves within the vehicle manufacturing sector to produce large scale mining equipment capable of consuming alternative fuels, however the lead-time to move from an experimental version (currently being assessed) to a successful prototype of a full-scale production run, will take a considerable number of years.

Hence, the mineral exploration, mining, and minerals processing industries are still extremely reliant on maintaining existing fleets. Consequently, should the Commonwealth Government impose covenants on the payment of rebates and grants dependent on the alternative fuel capability of fleets, Government and environmental stakeholders need to be mindful of the large capital expenditure required to procure new and compliant vehicles.

3. The discussion paper distributed for comment by the Australian Democrats contains few references to the mining sector and therefore it is not entirely clear what stance the Democrats are taking in relation to the industry. AMEC's initial comment on the five options outlined in the paper are as follows.

The first two options which refer to introducing credits and changing price relativities would severely impact on exploration companies, in particular smaller companies, the reason being that mineral exploration in a field sense is usually completely off-road and mostly in remote locations. Restricting the availability of the diesel fuel rebate would seriously impact on the vital activity of mineral exploration, reduce in-ground work and affect the future production of minerals.

Pooling as described in option 3 in the Democrats' paper would result in the EGS not meeting the stipulation that it maintains benefits equivalent to those currently available under the schemes it is intended to replace, the DFRS and DAFGS. A pool of $ 100m, the amount referred to in the discussion paper, would not provide sufficient funds to subsidise road vehicle conversions and relevant infrastructure as suggested.

Democrat Option 4, which would allow the conversion of diesel fuel rebates and grants to lump sums, would be administratively complex, susceptible to compliance problems and could have limited appeal in terms of recipients being prepared to borrow against a forecasted future entitlement.

The final option, option 5, which suggests altering the fuel rebate schedule according to pollution standards, has effectively been addressed by the Government's intention to restrict the entitlement under the EGS from 1 January 2006, when a mandatory standard of 50 parts per million of sulphur will come into effect.

4. The entitlements currently available to the mining sector under the DFRS and the DAFGS represent a significant component of the overall financial position of small to medium-sized exploration and production companies. Any reduction in the level of the benefits under the EGS, following its introduction on 1 July 2003, would have a direct impact on the level of employment within the mineral exploration, mining and mineral processing industries. Moreover, AMEC is firmly of the view that any reduction in the level of the existing benefit will lead to the possible closure of some existing sites and thus a loss of employment.

5. The Commonwealth Government has not adopted any standards in relation to emissions from off-road mobile equipment. There are European standards available and these cover industrial drilling rigs, compressors, bulldozers, highway excavators, forklift trucks and road maintenance equipment.

Were the Commonwealth Government to impose similar emission control standards on off-road equipment and vehicles, mineral exploration and mining companies would need to immediately assess the impact on their:

- existing diesel powered vehicles and equipment to ascertain their capacity to meet the 'new standards'; and
- identify future purchases of off-road mobile equipment and confirm whether suppliers and manufacturers were able to comply with the 'new standards'.

The capital costs associated with purchasing new capital equipment for a mining operation is significant and the planning and lead time required to ensure all financial and management considerations are adequately addressed is primary to the successful operation of a mine. Any additional burden placed on an operation of a mine (i.e. the requirement to source and purchase new mining equipment) to meet new standards without the necessary lead time and due commercial consideration, could potentially impact on the viability of mining and exploration activity.

6. Equally, the introduction of low sulphur diesel fuel during this decade will require mineral exploration and mining companies to assess:

- existing diesel powered vehicles and equipment to ascertain their capacity to operate on low and ultra-low sulphur diesel' and

- identify future purchases of off-road mobile equipment and confirm whether suppliers/manufacturers can meet the 'new' fuel standards.

7. In some submissions to the Committee of Inquiry into Fuel Taxation, particularly those from conservation and environment groups, the view was expressed that the diesel fuel rebate represented a subsidy to the mineral exploration and mining sector.

The rebate is *not* a subsidy.

The rebate is a refund of excise duty and should be expressed in the Commonwealth budgetary payments as such. It refunds, in part, to the minerals exploration and mining sector overpaid taxes.

The rebate is restricted to prescribed usages. Light vehicles, used off-road and powered by diesel fuel, are excluded from the DFRS. There is no rationale for this exclusion which penalises in particular smaller mineral exploration and mining companies. It is purely a revenue-saving device on the part of the Commonwealth Government.

12.1 COMMONWEALTH FUEL TAXATION INQUIRY –RECOMMENDATIONS AND COMMONWEALTH GOVERNMENT RESPONSE

The Committee of Inquiry received more than 300 submissions and held consultations in capital cities, including Perth.

The main recommendations of the Inquiry were –

- That fuel be taxed on the basis of energy content and that this regime also apply to currently exempt fuels.
- Twice yearly indexation of all fuel excise and customs duty be reintroduced.
- The existing DFRS and DAFGS be replaced with a business fuel credit scheme.
- The fuel sales grants scheme (FSGS) and the petroleum products freight subsidy scheme (PPFSS) be abolished.

The Treasurer, Peter Costello, largely rejected the Trebeck Committee's recommendations. In his media release, the Treasurer stated that the proposal to tax all fuels on their relative energy content was contrary to the Government's election commitment to maintain excise exemptions for fuel ethanol and biodiesel. Peter Costello also made it plain that the Government would not reintroduce fuel excise indexation.

On the future of the DFRS and the DAFGS, the Treasurer reiterated that it was proposed to replace both these existing schemes with an Energy Grants (Credits) Scheme by 1 July 2003. The Treasurer's rationale for maintaining the FSGS and the PPFSS was their abolition would adversely affect people in rural and regional Australia.

UNCERTAINTY PREVAILS

The Treasurer's decision to maintain the benefits of the DFRS and the DAFGS is certainly good news for the nation's export-oriented industries, including the mining sector.

The uncertainty arises from the fact that there is no clear indication as yet as to the content of the EGS. While the Government is on record saying that the entitlements of the DFRS and DAFGS will be maintained when these two schemes are subsumed into the EGS, access to the benefits by industry may be made conditional to the extent that they are placed out of the reach of many industry participants. Clearly the proposals of the Australian Democrats, as evidenced by their discussion paper, would significantly restrict industry access.

Whatever the content of the EGS legislation following its passage through the House of Representatives, it is subject to amendment in the Senate. One can only speculate as to what final form the legislation might take and how it might impact on the mining sector.

The commencement date of the EGS is also uncertain. It has been deferred once already. The Treasurer's media release referred to the "proposed" date of 1 July 2003. This could be read to imply that the commencement date is not firm.

The DFRS and DAFGS are critically important to the feasibility of mining and mineral exploration projects. It is essential that the industry can reliably depend on their entitlements continuing. Currently there is considerable uncertainty in the industry with respect to the maintenance of the entitlements and exactly what form the EGS will take.

RECOMMENDATIONS

1. ***That the entitlements currently flowing from the Diesel Fuel Rebate Scheme and the Diesel and Alternative Fuels Grants Scheme be retained at present levels, consistent with the undertaking given by the Commonwealth Government, when these two schemes are subsumed by the introduction of the Energy Grants (Credits) Scheme.***
2. ***That the Commonwealth Government reassert the principle that taxes should not be levied on business inputs and intermediate goods in order to facilitate the global competitiveness of export oriented sectors, including the mining industry.***
3. ***That the Energy Grants (Credits) Scheme not be used as a legislative measure to undermine the entitlements currently afforded to Australia's export oriented sectors by so qualifying the eligibility of companies and individuals to receive the rebates/grants that the entitlements made available through the present schemes, the DFRS and DAFGS, are effectively eroded.***
4. ***That the introduction of the Energy Grants (Credits) Scheme be seen by the Commonwealth Government as an opportunity to enhance administrative and compliance systems and to correct deficiencies in the DAFGS, notably to deem as eligible diesel used in light vehicles off-road.***
5. ***That the introduction by the Commonwealth Government of emission control standards and low-sulphur fuels be phased in over reasonable time frames to allow the mining industry to make the appropriate financial and operating adjustments, without damaging the viability of mineral exploration and mining companies.***

13.0 TAXATION

13.1 GST – THE UNCERTAINTY PERSISTS

The Goods & Service Tax (GST) regime in Australia commenced on 1 July 2000. There were a number of objectives in pursuing a GST in Australia, one of which was to simplify indirect tax collection and remove the ambiguities associated with applying the previous sales tax regime to the exploration and mining industry.

Another objective was to ensure that there was minimal indirect tax cost for Australian mining companies participating in a global environment.

The unfortunate reality, however, is that some 20 months later there still remains a number of areas of contention to be resolved in applying the GST to commercial transactions, which are commonplace in the mineral exploration and mining industry.

In a detailed letter to the ATO in June of 2001, AMEC sought advice on how the GST would apply to a range of farm-in / farm-out arrangements, both from the perspective of the 'farmee' and the 'farmor'.

AMEC takes the view that there is such a variety of arrangements and differing circumstances in these commercial instruments, which commonly involve overseas entities, that it is important for the ATO to have a thorough understanding of industry practice and, as a consequence, is in a position to provide appropriate advice and consistent application of the legislation.

Moreover, it is essential that mining companies, and their professional advisers, have a clear understanding of precisely what GST obligations are incurred when a party acquires a commercial interest as the 'farmee' or assigns or disposes of an interest as the 'farmor'.

The ATO understands that the term 'farm-out' in the mining industry is used to describe a wide variety of arrangements whereby the holder of a prospecting or mining right assigns or disposes of a portion of that right to another person in return for some form of consideration or benefit. These benefits may not become available until some future time (if at all).

What AMEC is concerned to ensure is that the ATO, in its application of the GST legislation, is aware as far as practicable, of the myriad arrangements and circumstances that can occur when parties enter into these contractual arrangements.

In consequence of this concern, AMEC supplied to the ATO an actual prospectus that contained a fairly typical suite of mining industry transactions and asked the ATO to give a review of these transactions and to indicate in each case, how the GST would be applied if those arrangements had occurred following the introduction of the GST. (See Appendix C).

Furthermore, AMEC's letter to the ATO stated, "We are interested in your technical assessment of the transactions, that is, the ATO's classifications of the supplies as taxable or GST-free or input-taxed, as well as advice on how the underlying administration of the transactions would operate, for example, the appropriate attribution periods".

THE ISSUES

Making reference to the example prospectus, AMEC posed a number of specific questions to the ATO, including:

1(a) Part of the consideration payable in an arrangement was the issue of shares, conditional upon the 'farmee' obtaining ASX listing, would the 'farmee' be entitled to a GST refund if the deal was terminated due to the ASX listing not being acquired?

1(b) In the event that pre-listing capital from seed investors was being raised at, say, 5 cents per share, a discount of 15 cents on the face value, would GST be payable on the 20 cent face value of the shares or the 5 cent market value?

2(a) In an arrangement where an Australian parent company had agreed to sell its interest in a company that had mining titles in Russia to the (Australian) 'farmee' in exchange for shares, would GST be payable on those shares given the tenements were located overseas?

2(b) If the 'farmee' defaulted, would the 'farmor' be entitled to a refund of any GST paid?

3(a) Where the 'farmor' agreed to accept staged payments from the 'farmee', would GST be payable on the full amount of the monetary consideration 'up front', or on a staged basis as the instalments fell due?

3(b) Where a per tonne royalty payment forms part of the consideration, is any GST payable in advance of the commencement of mining and, if so, what is the basis of that GST calculation and which of the parties are liable for the GST payment?

4. The 'farmee' earns 60 per cent of a project in return for a payment of $110,000, following which the 'farmor' can either elect to contribute to further expenditure or have the 'farmee' sole fund while the 'farmor' dilutes its equity.

   How is GST calculated in the event that the parties agree that the 'farmor' elects to dilute and the 'farmee' sole funds, given that in this arrangement there is no specified dollar commitment or timeframe?

5. The 'farmee' agrees to earn an 80 per cent increase in some tenements by spending $100,000. The 'farmor' has a "free carry" until the end of feasibility with the "free carry" cost being able to be recouped by the 'farmee' from the initial production income.

   Is GST payable on the 'free carry' provision? If so, who pays the GST and how is it calculated?

6. The 'farmee' agrees to the payment of a royalty upon a mine being brought into production. Assuming that royalty payments do attract GST, would GST be payable given that the arrangement was agreed prior to the introduction of the GST? Or would only those royalty payments made after 1 July 2000 be liable for GST?

Initially, the ATO undertook to provide AMEC with a single omnibus response to the issues raised in the Association's letter. After further consideration, and in recognition of the complexities of the issues raised, the ATO advised it would provide the clarification sought in a series of replies. The first reply was received by AMEC in December 2001, some six months after its letter to the ATO was written. Further replies from the ATO are expected during calendar year 2002.

Essentially, there remains a considerable amount of uncertainty in the exploration and mining industry as to the application of section 38-325 of the GST legislation which deals with the "Supply of a Going Concern".

This section was introduced into the GST legislation in order to simplify and partially diminish the large cost often associated with the disposal of a business. It achieves this by making ordinarily taxable supplies GST-free and so removing the potential timing costs associated with collecting and remitting the GST for one party and paying and receiving an input tax credit for the other party.
Such relief is viewed as particularly important when considering the cash position of many junior explorers. The issues that give rise to the uncertainty of the application of this section to the exploration and mining industry include the treatment of partial disposals by a junior explorer and the treatment of farm-in and farm-out arrangements generally.

This result is inequitable as it leaves the industry uncertain as to its compliance obligations generally and exposes junior explorers to the cash flow issues that the provisions were originally intended to avoid.

A second area of major concern to AMEC members is the application of the GST to precious metals, an issue taken up with the ATO as far back as 1999 when the tax reform legislation was yet to complete its passage through Parliament.

The GST legislation contains some specific sections dealing with the treatment of precious metal products. Section 38-385 of the GST legislation operates to make certain supplies of precious metals GST-free provided some conditions are met. The basic intent of the GST legislation is to ensure that gold and other miners could mine their product, have it refined and then sell it GST-free in most circumstances.

The reality, however, is that the section does not work as was originally intended, despite one amendment already having been made to the GST legislation in this area. Currently, the Australian Taxation Office (ATO) is, in many instances, treating the provision of partially refined ore/dore by the miner to the relevant refiner as taxable and as such introducing unwarranted complexity to this area and the requirement of considerable industry and ATO resource to ensure that the timing costs of such transactions to the industry are minimised as much as possible. This is not a sensible use of industry or ATO resources given that minor amendment to the GST legislation could remove an issue that does not have a revenue impact to Government.

RECOMMENDATIONS

1. *In order to address the 'Supply of a Going Concern Issue' adequately, AMEC strongly recommends that Government direct the resources of the ATO to providing a detailed view of how the "Supply of a Going Concern" provisions of the GST legislation apply to the variety of joint venture transactions conducted in the exploration and mining industry.*

   To the extent that there are any deficiencies with respect to providing the type of relief the section originally contemplated, that Government enacts appropriate amendments to the GST legislation.

2. *With regard to the issues related to precious metal products, AMEC recommends that the relevant sections be amended to address the issue of partially refined ore/dore being treated as taxable on its provision to a refiner.*

   This would remove the need for the special arrangements the ATO has put in place to assist in removing the effects of the GST legislation as it currently stands. In so doing, it would save both the industry and Government considerable resources.

13.2 Income Tax Consolidation

Significant Anomaly In Current Drafting Of Consolidation Rules Concerning Pre 1 July 2001 Exploration And Mining Rights

On 27 June 2002 the Government introduced into the House of Representatives a Bill dealing with the second instalment of the income tax consolidation rules for wholly owned groups of companies. Included in the Bill are provisions that will impact the treatment of exploration and mining rights acquired by a subsidiary member before 1 July 2001.

Background

The Uniform Capital Allowances (UCA) legislation commenced from 1 July 2001. Under the UCA legislation most of the capital expenditure incurred on a mining project is deductible by reference to the effective lives of the 'depreciating assets' acquired or constructed as a result of the expenditure. Mining and exploration tenements are specifically included as 'depreciating assets'. The UCA

legislation also provides for the outright deductibility of exploration expenditure and 'depreciating assets' first used for exploration purposes.

As the UCA legislation replaces a number of the capital allowance regimes from 1 July 2001, there are a number of complex transitional provisions dealing with the treatment of assets already in existence on that date. Included in the transitional provisions are measures that prevent mining and exploration rights acquired before 1 July 2001 from being treated as 'depreciating assets' under the UCA legislation. Rather, such assets are not eligible for deduction under the UCA rules and retain their prior treatment as capital gains tax assets only.

CONSOLIDATION REGIME

The proposed consolidation regime seeks to treat a wholly owned group of companies as a single taxpayer for income tax purposes. Under the proposed consolidation measures, the head company of the group will be required to calculate the consolidated taxable income and lodge a single income tax return on behalf of all group companies. The consolidation regime potentially commences from 1 July 2002, depending on the circumstances of the group concerned.

Under the proposed consolidation regime, the head company's tax cost of assets on consolidation is set on the basis that the head company acquires each asset at the time the relevant subsidiary becomes a subsidiary member of the consolidated group. To ensure the continued operation of the UCA transitional provisions the second Consolidation bill modifies the application of this general tax cost setting rule for exploration or mining rights acquired by the subsidiary member prior to 1 July 2001. Such assets are not deemed to have been acquired by the head company at the time of consolidation but retain their pre 1 July 2001 status. That is, the head company's deductions for that asset are restricted to the amount that would have been deductible under the former Division 330 and it will not benefit from any additional deductions for mining rights under the UCA rules.

ANOMALY

It appears the Government's intention for the consolidation rules is to maintain consistency between asset and share purchases. However, the current drafting of the Bill produces an anomaly in that there is not always consistency between the outright purchase of a mining right and the purchase of shares in a company owning a mining right.

The anomaly arises because the consolidation rules preserve the pre 1 July 2001 status of a mining right forever regardless of when the subsidiary company owning the mining right joins the consolidated group.

After 1 July 2001, where an **unrelated party** acquires a company that holds a pre 1 July 2001 exploration or mining right, that right will retain its pre 1 July 2001 status under the consolidation rules. The implication being that on consolidation the consolidated group (that includes the purchaser and the company acquired) will not be entitled to a deduction for the exploration or mining right under the UCA rules. However a deduction would arise under the UCA rules if the purchaser had acquired the exploration or mining right directly rather than acquired the shares in the relevant company. This discrepancy creates a bias in favour of asset purchases over share purchases, which is the very outcome that the consolidation regime was designed to remove.

Furthermore, for some acquisitions, commercial issues (such as pre-emptive rights) and legal restrictions (such as environmental and native title issues) mean that a share transfer is the only practical way of transferring interest in these rights. Accordingly, it appears that the mining industry will be subject to significant tax disadvantages compared to other industries.

RECOMMENDATION

That Government amend the current provisions of the new Business Tax System (Consolidation, Value shifting, Demergers and other measures) Bill 2002, to ensure that the bias between share and asset purchases is removed.

14.0 NUCLEAR AND RELATED MATTERS

When elected in 2001, the Western Australian Labor Government brought to office a Policy, which was aimed at prohibiting the mining and export of uranium. The Policy read as follows:

"Labor will:

- *oppose the entry of nuclear-powered and nuclear armed vessels into Western Australian harbours or adjoining waters because of the hazards they create;*
- *prohibit the importation of radioactive waste into Western Australia;*
- *prohibit the mining and export of uranium;*
- *regulate the mining and export of thorium to ensure that it is not used for nuclear purposes;*

and

- *ensure that residual stockpiles from post exploration and mining activities are made safe."*

In 2001 Green party members of the Western Australian Parliament introduced a "Nuclear Activities (Prohibition) Bill to the Parliament. Government did not support the Bill and subsequently it was withdrawn.

AMEC opposed the Bill and in a submission to the Minister for State Development, Mr Clive Brown, raised the following points:

EXTRACT FROM SUBMISSION TO THE HON. CLIVE BROWN – WA MINISTER FOR STATE DEVELOPMENT

AMEC represents companies which explore for all types of minerals, including on occasion uranium and is completely opposed to the Bill due to the spectrum of negative effect it is likely to create, not just for uranium explorers but for the entire mineral exploration and mining industry in this State.

The Bill attempts to distinguish between types of minerals which can be legally explored for and mined and those which cannot and therefore an impractical division between what is acceptable and what is unacceptable in terms of mineral exploration and mining is created. AMEC strongly disagrees with this approach and does not view uranium and thorium as any different to a number of other minerals which require special procedures with respect to mining, handling and transport.

EXTRACT FROM SUBMISSION TO THE HON. CLIVE BROWN – WA MINISTER FOR STATE DEVELOPMENT

In AMEC's view the Bill is simplistic, will have implications far beyond just uranium, thorium and associated issues, seeks to capitalise on the fears of the electorate to achieve a policy end for which the Parliamentary member has no broad mandate. In any event this Bill will have no effect on world attitudes to uranium, its use or treatment by other nations. The Bill will deliver a negative impact on countries which seek to purchase fuel for nuclear power stations, to lower greenhouse gas emissions and will certainly reduce Australia's trade growth opportunities.

In short it is "feel good" legislation with no practical benefit to WA and the ultimate price of its carriage to the community will be higher than its proponents appear to realise and almost certainly unacceptable when those costs are eventually counted.

OVERVIEW

AMEC believes that world trends clearly illustrate a developing global attitude which runs totally counter to the expressed intentions of the Bill. This alone identifies the Bill as reactionary in the extreme and disparaging of the legitimate needs of many people for clean electricity. Global attitudes are illustrated by the following:-

World debate over climate change issues (enhanced greenhouse effect) consistently acknowledges nuclear power as a major means of eliminating the vast amounts of greenhouse gases generated by both coal and gas fired plant.

Nuclear power, which now supplies 16 per cent of the world's electricity, produces no greenhouse gases. Nuclear power is a clean and effective way of producing electricity on a large scale. While its other wastes are significant and are often considered to be a major problem, they are capable of being safely contained, stored and managed, and are not released into the environment. Waste management is costed into the electricity, it is not left as an external cost as with other electricity generating technologies. (See Appendix D - Nuclear Power in the World Today.)

France now generates 75% of its electricity from nuclear power plants and is the world's largest net exporter of electricity to neighbouring countries. A recent community survey is attached as Appendix E.

EXTRACT FROM SUBMISSION TO THE HON. CLIVE BROWN – WA MINISTER FOR STATE DEVELOPMENT

In East and South East Asia there are currently 94 nuclear power reactors in operation, 19 under construction and plans to build another 35. Japan, for example, currently generates 36 per cent of its electricity from nuclear power. By the year 2010, this is estimated to grow to over 40 per cent, or 50 per cent if greenhouse reduction targets are met.

Added to this creation of new plant is the fact that many older generating stations particularly in Eastern Europe and the former USSR are being completely refurbished rather than being retired from duty. Germany, which has a so-called red/green government, which came to power with the stated policy of closing down the nuclear power industry, has now done a complete backflip and deferred any wholesale closure to many years in the future.

Every 22 tonnes of uranium used, saves the emission of 1 million tonnes of carbon dioxide, relative to coal. To run a 1000 megawatt power station for a year (providing some 7 billion kwh), either 200 tonnes U_3O_8 is needed, or 3.2 million tonnes of black coal, which produces 7-8 million tonnes of carbon dioxide. If all the world's nuclear power was replaced by coal fired power, carbon dioxide emissions from electricity generation would rise by one third, about 2.3 billion tonnes per year.

Australia is well placed to make a significant contribution to greenhouse gas emission reduction targets through increased production and supply of uranium. In the light of the favourable outcome for Australia at Kyoto, government now has a moral responsibility to contribute to reducing global greenhouse emissions.

Australia's abundance of uranium reserves means that it has a major responsibility through trade to people elsewhere in the world who are less endowed with energy minerals. Australia's resources can further ensure its future position as a leading world supplier to these markets, provided a politically and economically favourable environment in Australia is maintained.

If greenhouse concerns come to be taken seriously in Australia and West Australia's gas resources come to be valued for other purposes, it can readily be envisaged that nuclear energy will be seen as a desirable option even here.

EXTRACT FROM SUBMISSION TO THE HON. CLIVE BROWN – WA MINISTER FOR STATE DEVELOPMENT

Finally, the Bill is at odds with the Greens' own stated policy commitments to greenhouse gas reduction. It ignores world trends in the construction of new nuclear power units, which are directly relevant to reduction in the production of greenhouse gases in Europe particularly, but also in other parts of the world.

THE VERY REAL CONSEQUENCES OF PROCEEDING WITH THE BILL

Carriage of the Bill would have the following consequences:-

A negative perception of Western Australia as a destination for mineral investment capital would be generated, which would affect the State generally.

It is one thing for a Government to have a policy which discourages nuclear developments, it is quite another to have a prohibiting statute on the books.

Creation of a distrust where investors will be waiting for the next mineral to be added to the list of prohibited items. Will lead be the next target, or some exotic mineral such as monazite?

The Bill is a classic example of the worst sort of sovereign risk (which is the kiss of death with respect to investor perceptions of where best to invest, wherever it arises). An anti development Bill will override the mining statutes which allow exploration and development of the State's mineral resources under proper conditions.

Mineral exploration which is down 41% on 1997 peak levels will be further discouraged, as companies which seek one mineral will suddenly be at risk of prosecution or loss of tenement if they find uranium or thorium in a drill core or sample bag.

It is not enough that it may be a defence to charges if levels of the material (by weight) are below certain limits.

EXTRACT FROM SUBMISSION TO THE HON. CLIVE BROWN – WA MINISTER FOR STATE DEVELOPMENT

The valuable titanium minerals industry (heavy mineral sands) which often finds high levels of thorium in certain deposits will be at risk particularly. Are existing mines and deposits with high levels of thorium to be closed down and where exploration finds such deposits are they never to be developed?

Denial of the benefits of the titanium minerals industry to Western Australia goes beyond just mines into a complex downstream value adding process which could mean a heavy loss of jobs if the upstream exploration and mining process is disrupted.

The State may well face compensation costs if companies with an already heavy expenditure on development of a uranium prospect are forced to abandon their investment.

Regional centres will suffer set backs should the titanium minerals industry also suffer setbacks. Eneabba is an excellent example.

The community generally will be potentially deprived of future income and associated economic benefits from a uranium mine or mines being developed in Western Australia at some future time.

Should Government allow passage of such a Bill it will run the risk of being itself labelled anti-development, which would have massive implications across the whole economy.

CONCLUSION

For the reasons contained in this submission, AMEC recommends that Government not support the Nuclear Activities (Prohibition) Bill 2001, as it is clearly not in the best interests of the Western Australian community, the economy, or in realising the future development potential of the State.

The negative effects that would flow from the Bill would be totally unacceptable and would achieve no purpose in any event in the global sense.

EXTRACT ENDS

The points raised in the 2001 paper are valid today, and apply equally to the State Government's stated intent (see Ministerial Media Release – Appendix F.)

The events in train in Western Australia are certainly a prime example of the ultimate impediment to mineral investment – a clear message that no investment is wanted.

The issue for the Federal Government is clearly whether the Western Australian developments are in the National interest, and if it is judged they are not, what then??

It is AMEC's view that considerable damage is in the process of being done to Australia's reputation as a safe destination for mineral investment capital.

RECOMMENDATION

That the Federal Government consider what powers are available to it to prevent State Governments from passing legislation which is not in the National interest and which will damage investment perceptions and economic outcomes beyond State jurisdictions.

15.0 CORPORATE GOVERNANCE – UNHELPFUL REGULATION

In late January of this year, AMEC was alerted by a member to an Issues Paper released for comment by the Australian Securities and Investment Commission (ASIC). The Issues Paper, titled "Secondary Sales of Securities that Require Disclosure under s707(3) & (4)" was dated 21 December 2002. The deadline for comment was 1 February 2002.

AMEC wrote to ASIC pointing out the importance of the issues canvassed in the Paper to AMEC members and expressing its concern that the timing of the Paper's release, just prior to Christmas, provided little opportunity for comment. Furthermore, had we not been informed by a member of the Paper's existence, we would not have been aware of the Paper at all.

We subsequently learned that the Issues Paper was issued by ASIC on a "restricted" circulation and was not available on the ASIC website.

AMEC representatives met with Perth office staff of ASIC on 30 January 2002 when a frank and cordial exchange of views occurred. At this time, AMEC requested an extension of time to provide comment in response to the Issues Paper. We were informed that this was not possible, given that the *Financial Services Reform Act* would come into effect on 11 March 2002.

Despite these shortcomings of the ASIC process, we were able to furnish a short submission addressing the issues raised in the ASIC Paper.

No contact or response was received from ASIC in response to the comments we made on the Issues Paper.

Subsequently, on 20 May, AMEC representatives again met with ASIC staff. In attendance at this meeting was Mr Richard Cockburn, the ASIC Director of Corporate Finance, based in Melbourne. During the course of the meeting, he acknowledged the shortcomings of the ASIC process to date in its dealing with the issue of the secondary sale of securities and advised that a further discussion paper would be issued by ASIC for public comment in mid-June.

On 8 April 2002, public notices appeared in the print media advising that the Parliamentary Joint Committee on Corporations and Financial Services would conduct an Inquiry into the Regulations and ASIC Policy Statements made under the *Financial Services Reform Act 2001.* The deadline for submissions was 3 May 2002.

AMEC made a submission to the Inquiry which is reprinted below:

EXTRACT FROM SUBMISSION TO PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

15.1 INQUIRY INTO REGULATIONS AND ASIC POLICY STATEMENTS – FINANCIAL SERVICES REFORM ACT 2001

AMEC is an organisation representing a significant number of junior resource companies, many of whom have been or, in AMEC's view, will be adversely affected by ASIC Class Order 02/272 (as varied by CO02/334) ("**Class Order**") concerning sections 703(3) and (4) of the Corporations Act (secondary sale of securities).

AMEC has, as associate members, leading corporate law firms in Perth and this submission incorporates comments from our resource company members and from those corporate lawyers.

SUMMARY

AMEC has concerns with both the relevant sections of the Corporations Act and the Class Order. In summary those concerns are as follows:

- The Act would appear to extend to all persons who innocently purchase shares from a seller who breached s703(3). However, the interpretation of this clause is unclear given *Re Timor Sea Petroleum NL* (2000) 35 ACSR 186, which is at odds with ASIC's interpretation, thus causing market uncertainty.
- The twelve month period in s703(3) is too long having regard to ASX reporting obligations.
- It is not clear whether the company, as well as the seller, breaches the Act if unauthorised secondary trading occurs.

EXTRACT FROM SUBMISSION TO PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

- It could be questioned whether the provisions are required at all, in light of the period reporting, continuous disclosure and insider trading laws.
- Category 3 of the Class Order, should not be limited to ED securities.
- Category 4 of the Class Order, giving relief in the case of ASX S&P 200 companies is not logical and the relief should extend to all companies with ED securities quoted for at least 12 months.
- Category 5 of the Class Order undermines the continuous disclosure principle (when read in light of the insider trading laws).
- In Category 6 of the Class Order, the restriction to a 6 month period is not justified.
- ASIC would appear to have adopted a stance whereby case by case relief will be very difficult to obtain.
- The complexity of section 707 and the Class Order increases legal and compliance costs to an extent not justified by the regulatory benefit.

15.1.1 SECTIONS 707(3) AND 707(4) OF THE CORPORATIONS ACT

UNWITTING PURCHASERS CAUGHT

Section 707(3) would appear on its terms to apply such that an unwitting purchaser, who acquired shares on market from a person who was issued securities but who was prohibited from reselling those securities within 12 months, has also breached the section. Likewise, all future purchasers of those particular securities, during the relevant 12 month period, are also in breach of Section 707(3). That is, there is no "safe harbour" for innocent parties not involved with the original issue of securities. The section should be amended, or the class order amended to clarify that such innocent parties are not caught by the section. In any event, the interpretation of this clause is unclear given the conflicting view of ASIC (see paragraphs 18 to 22 of ASIC's Issues Paper titled "Secondary Trading of Securities that Require Disclosure s707(3) and (4)" dated 21 December 2001) which is at odds with the judgement in *Re Timor Sea Petroleum NL* (2000) 35 ACSR 186, thus creating market uncertainty.

EXTRACT FROM SUBMISSION TO PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

It is also unclear whether a recipient of shares pursuant to a special distribution which is effected by a capital reduction (a common form of restructuring) will breach s707(3) when they subsequently on-sell the shares.

It is clear that the person who sells securities in breach of section 707(3) has committed an offence against the Act. However, the position of the company that issued the securities, is not clear. By the terms of sections 707(3) and (4), the company itself would not be in breach, but the "aiding and abetting" provisions of section 79 of the Act and section 11 of the Criminal Code Act 1995 (Cth) may apply to the company. This uncertainty should be removed, by a provision in the act which states that the company will only be liable for breach of section 707 if it is proved that the company issued the securities with the purpose that they be resold.

12 MONTH PERIOD TOO LONG

The 12 month period in section 707(3) appears to have been arbitrarily chosen and is too long. Given the periodic reporting and continuous disclosure obligations, a period of 3 months would be adequate to deal with the policy underlying the section. It is submitted that it is unlikely that the "carve out" in Listing Rule 3.1, (typically, that the information concerned an incomplete proposal or negotiation and is confidential) can be legitimately sustained by a company for more than a 3 month period.

In any event, the issuer and the recipients of the securities may legitimately wish that such information should be kept confidential and not disclosed to the persons to whom the new securities are issued, in order not to prejudice the company's contractual constraints and commercial standing, and to avoid the recipients becoming holders of inside information and subject to the prohibitions on insider trading. In essence the category may result in the disclosure of information that the securities' recipient does not desire, and which if disclosed may prejudice the company. The restraints imposed by this category are therefore very much at odds with the continuous disclosure regime which appropriately recognises that it is not always in shareholders' or the public's interest that all material information be released to the market.

It is suggested that the Class Order be amended to provide that, in the case of ED securities quoted for a continuous period of at least 12 months before the issue of the new securities of that class, the 12 month period be reduced to 3 months. It is submitted that it is appropriate for the class order to make such provision, without undermining the policy behind sections 707(3) and (4).

EXTRACT FROM SUBMISSION TO PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

15.1.2 CLASS ORDER

Category 3

Category 3 of the Class Order is limited to ED securities quoted for 12 months before the issue of the "convertible securities". Since the original issue of the convertible securities must be pursuant to a prospectus for the Category to apply, it should not be limited in this way. If a full disclosure prospectus is issued (rather than the short form for ED Securities) then this Category should also apply.

Category 4 – Arbitrary and Illogical

It is submitted that Category 4 in the Class Order is arbitrary and illogical. The size of the company has no relevance to whether or not the basic "evil" that section 707 seeks to prevent, is properly dealt with. All listed companies, large and small, are subject to the same standard of reporting and continuous disclosure. It is insulting to the many small to medium companies, which work hard on their corporate governance, to see a Class Order obviously framed upon the presumption that bigger companies can be "trusted" whereas smaller companies cannot be. This presumption is not supported by recent events where the continuous disclosure practices of several "blue chip" companies have been called into question. This simply highlights the fact that, in the case of companies with ED securities continuously quoted for 12 months, the 12 month restriction in 707(3) should be dropped to 3 months or removed altogether.

Category 5 – Undermines Continuous Disclosure

Category 5 of the Class Order undermines the continuous disclosure principle. If a company is legitimately entitled to withhold information on an incomplete proposal or negotiation (which is kept confidential) then it should be able to make a placement of securities without such disclosure (bearing in mind the market will in any event be trading securities of the same class without that information). The restraints imposed by this category are therefore very much at odds with the continuous disclosure regime which appropriately recognises that it is not always in shareholders' or the public's interest that all material information be released to the market. Further, it is illogical that there should exist a separate standard of disclosure to investors simply because securities the subject of a private placement may be sold within 12 months of their issue.

Again, this result would be alleviated, without undermining the purpose of section 707, if the 12 month period was reduced to 3 months. Exploration companies are often negotiating joint ventures and, as they are not income producing companies, they need to often go to the market to raise working capital. In circumstances where the persons taking the placement of securities do not require the company to disclose the confidential information to them, they should not have to be made aware of the confidential information in order to effectively allow the placement to be made. To provide this information may prejudice the company's commercial position and, as mentioned above, subject the recipients to potential breach of the insider trading laws. There is no need for and it is confusing to have overlapping provisions in the way section 707 (coupled with the Class Order), is applied on the one hand and the insider trading laws on the other hand.

Category 5 – Often Not Viable

Category 5 of the class order is often not a viable option for such resource companies, but if the 12 month restriction was reduced to 3 months, their fund raising capacity would be less seriously affected. The 3 month period allows time for current negotiations to conclude or for a decision to be made to announce the status of negotiations (usually triggered by the next quarterly report to the ASX). After such period, the persons who took the placement of securities, should be free to trade at any time thereafter.

Category 6 – 6 Month Period Illogical

With respect to Category 6 in Schedule C of the Class Order, it is submitted that the requirement that a prospectus be issued no more than 6 months prior to the offer for sale, is not justified. On the basis that the issue of a prospectus will address the "anti-avoidance" purpose of section 703, it follows logically that Category 6 should apply at any time after a prospectus is lodged. In the context of Category 6, the prospectus is obviously issued subsequent to the issue of the securities, so all market sensitive information is or is required to have been disclosed in that prospectus. It is illogical that securities issued under the prospectus may be freely traded at all times thereafter, whereas securities issued prior to the prospectus may only be resold within 6 months of the date of the prospectus (and, of course, after 12 months from their original issue). Further, from a regulatory perspective, it is difficult to see how ASIC could effectively monitor and enforce compliance with this requirement once the securities issued prior to the prospectus are being traded alongside with those issued under the prospectus, or what regulatory benefit would ensue if they were to do so.

EXTRACT FROM SUBMISSION TO PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

ASIC's Stance

The experience of our law firm members to date indicates that at least during the Class Order "trial" phase until 12 September 2002, ASIC will not readily grant relief outside of the Class Order whilst it remains in place. AMEC is concerned that ASIC's stance may prejudice companies that have a legitimate need for declaratory relief due to their particular circumstances.

Increased Legal and Compliance Cost

The experience of our law firm members indicates that many exploration companies have sought, and will no doubt continue to seek, detailed legal advice (and incur not insignificant expense) in relation to the steps that need to be taken to ensure compliance with the Class Order, even for relatively straightforward placements. This suggests that the regulation in this area is overly complex. This advice is being given in the context of proposed placements to private investors in circumstances where it is apparent that neither the company nor the investor is seeking to flout the prospectus regime. Small mining exploration companies seeking to maximise the amount of available funds for exploration needs in the interests of their shareholders can ill afford this additional legal and regulatory burden and the associated lost management time and compliance costs.

AMEC would like the opportunity for its representatives to appear before the Inquiry to discuss and expand upon these submissions.

(COMMITTEE SUBMISSION ENDS)

In late June, AMEC received a copy of the ASIC Discussion Paper, titled "Disclosure for on-sale of securities and other financial products". The Paper, dated 27 June 2002, is open for public comment until 8 August 2002.

From AMEC's reading of the Discussion Paper, ASIC's proposals will do little to resolve AMEC's fundamental concerns with the recent amendments to section 707 and ASIC's exemptions.

Notwithstanding the existing ASIC relief and its further proposals, the additional regulation of secondary sales:

- Unnecessarily impedes an industry whose ongoing success and survival is dependent on equity fundraising;
- Adds a further layer of legal and compliance costs on companies who can ill-afford them;
- Is illogical in its application to listed companies already complying with the continuous disclosure regime;
- Is far too general in its application – the concerns expressed by ASIC can and should be addressed in a far more focussed manner.

ASIC does propose to withdraw the "Category 4" exemption in favour of the largest 200 listed companies and to remove the 6 month requirement in relation to the "Category 6" existing prospectus exemption, thereby addressing our concerns in those particular respects.

Nevertheless, it is apparent from ASIC's second Discussion Paper that the problems caused to the mining and mineral exploration industry will remain largely unresolved unless addressed by further legislative change.

16.0 A MEANS OF INCREASING MINERAL INVESTMENT LEVELS

16.1 FLOW THROUGH SHARES

The Australian mineral exploration industry suffered an investment downturn over a period of 4 years due to a confluence of negative factors, which include low global commodity prices, currency and economic factors, the South East Asian economic downturn, and continuing difficulties in land access due to native title, all of which resulted in negative investor perceptions, which literally dried up the flow of risk capital into mineral exploration during this period.

Whichever way the statistics are analysed, Australia's private mineral exploration expenditures have slumped badly and the problem has not resolved itself, despite some slight encouraging signs that a recovery may be in sight. What is clearly needed is a circuit breaking initiative to stimulate investment and ensure Australia's future mineral production.

The initiative must be commercially driven, tax effective and sufficiently attractive to achieve the objective (See Appendix G).

In recent years "tax breaks" have been created which attract investment flows to industries such as plantation timber, olive production and vineyard establishment. Each of these initiatives have helped growth in economic terms in a tax effective way for those industries.

The mineral exploration industry has the ability to deliver far greater economic gains than either plantation timber, olive growing or vineyard development, and at the same time preserve the great Australian mining industry into the future.

Popular misconceptions that mining is finite are too generally applied by misinformed people, some of whom should know better. The truth is that a given mineral deposit is finite and future sustainability requires replacement of each exhausted mine through the discovery of a new mineral deposit of equal size and worth. Improved technology and engineering knowledge now allows lower grades of ore to be mined, and deeper mines to operate economically.

Improved metallurgy has also significantly improved the industry's ability to treat many types of ore. **A very big part of the Australian continental land mass has not yet been effectively explored, so the finite myth when applied to mining is just that, a myth.**

Mineral exploration is the key to the industry's future and to the continuing contribution currently made to the economy. Mineral exploration must therefore be nurtured and sustained.

In AMEC's view, "Flow Through Shares" has the potential to achieve a substantial rise in the current mineral investment graph, to Australia's and the community's benefit.

While cynics may point to the issue of a short-term loss of government revenue, which will result from the utilisation of currently unused tax deductible exploration work undertaken by mineral exploration companies, this is another myth.

In effect, foregone revenue in any given year is only a deferred revenue collection which will be recouped from production at a later stage by a future Government at a much greater rate.

Meanwhile exploration expenditure is boosted creating a bigger future tax base, when new mines come into production.

In addition, Australia's finance industry is expanded and a magnet for a flow of overseas investment capital into Australia is created.

16.1.1 THE PROPOSITION

In view of the current parlous state of mineral exploration generally, immediate action is required to assist the smaller companies particularly in the matter of capital raising.

Canada has been successful over many years in mobilising local risk capital through the medium of flow through shares, which commits those funds to effective mineral exploration programs, AMEC is of the view that a similar program tailored to Australia's conditions and needs, should be implemented in Australia. Canada is a similar country, with a similar mining industry and culture, a similar economy and was, when the scheme they designed was introduced in the early 1980's, suffering a

similar downturn in mineral exploration activities. Canada re-introduced and promoted the system in 2001/2002 to address a current problem to that which caused the original introduction of the scheme. The *Australian Taxation Act* has in the past provided incentives in section 77c which was repealed by Act Number 107 of 1989 with effect from 30 June 1989.

Australia therefore has a solid precedent in statutory terms for re-introduction of some form of taxation effective incentive to assist mineral exploration.

Small mineral exploration companies provide a dynamic that is essential to the health of the Australian mineral exploration industry. It is not possible to entirely divorce the issue of an adequate level of mineral exploration, from the continuing health of the junior exploration companies and the industry generally.

Small explorers are driven by the imperative that they must do sufficient work, in terms of proving up prospective ground, to either underpin further fund raising to supplement float money, or to make their properties attractive to another company that may then joint venture with them. Larger corporations do not have the same need to perform, as their ongoing survival is not tied closely to immediate performance.

Statistics prove that smaller companies, hungry for success, are vastly more efficient and effective explorers than the larger corporate groups. This has been amply illustrated over recent years.

To add a further complication, there is of late an emerging trend for large corporations to close down or severely reduce their exploration divisions in favour of acquisition of projects from smaller players. If the smaller operators cannot raise money to progress their projects to a provable stage, then the larger companies will not in future have a ready supply of projects in which to invest.

Due to poor commodity prices, the South East Asian downturn, global currency and economic problems and problems with land access as a result of native title, investors in the current climate now have a poor perception of mineral exploration as an investment.

As a result mineral exploration companies have encountered great difficulty in mobilising investment in mineral exploration programs.

A Flow Through Share incentive would be likely to benefit these capital-deprived companies by re-funding their programs where investors judge there are real prospects of success.

Canada has reaped a secondary, probably unplanned benefit, from their enlightened approach to treatment of risk capital, through tax-effective incentive schemes.

Canada has the enviable record of mobilising 51% of the world's mineral exploration capital on an annual basis and exports a great deal of this money worldwide. Canada has therefore achieved a global role as a clearing-house for mineral exploration capital, and this achievement is largely due to enlightened regulation and tax treatment of risk capital investors.

Australia should seek to emulate Canada and add a new dimension to our already burgeoning financial industry.

16.1.2 THE CANADIAN MODEL

BACKGROUND AND KEY PRINCIPLES

Under the Canadian concept, companies are able to transfer to shareholders the tax deductions associated with bona fide exploration work by way of issuing flow through shares. The Flow Through Shares actually form part of the company's share capital, but they can only be issued by eligible entities registered with an appropriate organisation.

The tax deduction resulting from certain exploration expenditure incurred by the company (with specified limitations) as detailed below, is then passed on to the shareholder and is subsequently not deductible to the eligible entity.

For a shareholder to qualify for the flow through deductions, an agreement must be signed between the shareholder and the eligible entity at the time of subscription for the Flow Through Shares. The eligible exploration expenses are then treated as expenses of the shareholder. This is done by a process where the company "renounces" the expenses to the shareholder.

RENUNCIATION

The eligible entity cannot renounce more exploration expenditure than it has actually incurred and cannot renounce to the shareholders more than the consideration received for the shares. The potential renunciation and deductions to the shareholder are limited to an amount based upon the shareholder's investment.

AMEC proposes that the renunciation passed to the shareholders be given a concessional uplift to 133% to encourage additional investment in the mining and exploration industry. Canada used this device very successfully to break out of their 1980's risk capital drought.

To govern the extent of renunciation we propose that this process involve reporting to relevant authorities.

LIMITATIONS

One issue to be resolved with flow through shares would be the imposition of a limitation on the type of exploration expenditure eligible for the purpose of Flow Through Shares and consequently renouncable to shareholders. Currently, basic exploration expenditure is deductible to companies and we propose that the same expenditure could qualify for the proposed Flow Through Shares.

The purpose of this limitation is to encourage investment in genuine exploration activity, the area of the industry in most need of support. In addition, a limitation could also be imposed on the size of the company eligible to issue Flow Through Shares either in terms of capitalisation or through a condition which would rule out companies with a cashflow from Mining.

As previously mentioned the total exploration expenditure transferred would either not exceed the aggregate amount received in consideration for the shares or conversely the uplifted incentive rate. Attention should also be given to imposing limitations on the time frame in which expenses are renounced and hence deductions could be claimed by taxpayers.

RESTRICTIONS

Pursuant to the Canadian Model of Flow Through Shares, restrictions referred to as "warehousing" and "stacking", are employed to help govern the utilisation of these shares.

Firstly, the "warehousing" provision restricts shareholders from renouncing expenditure before an agreement is signed between the company and the shareholder. This restriction is particularly important in governing shareholders that are partnerships, as under the Australian legislation, partnerships do not recognise and distribute profits or losses until year-end. This proposed restriction would prevent entities in this situation from claiming expenditure by the company prior to the signing of an agreement.

"Stacking" arrangements on the other hand apply similar restrictions to our loss provisions. "Stacking" between related companies is a situation where a corporation incurring the expenses issues Flow Through Shares to the parent company and renounces the expenses to the parent, who in turn issues Flow Through Shares to the public, again renouncing those expenses. We suggest that "Stacking" arrangement between related companies should be allowable, but restrictions should apply to stacking arrangements between non related companies.

CAPITAL GAINS CONSEQUENCES

Subject to the total amount renounced to the taxpayer, the disposal of the Flow Through Shares would have a cost base of nil for capital gains tax and thus the entire proceeds received on disposal would constitute a capital gain. Where there is not a full renunciation to the taxpayer of the total amount paid for the purchase of the Flow Through Shares, the cost base would be deemed to be the total remaining unrenounced balance.

AMEC believes that the introduction in Australia of a similar model to the Canadian Flow Through Shares provisions would encourage additional much needed investment in the mining and exploration industry.

USAGE

The Canadian system has attracted a valid criticism which should be addressed in the Australian system and that is the ability to carry over to a following year any unused flow through share monies on programmes which span financial periods i.e. more than one financial year. The relevant concession could be made useable in terms of when spent rather than in the year the shares were subscribed for.

16.1.3 CONCLUSION

AMEC believes that it has shown conclusively that the current mining downturn is now serious enough, particularly in its effect on the exploration sector and future production, to warrant Federal Government action.

Whichever way the statistics are analysed, Australia's private mineral exploration expenditures have fallen to unacceptable levels. What is clearly needed is a circuit breaking initiative to slow and reverse this state of affairs.

The initiative must be commercially driven, tax effective and sufficiently attractive to achieve this objective.

The *Australian Taxation Act* has in the past provided incentives in section 77c which was repealed by Act Number 107 of 1989 with effect from 30 June 1989.

Australia has a solid precedent in statutory terms for re-introduction of some form of taxation effective incentive to assist mineral exploration.

Providing a tax effective incentive to address and reverse the current problems is seen as the most efficient and cost effective means of achieving this objective.

RECOMMENDATIONS

AMEC recommends that:

1. ***The Commonwealth Government seriously examines the Flow through Shares mechanism contained in the Canadian taxation system, with a view to implementing a similar regime in Australia.***

2. ***The scheme be trialed on a five year basis with an appropriate sunset clause attached to ensure a full review of whether the scheme was cost effective, met its objectives and resulted in positive outcomes in a national sense.***

3. ***If an affirmative decision to proceed is reached that implementation be treated as a matter of urgency and that necessary amendments to the Taxation Act, to implement the system, be contained in a priority Bill and not left for inclusion with other amendments to the Act which may be pending.***

AMEC is prepared to participate with Government in bringing this matter to an equitable and successful conclusion.

17.0 CONCLUSION

In this submission, AMEC has outlined impediments to Resource Exploration in Australia which collectively, have a significant impact on companies involved in Mineral search.

There are impediments which exist at a State level that add to these problems, some of which are not raised directly because they are matters wholly within the control of State Governments.

AMEC seeks the opportunity to appear at any public hearing the Committee may hold, to allow us to expand on our Submissions and to clarify issues and answer questions which Committee members may raise.

Please do not hesitate to contact us meanwhile, if there is any way we can further contribute to the Inquiry.

APPENDICES

TO

SUBMISSION TO THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON INDUSTRY & RESOURCES INQUIRY

INTO

RESOURCES EXPLORATION IMPEDIMENTS

FROM

ASSOCIATION OF MINING AND EXPLORATION COMPANIES (INC)

JULY, 2002

INCORPORATED IN WESTERN AUSTRALIA
3rd Floor, 33 Ord Street, West Perth WA 6005
Phone: (08) 9321 3999 Fax: (08) 9321 3260
E Mail: amec@amec.asn.au Home Page Address: http://www.amec.asn.au

APPENDIX A.

LETTER FROM SENATOR HILL

INDIGENOUS PROTECTED AREAS PROGRAM

Senator the Hon Robert Hill
Leader of the Government in the Senate
Minister for the Environment and Heritage

20 SEP 2000

Mr G A Savell
Chief Executive Officer
Association of Mining and Exploration Companies Inc
PO Box 545
WEST PERTH WA 6872

APPENDIX A.

Indigenous Protected Areas Program

Dear Mr Savell

I refer to your letter of 14 August 2000, in which you express your concern over the "potentially disastrous" effect Indigenous Protected Areas may, in your view, have on mineral exploration. I note your continued interest in this important and innovative program.

It appears from your correspondence that the attachment provided with my response of 18 April 2000 did not reach your office. I assure you that the attachment was comprehensive and specific to the questions you raised and I now include an updated version of the attachment for your information.

I am not aware of any instances in which discussions about, or indeed the establishment of Indigenous Protected Areas, has had an effect on any aspect of the mining industry. I would appreciate your advice should you know of such instances.

Indigenous Protected Areas contribute to the national effort to establish a comprehensive, adequate and representative system of protected areas. As you will be aware, loss of biodiversity is one of the major environmental problems confronting Australia today. Protected areas are an important and internationally recognised strategy for biodiversity conservation.

Most protected areas are established, owned and managed by State and Territory government agencies through statutory approaches with legally enforceable management regimes. However, statutory protected areas alone cannot ensure that a truly representative protected areas system inclusive of all Australian ecosystems, is established. Through the Indigenous Protected Areas Program, Indigenous owned and managed lands are able to become part of the National Reserve System and complement the statutory protected areas system managed by government agencies.

Indigenous Protected Areas are established through voluntary agreements and partnerships, where the Indigenous land holders contribute their land, knowledge and land management effort towards the achievement of national biodiversity conservation objectives. There are at least two cases nationally where mining companies are active partners in the establishment and management of Indigenous Protected Areas, thus demonstrating that mining activity and Indigenous Protected Areas can co-exist.

Parliament House, Canberra ACT 2600
Telephone 02 6277 7640 Facsimile 02 6273 610

Internationally recognised standards and guidelines for protected areas allow significant portions of a protected area to be used for purposes other than conservation, provided this use does not undermine the values of the whole protected area.

I hope this second reply will alleviate your concerns about Indigenous Protected Areas. The Program provides opportunities for Indigenous land holders to form partnerships in conservation with a wide range of stakeholders, including members of your own Association. By contributing financial and technical assistance to Indigenous landowners engaged in environmental protection, the mining industry has much to gain in terms of its public perception. Such cooperative approaches would minimise concerns about negative environmental and social impacts of mining on Indigenous owned lands.

I have copied this reply and attachment to the Hon John Howard MP, Prime Minister, Senator the Hon John Herron, Minister for Aboriginal and Torres Strait Islander Affairs, Senator the Hon Nick Minchin, Minister for Industry, Science and Resources and the Hon Richard Court MLA, Premier of Western Australia.

Yours sincerely

Robert Hill

Enclosure

Questions and Answers on Indigenous Protected Areas

1. *Where are the Indigenous Protected Areas which have already been declared?*
2. *What actual land area is involved in 1 above with respect to each State or Territory*

Indigenous Protected Areas which have been declared and the size of these areas in hectares.

Nantawarrina (South Australia)	58,000 ha
Yalata (South Australia)	436,000 ha
Deen Maar (Victoria)	453 ha
Risdon and Oyster coves (Tasmania)	109 ha
Preminghana (Tasmania)	524 ha
*Walalkara (South Australia)	700,000ha
*Watarru (South Australia)	1,580,000ha

*Since the original reply to your letter two portions of Anangu Pitjantjatjara lands were declared Indigenous Protected Areas.

3. *What percentage of each State or Territory is already declared*

South Australia	2.8%
Victoria	<0.02%
Tasmania	<0.01%
Western Australia	0.0 %
Northern Territory	0.0 %
Queensland	0.0 %
New South Wales	0.0 %

4. *What further areas are actively under consideration or about to be declared in each State and Territory*

Indigenous Protected Area projects are at varying stages ranging from consideration of declaration on Indigenous owned lands through to finalising Plans of Management and management agreements. The land areas identified below cover the total land for which the Indigenous organisation has responsibility. Any areas ultimately declared as Indigenous Protected Areas are likely to be significantly smaller than the total area.

South Australia;	
Finniss Springs	171,270 ha
Anangu Pitjantjatjara lands	2,000,000 ha
Western Australia;	
Paraku (Lake Gregory)	435,000 ha
Great Sandy Desert	20,000,000 ha
Ngaanyatjarra Lands	8,000,000 ha
Northern Territory;	
Purta Aboriginal Land Trust	390,000 ha

Amorrdak	117,000 ha
Dhimurru	20,000 ha
Queensland:	
Guanaba	100 ha
New South Wales;	
Wattleridge	480 ha

5. Over what land types and land titles may an Indigenous Protected Area be declared?

Indigenous Protected Areas may be declared over any land type. The primary aim of the Indigenous Protected Area program is to provide a mechanism for the inclusion of Indigenous owned lands in the National Reserve System. Eligibility for Indigenous Protected Area funding is focused on those land types and ecological communities which are poorly represented in the existing Protected Area network.

Indigenous Protected Areas may be declared over any land which is owned by Indigenous groups under a title which permits management of that land primarily for biodiversity conservation.

6. What benefits does a declaration confer on an area and/or and Indigenous Group?

The primary benefit Indigenous Protected Area declaration confers on an area or group is to have their land considered as part of the National Reserve System, with this status enabling support for future land management activities from both Federal and State Government. Declaration of an Indigenous Protected Area formalises management plans for an area making activities on land more accountable to both the government and the public. The land is being managed in the public interest through a management program that is monitored via the States and Territories as managers of the National Reserve System.

7. Can an Indigenous Protected Area be declared over a Pastoral Lease?

An Indigenous Protected Area can be declared over all or part of a pastoral lease with the proviso that the ongoing use of the leased land remained acceptable under the terms of the lease, and the primary purpose of the management of the declared Indigenous Protected Area is Biodiversity Conservation. Where the aims of a proposed Indigenous Protected Area (ie.biodiversity conservation) are not compatible with the terms of a lease, declaration could not proceed unless the responsible State or Territory reviewed the lease arrangement or the land tenure was changed to one which was compatible with biodiversity conservation as a primary land management objective.

8. How would access to such areas for mineral exploration or mining be affected?

There would be no impact on access to such an area for mineral exploration beyond the current requirements. In circumstances where exploration or mining activities approved through existing procedures significantly impact upon biodiversity conservation on an Indigenous Protected Area, the status of the area would be reviewed. Note that up to 25% of a protected area may be used for other purposes, provided these activities do not compromise the conservation values of the whole area.

9. *What disincentives flow to the wider community as a result of the declaration of an Indigenous Protected Area?*

The Commonwealth considers that no disincentives flow to the wider community as a result of Indigenous Protected Areas. Indigenous Protected Area declarations lead to improved conservation on Indigenous lands and additions to the National Reserve System in a very cost effective way. Public access and enjoyment of IPAs is encouraged by the land holders. As is the case with other protected areas, Indigenous Protected Areas provide improved public access to special areas and provide unique visitor experiences because of improved infrastructure and visitor management services. Commercial activities such as mining and sustainable forestry may still be undertaken within the context of Indigenous Protected Area use.

APPENDIX B.

AMEC BRIEFING NOTE

BIOLOGICAL DIVERSITY – CONSERVATION AND SUSTAINABLE DEVELOPMENT

APPENDIX B.

BRIEFING NOTE

ON

BIOLOGICAL DIVERSITY
- CONSERVATION AND SUSTAINABLE USE

FEBRUARY 2000

BACKGROUND

Biological diversity (biodiversity) is a global issue and broadly refers to the variety of life (plant, insect, animal and human) found on earth. The focus of the debate over biodiversity centres on the actual or threatened extinction of a species as a result of ecosystem alteration.

As a signatory to the international 'Convention on Biological Diversity', Australia is required to identify and protect its biodiversity. A domestic consequence of Australia's ratification of the Convention has been the development of a 'National Strategy for the Conservation of Australia's Biodiversity', in addition to the Environment Protection and Biodiversity Conservation Act 1999. The Act prescribes a statutory framework for the conservation and sustainable use of Australia's biodiversity. *For more information on the Act, please see AMEC briefing note, 'Commonwealth Environment Protection and Biodiversity Conservation Act 1999 – Promoting Duplication and Uncertainty.'*

AMEC supports preservation of Australia's rich and unique biodiversity which is best described as a significant national asset. AMEC is concerned however, that successive Commonwealth Governments have hastily developed a national strategy and legislative regime that does not sufficiently consider the potential social and economic consequences of the biodiversity preservation objectives outlined, nor the broader requirement for an effective, balanced and scientifically based approach to the preservation of biodiversity.

There is a body of scientific opinion which argues that biodiversity preservation is best achieved by a 'whole of environment' approach, as opposed to a 'lock up' reserve approach. Any strategy aimed at biodiversity preservation should therefore acknowledge and recognise that species protection cannot be achieved in isolation, but should be considered within the context of society's broader environmental goals.

Management is the key to the maintenance of Australia's rich biodiversity. An over-emphasis on the 'real estate' approach to conservation, focusing on the already inadequately managed 6 percent of the Australian land mass classified as national park and other forms of conservation reserves, may in fact be counterproductive to the preservation of biodiversity.

ISSUES

1. The National Strategy for the Conservation of Australia's Biodiversity fails to provide any specific mention of how the Commonwealth Government intends integrating biodiversity conservation with the activities of the mineral exploration and mining industry. The Strategy does however, feature a lengthy discussion on the integration of biodiversity conservation and natural resource management in the case of agriculture, pastoralism, fishing, forestry, water and tourism.

2. A key feature of the National Strategy is the 'National Reserve System'. Given the lack of detail provided in the Strategy document with respect to use of the reserves, one can only assume that they will limit or even exclude mineral exploration and/or mining activity. Moreover, there is a possibility that biodiversity reserves will impose additional constraints on land access akin to, or perhaps even more stringent than the access conditions applicable to national parks, conservation reserves and protected marine areas.

Should this scenario eventuate, a national biodiversity reserve system will inevitably result in the sterilisation of extensive tracts of land for future development. Biodiversity reserves may become extensions of existing reserves such as national parks and wilderness areas, thus creating large 'no go' areas in the case of mineral exploration and mining.

3. The Environment Protection and Biodiversity Conservation Act provides for the preparation of 'bioregional plans' for use as a means of preserving biodiversity. The Act does not however, make provision for any degree of public consultation in relation to bioregional plans, or the participation and agreement of the States and Territories affected by such plans.

4. The Act also dramatically expands the existing categories of species currently under Commonwealth statutory protection. AMEC is concerned that this provision will increase mining company vulnerability to ambit and vexatious actions and/or project injunctions.

5. Biodiversity regulation is likely to increase the mining industry's environmental compliance costs in the form of initial statement preparation including the development of appropriate environmental management systems, performance audits and overall project design.

6. Although the Environment Protection and Biodiversity Conservation Act prescribes the development of bilateral agreements with the States and Territories in respect of biodiversity preservation, the Commonwealth has failed to provide a commitment that it will postpone enactment of the legislation, scheduled for July 2000, until such time as all bilateral agreements are finalised. The potential therefore exists for unnecessary and wasteful State/Commonwealth duplication of environmental process.

7. The scientific community is yet to form a consensus on how biodiversity is most effectively preserved. Protection of all the elements in the biosphere is an extremely difficult task given that there are few scientifically designed guidelines available which indicate the amount of modification that can be made to an ecosystem before the ecosystem undergoes permanent change.

8. Commonwealth ratification of the international Convention on Biological Diversity confers on the Government the ability to utilise its foreign affairs powers (as was the case with world heritage listing), to forcibly impose Commonwealth inspired biodiversity policy on the States.

RECOMMENDATIONS

1. A systematic and practical approach to biodiversity preservation should be adopted by the Commonwealth Government whereby responsibility for the 'on the ground' implementation of Commonwealth biodiversity policy rests with the Australian States and Territories.

   The States and Territories should in turn act to ensure that biodiversity assessment is undertaken simultaneous to the assessment of all other environmental issues in respect of a mineral exploration or mining project.

This approach should incorporate the following key principles:

a) A multiple and sequential national land and marine use approach in which development activities are permitted in biodiversity reserves under appropriate environmental conditions. AMEC expects that multiple-use biodiversity reserves may encompass core zones which boast a high degree of biodiversity and which are not open to development, but which are surrounded by 'buffer' areas on which a wider range of activities can be undertaken including mineral exploration and mining.

b) The completion of economic and social impact assessments for all biodiversity reserve proposals. The impact assessments should clearly identify the likely economic and social costs associated with reserving an area for the purpose of biodiversity preservation and be afforded due consideration by the Commonwealth Government prior to a decision being made.

c) The maintenance of transparency, accountability and above all, consistency by Government with respect to biodiversity preservation and the establishment of biodiversity reserves and access conditions.

2. An independent and objective appeals system should be established to facilitate the resolution of disputes between stakeholders on the question of biodiversity preservation.

3 The Commonwealth Government should confine its activities in respect of biodiversity preservation to a supervisory role and in so doing officially recognise and respect the States' constitutional responsibility for land management.

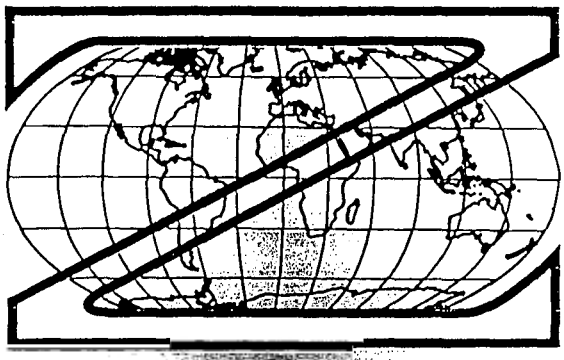
4. By virtue of its acknowledged practical experience and funding of environmental and ecological research in environmentally sensitive areas, the mining industry should be consulted by the Commonwealth, State and Local Governments prior to the implementation of specific biodiversity conservation initiatives, most particularly the establishment of biodiversity reserves.

APPENDIX C.

PROSPECTUS

EXAMPLES OF JOINT VENTURES COMMON TO THE MINING INDUSTRY

APPENDIX C.



ZEPHYR MINERALS N.L.

A.C.N. 008 894 442

PROSPECTUS

Non-renounceable entitlement issue to shareholders of Stirling Resources N.L. (A.C.N. 008 877 745) ("Stirling") of up to 25,226,400 ordinary fully paid 20 cent shares at an issue price of 20 cents each, which shares carry an entitlement to one free option exercisable at 20 cents on or before 30 June 1996 for every two ordinary shares subscribed. Issue closes at 5:00pm (WST) on 25 March 1994. In addition, Stirling shareholders will receive one bonus Zephyr option for every ten ordinary shares in Stirling exercisable at 20 cents on or before 30 June 1996.

This issue is to raise $5,045,000

Dated this 27th day of January 1994

This issue has been fully underwritten by CIF Capital Limited
A.C.N. 005 296 186

Brokers to the Issue:
Bell Securities Ltd
A.C.N. 006 465 498
ABS White & Co. Ltd
A.C.N. 003 307 873
and
Porter Western Limited
A.C.N. 009 105 579

The Tenements referred to in this Prospectus are at exploration and evaluation stages and accordingly the shares and options offered by this Prospectus are of a speculative nature. Applicants should read this document in its entirety and consult with their professional advisors before deciding to apply for shares and options.

10. SOLICITOR'S REPORT

FIOCCO HOPKINS RATTIGAN

BARRISTERS & SOLICITORS

9th Floor
55 St George's Terrace
Perth W A 6000

Tel (09) 325 7800
International +619 325 7800
Fax (09) 221 1216
Ausdoc DX 127

The Directors
Zephyr Minerals N.L.
4th Floor, 40 The Esplanade
PERTH WA 6000

Dear Sirs

PROSPECTUS - SOLICITOR'S REPORT ON THE COMPANY'S INTEREST IN THE MINING TENEMENTS AND ON THE AGREEMENTS SCHEDULE AND TENEMENTS SCHEDULE

This report has been prepared for inclusion in a Prospectus to be dated on or about 27 January 1994 for a non-renounceable offer by Zephyr Minerals N.L. ("the Company") of up to 25,225,000 ordinary shares of 20 cents each at par to raise $5,045,000, together with attaching free 1 for 2 options at an exercise price of 20 cents each payable in full on application ("the Prospectus"). In addition, the Company is offering, subject to the minimum capital raising pursuant to the Prospectus, free Bonus Options to Stirling Resources N.L. shareholders on the basis of one Option for every ten shares held in Stirling Resources N.L. on the books closing date of 1 March 1994.

This Prospectus relates to the various mining tenements held by the Company (collectively "the Tenements") set out in the attached Agreements Schedule and Tenements Schedule which, together with the Notes attached to the Tenements Schedule, forms part of this report.

Agreements and Tenement Schedule

As a result of and based upon searches of the Tenements listed in the Tenement Schedule conducted at:

a) the Department of Minerals and Energy in Perth, Western Australia on 3.12.1993;
b) the Department of Energy and Minerals in Melbourne, Victoria on 6.1.1994;
c) the Department of Mines and Energy in Darwin, Northern Territory on 3.12.1993;
d) the Department of Mines and Energy in Adelaide, South Australia on 6.1.1994;
e) the Nelson Land Registry, Ministry of Commerce and Auckland Registry in New Zealand on 6.1.1994;
f) after obtaining an independent certified translation from Russian of mining licences CHITA No. 00137 BR and CHITA No. 00133 BP, as provided to us by the Company;

we confirm that the information and particulars included in the Tenement Schedule are an accurate statement of the Tenements therein.

In the case of searches undertaken on our behalf in New Zealand by Messrs. Simpson Grierson Butler White, that legal firm has confirmed the status of the New Zealand Tenements for due diligence purposes. In addition, Messrs. Baker O'Louglin undertook a search of the Ooldea Tenement in South Australia to enable us to establish that the Tenement is adjacent to but does not form part of the existing "Maralinga Lands" proclaimed in the Maralinga Tjarutja Land Rights Act 1984 (S.A.)

In the case of Chargold we have not obtained advice from Russian lawyers and are unable to verify as to the legal validity of the Tenements or the Chargold Agreement or the legal implications of these documents but we are not aware of any facts that suggest the above are invalid.

In the case of Tenements not yet formally granted or approved by the appropriate authority, we can express no opinion as to whether any such application will ultimately be granted, although we have no reason to believe that such application will be refused. In such cases, the Tenement Schedule sets out the status of the application for title.

In some cases, the searches on which the information in the Tenement Schedule is based have not provided current information concerning the Registered holders of the Tenements. With respect to the Ooldea Tenement, although the search undertaken at the Department of Minerals and Energy in Adelaide shows that the Company holds a 95% interest in the Tenement and Outback Mining and Oil Company Pty Ltd holds a 5% interest in the Tenement, we have perused a copy of an agreement signed on 27 November 1992 between Cosmo Developments Pty Ltd and the Company. Under the agreement, the Company sold 100% of its interest in the Tenements to Cosmo.

This agreement appears to be in all respects a valid agreement enabling the Company to transfer its interest in the Tenement to Cosmo but does not appear to have yet been registered in South Australia. By a royalty agreement of the same date, and which is detailed in the Agreements Schedule attached to this Report, the Company obtained its royalty interest in the Tenement.

With respect to the Cambridge Gulf Tenements, the Company has always been the Registered holder of Tenements E80/1368 and E80/1556. We have been advised by the Company that transfers concerning Tenements E80/671 and E80/734 have been lodged for registration with the Department of Minerals and Energy and have sighted copies of those transfers. We have therefore satisfied ourselves that the Company has obtained its 100% interest in these Tenements, although the searches undertaken at the Department of Minerals and Energy have not shown it to be the Registered holder of 100% of these Tenements. The Company subsequently entered into the agreement with Australian Kimberley Diamonds N.L. concerning those Tenements which are detailed in the Agreements Schedule attached to this report.

With respect to Tenement E80/667, a substantial area of the Tenement has been surrendered under the terms of that exploration licence. The Company has therefore lodged mining licence applications ML(a)80/375, ML(a)80/376, ML(a)80/377, ML(a)80/378, ML(a)80/379, ML(a)80/380 and ML(a)80/381 over the area required to be surrendered and this maintains its interest in this area.

In the case of agreements which do not relate to Tenements, the Agreement Schedule sets out the material terms of those agreements

AGREEMENTS SCHEDULE

INTRODUCTION

PIGEON ROCKS TENEMENT

Parties and Nature of Agreement

By an agreement dated on or about 12 October 1993 between the Company and Gulf Mining Pty Ltd ("Gulf") a company associated with members of the family of Mr E.J. Ellyard, a director of the Company, the Company agreed to acquire Gulf's 100% interest in Western Australian exploration licence E77/483 ("Pigeon Rocks"), all other rights and privileges pertaining thereto and all mining information in the custody or control of Gulf which relates to the Tenement. This agreement was lodged for stamping in Western Australia on 9 November 1993.

Price

The consideration for sale is:

a) the payment to Gulf of $10,000 by way of reimbursement of past expenditure incurred by Gulf; and
b) the issue by the Company to Gulf of 750,000 ordinary shares at 20 cents each in the capital of the Company upon the Company listing on the ASX.

If the Company is unable to list on the ASX then the agreement shall automatically terminate and the Company forfeits so much of the expenditure it has incurred on the Tenement to that date.

Condition Precedent

It is a condition precedent that the transfer of the Tenement receives the approval of the Minister pursuant to the Mining Act 1978 and is registered at the Western Australian Department of Minerals and Energy pursuant to the Act. If the condition precedent is not satisfied by 30 June 1994 or such later date as may be agreed in writing by the Company and Gulf, the agreement automatically terminates.

SHARE SALE AGREEMENT - TRANS PACIFIC GOLD PTY LTD

Parties and Nature of Agreement

By an agreement dated 1 October 1993 between Trans Pacific Resources Group Pty Ltd ("Trans Pacific Resources Group"), Stirling Resources N.L. ("Stirling"), Trans Pacific Gold Pty Ltd (Trans Pacific Gold") and the Company, the Company agreed to acquire all the issued and allotted shares and options in the capital of Trans Pacific Gold from Trans Pacific Resources Group. Trans Pacific Gold is the holder of 49% of the shares in Chargold Ltd, a Russian Joint Stock Company.

Settlement occurred on 1 October 1993.

The agreement was lodged for stamping in Western Australia on 8 November 1993.

Price

The consideration for the sale of the shares in Trans Pacific Gold is:

a) the issue and allotment to Trans Pacific Resources Group of 500,000 ordinary shares in the capital of the Company; and
b) the payment to Trans Pacific Resources Group of $50,000 on the date the Company lists on the ASX, of which some $35,000 is payment to Trans Pacific Resources Group by way of reimbursement of past expenditure.

Trans Pacific Resources Group's Warranties

Trans Pacific Resources Group warrants that, to the best of its knowledge at the date of this agreement, it is the owner of 49% of the issued shares in Chargold Ltd, which owns or is entitled to own mining and exploration licences over areas in the Chita Region of Russia in connection with certain alluvial and hard rock gold mining projects. Trans Pacific Resources Group gives warranties as to title and other matters which are usual in a transaction of this nature.

Company's Covenants

The Company covenants that during the continuance in force of this agreement it will cause Trans Pacific Gold to abide by all the provisions of the Memorandum and Articles of Association of Chargold Ltd and the associated Joint Stock Company Agreement.

The Company also covenants:

a) upon execution of the agreement to effect deposit by way of loar of US$50,000 in a bank account in the name of Trans Pacific Gold and within a bank nominated by Trans Pacific Resources Gold to be used to fund Trans Pacific Gold's obligations tc contribute to Chargold Ltd's exploration expenditure. This obligation has been met by the Company;
b) as and when required and until the Company lists on the ASX, tc make further deposits to the said account as and when required ir order for Trans Pacific Gold to fulfil its obligations to Chargold Ltd
c) issue and allot to Trans Pacific Resources Group 2,500,00C shares in the capital of the Company, if possible listed for trading within 30 days of the commencement of mining operations for the production of gold from the alluvial mining properties associatec with Chargold Ltd.

Default

In the event that Company defaults in meeting any of its covenantec obligations or if Stirling as guarantor defaults under its obligation tc guarantee the Company's covenanted obligations to fund Trans Pacific Gold's obligations to contribute to Chargold Ltd's exploratior expenditure or if Trans Pacific Gold defaults under the terms of the Articles of Association of Chargold and the Joint Stock Compan Agreement to contribute to Chargold as required from time to time, the Company shall give to Trans Pacific Resources Group 90 days notic of its default and shall transfer to Trans Pacific Resources Group a the shares in Trans Pacific Gold under its control or the control of an associate company or nominee or any director or member of the Company for AUS$1 upon failing to meeting the obligations on the dat the obligations fall due.

AGREEMENT ON THE ESTABLISHMENT OF THE RUSSIA AUSTRALIA JOINT COMPANY "CHARGOLD"

Parties and Nature of Agreement

By an agreement dated 12 October 1993 between Trans Pacific Gol Pty Ltd ("Trans Pacific Gold"), Limited company artel "Bystraya" ("Art Bystraya") and Limited company "Charita" ("Charita"), the parties hav agreed to associate in a Russia Joint Stock Company Chargold Lt ("Chargold").

Trans Pacific Gold is holder of 49% of the shares in Chargold, Art Bystraya is the holder of 46% of the shares in Chargold and Charita i the holder of 5% of the shares in Chargold.

Contributions

Participation in Chargold is based on contribution to the Statutory Fun created by this agreement and distribution of the profit, participation the property of Chargold or liquidation and other rights of th participants will be determined on the basis of the contributions of th participants to the Statutory Fund. Trans Pacific Gold shall contribut to the Statutory Fund by transferring US$41,200 to the currenc account of Chargold within 30 days of the registration of Chargol This obligation has already been met by Trans Pacific Gold.

Artel Bystraya shall contribute to the Statutory Fund by way of grantir the rights to use the following licences from the date of registration Chargold and for a period of 5 years:

a) Chita number 00137BR2.08-1993
geological exploration and extraction of gold at the enterprise's risk on the river Jemkoo and its tributaries;

b) Chita number 00133BP2.08-1993
research and geological exploration and extraction of the alluvial gold on the river Kalar and its tributaries.

In the event that Artel Bystraya is unable to make available to Chargold its rights in relation to the above licences, Chargold shall be considered to be at an end and all the currency contributed by Trans Pacific Gold shall be returned in full to Trans Pacific Gold. The rights in relation to the licences have been made available by Artel Bystraya but, as noted in the Solicitor's Report, at this date the licences remain in the name of Artel Bystraya and not in the name of Chargold Ltd because the directors of Artel Bystraya and Charita believe that there will be less holdups when dealing with government instrumentalities in the Federation of Russia if the licences remain in the name of that Company.

Charita shall contribute to the Statutory Fund by way of carrying out foreign, economic and other activities of Chargold free of charge, creating at Chargold's expense a base in Moscow for delivery of any necessary equipment and other organising activities and rendering assistance to Chargold according to the decisions of the Board of Directors of Chargold from the date of its registration. If Charita fails to fulfil its obligations hereunder it will forfeit it share in Chargold and will withdraw in accordance with Chargold's Articles of Association with respect to the payment for its share in the property of Chargold.

Additional Contributions

The parties agree that after registration of Chargold and at the first meeting of the Board of Directors, the Board of Directors will take a decision in relation to increasing the Statutory Fund by among other things, an additional investment of up to the amount of US$1 million taking into account circumstances at the time and having regard for the exchange rate of the Central Bank of Russia at the time. Trans Pacific Gold shall contribute the entire hard currency requirements in order to maintain its 49% interest in the Statutory Fund. Artel Bystraya will make additional contributions to the value of 46% of the Statutory Fund by prolongation of the period of providing to Chargold the abovementioned licences. Charita shall make additional contributions to the value of 5% of the Statutory Fund by further carrying out foreign, economic and other activities of Chargold free of charge and creating a base in Moscow and organising activities and rendering other assistance to Chargold according to the decision of the Board of Directors for a longer period. The parties shall mutually agree as to what period of prolongation of the provision of licences by Artel Bystraya shall constitute 46% of the Statutory Fund and as to what period of prolongation of provision of services by Charita shall constitute 5% of the Statutory Fund.

Management

Chargold shall be controlled by the Board of Directors which consists of four representatives of the parties, two of whom are nominated by Trans Pacific Gold and two of whom are nominated by Charita and Artel Bystraya. Chargold shall be managed by a General Director. The rights, duties and responsibilities of the General Director are to be contained in the contract to be concluded with him by the Board of Directors. The senior officials of Chargold are the Chairman of the Board of Directors and the General Director. For the first 3 years, the Chairman of the Board of Directors will be nominated by Trans Pacific Gold and the General Director will be nominated by Artel Bystraya. After three years the Chairman of the Board of Directors will be nominated by Artel Bystraya and the General Director will be nominated by Trans Pacific Gold. These appointments will alternate for the life of Chargold.

The review of the annual accounts of Chargold will be exercised by a Revision Committee which will consist of three representatives, one from each party.

The parties agree that resolutions at meetings of the Board of Directors will be decided by the simple majority of votes. Other than matters which require a unanimous decision of the Board of Directors, if during voting there is inequality of votes, the Chairman of the Board of Directors shall have a casting vote. The following matters require unanimity of the members of the Board of Directors:

1) a resolution in relation to the liquidation or reorganisation of Chargold;
2) determination of the amounts of dividends to be paid to the parties, in the form of foreign currency or property,
3) recalling of the General Director;
4) inserting any changes in the foundation documents;
5) removal of any party from Chargold and determination of the dates and order of payment of the share of the property of Chargold owing to that party;
6) admittance of a new party and determination of their contributions to the Statutory Fund;
7) changing the amount of the Statutory Fund and shares of the parties; and
8) resolution on the foundation of a subsidiary, branches abroad and in the Russian Federation and the resolution on any activity of foreign enterprises abroad.

Period of Activity

The period of Chargold's activity is settled for 25 years from the date of its registration. The term may be extended for a further 25 years if the parties do not object.

Dividends

A reserve fund shall be created by setting aside up to 10% of the net profits of Chargold for the fiscal year reduced by prior losses. The distributable profits shall consist of the net profits for the fiscal year reduced by prior losses (if any), reduced by the amount set aside for the creation of the reserve fund and any allowance made for any taxation payable, and increased by any profits which may have been carried forward.

Chargold in general meeting may decide to set aside from these distributable profits any sums it deems appropriate to be set up as optional, ordinary or special reserve funds to be carried forward.

The parties shall then take steps to ensure that the distributable profits of Chargold, after taking into account all the amounts set aside as provided for above, shall be distributed as dividends in respect of each financial year. Dividends will be available for distribution annually.

MULGABBIE SOUTH PROSPECT TENEMENTS

Parties and Nature of Agreement

By an agreement dated 26 November 1993 between Artrayu Investments Pty Ltd ("Artrayu) and C.B. Harris ("Harris") and Stirling Resources N.L. ("Stirling") and the Company, the Company agreed to purchase Artrayu's and Harris's 100% interest in Western Australian prospecting licences P28/803 and P28/825 and exploration licence E28/485 and all other rights and privileges pertaining thereto and all mining information in the custody or control of Artrayu and Harris.

This agreement was lodged for stamping on 2 December 1993.

Price

The purchase price is:

a) (i) the payment to Artrayu and Harries of $130,000, payable as $10,000 upon the Company executing the agreement $20,000 no later than 25 November 1994, $40,000 no later than 25 November 1995, $60,000 no later than 25 Novembe 1996; or

(ii) the payment to Artrayu and Harris of $80,000 no later than 25 November 1994; and

b) the issue by the Company to Artrayu and Harris of 100,000 ordinary shares of 20 cents each in the capital of the Company. In the event that the Company does not list on the ASX on or before 25 August 1994, Stirling as guarantor shall pay $7,000 to Artrayu and Harris in place of the issue of the shares described above.

Escrow

Upon execution of the agreement, Artrayu and Harris agree to execute a registrable transfer of the Tenements and to deliver that transfer along with any instrument of title to the Tenements to the Company's solicitors to hold the transfer and instrument of title in escrow until the Company makes full payment of the purchase price. This obligation has already been met by Artrayu and Harris.

Royalty Agreement

Within 30 days of the Company publicly announcing or giving notice in writing to Artrayu and Harris that commercial tonnage and grades of mineralisation have been discovered on the Tenements, the Company and Artrayu and Harris shall enter into a royalty deed. It shall be a term of that deed that the Company grants to Artrayu and Harris, effective from the date of full payment of the purchase price, the right to receive the following royalties:

a) a $1.50 per tonne royalty on all ore mined from the Tenements and milled on the Tenements or elsewhere after the first 50,000 tonnes of open-cut ore. The royalty shall be granted for the working life of the Tenements and shall be increased yearly by the Percentage Increase in the Consumer Price Index for Perth;
b) a 1.5% gross royalty on gold value of all ore obtained by underground mining on the Tenements;
c) the Company and Artrayu and Harris shall negotiate a royalty payable on the sale of any mineral except gold mined by underground mining methods.

DUNNSVILLE TENEMENTS

Parties and Nature of Agreement

By an agreement dated on or about 1 December 1993 between Yardarino Mining N.L. ("Yardarino") and Croesus Mining N.L. ("Croesus"), Stirling Resources N.L. ("Stirling") and the Company, Yardarino, Croesus and the Company have agreed to associate in a Joint Venture pursuant to the terms of which the Company shall earn an interest in the exploration licence EL16/90, prospecting licence P16/1534 and prospecting licence P16/1535. Stirling agrees to guarantee the performance of the Company's obligations under the agreement up to and including the date of the Company listing on the ASX.

Condition Precedent

The agreement is subject to all necessary Ministerial and Government consents or authorisations required under applicable laws.

Joint Venturers

The Joint Venturers are the Company, Yardarino and Croesus who shall hold participating interests according to project expenditure as detailed below.

Price

The consideration for the Parties associating with effect from execution of the agreement in a Joint Venture is the issue by the Company to Yardarino of 184,000 ordinary shares of 20 cents each in the capital of the Company and the issue by the Company to Croesus of 46,000 ordinary shares of 20 cents each in the capital of the Company upon the Company listing on the ASX and by way of reimbursement of past expenditure;

Project Expenditure

The Joint Venturers are required to contribute to tenement expenditure in proportion to their participating interests, save that the Company must solely contribute to tenement expenditure until 45 days after it gives notice to Yardarino and Croesus that it has earned its participating interest in the Tenements.

The Company may earn its participating interest in the Tenements by:

a) expending $40,000 on exploration on the Tenements prior to 30 June 1994 to earn a 40% interest in the Tenements;
b) expending a further $70,000 on exploration and/or development on the Tenements prior to 30 June 1995 to earn a further 20% interest in the Tenements.

Within 30 days of the Company notifying Yardarino and Croesus that it has earned its participating interest in the Tenements, Yardarino and Croesus must elect to either:

a) not contribute to expenditure until completion of the then current Approved Program and accept dilution in accordance with the standard dilution formula; or
b) elect to contribute to the then current Approved Program as a contributing party for all expenditure from the date of such election

If a party elects not to contribute to expenditure and its interest dilutes to 5%, that party may within 14 days notice of its interest reaching 5%, contribute to expenditure or withdraw from the Joint Venture and its participating interest shall be transferred pro-rata to the contributing parties for no consideration.

Management

The Company is the Manager of the Joint Venture and has control of and supervision of the carrying out of operations of the Joint Venture.

Representatives

Each party shall appoint one person to be their Representative in all matters relating to the Joint Venture and any decision taken by Representatives in relation to the Joint Venture shall be decided by a majority vote with each Representative entitled to a number of votes corresponding to the percentage contributing interest of the party which appointed him. There shall be submitted by the Manager to the meetings of Representatives programs for the proposed prospecting, exploration, investigation, development and exploration to be carried out in respect of the Tenements. The particulars of programs or budgets to be adopted shall be determined by a majority vote of Representatives in the manner described above.

Royalty

In the event that Yardarino's interest in the Tenements shall dilute to less than 5% during an Approved Program, the Manager shall pay Yardarino a 1.2% gross royalty on all processed product delivered from the Tenements to a recognised refiner.

In the event that Croesus's interest in the Tenements shall dilute to less than 5% during an Approved Program, the Manager shall pay to Croesus a 0.3% gross royalty on all processed product delivered from the Tenements to a recognised refiner.

Yardarino or Croesus shall have the right within 1 month of the Manager's calculation of processed product delivered from the Tenements to a recognised refiner to audit at its own cost the Manager's calculations. Any dispute as to calculation must be referred to an expert.

The royalty provided for above continues to be payable after Yardarino or Croesus withdraws from the Tenements.

Default

a) Pre-Development

In the event of any of the parties defaulting in the performance of any its obligations under the agreement or committing a material breach of the agreement and failing to remedy the breach within 30 days of a written request to remedy it, the other parties may within 14 days acquire the whole of the interest of the defaulting party for the consideration of $1,000.

b) Per Se

If a party goes into liquidation or suffers a receiver to be appointed or commits any act which would constitute an act of bankruptcy, such party shall be deemed to have given a notice of its intention to sell its participating interest to the remaining parties.

SALE OF CAMBRIDGE GULF PROSPECT "A"

Parties and Nature of Agreement

By agreement dated 24 September 1993 between Australian Kimberley Diamonds ("AKD") and the Company, AKD has agreed to acquire 51% of the Company's interest in E80/667 and E80/735.

Settlement occurred on or before 23 October 1993.

The agreement was lodged for stamping on 15 October 1993.

Price

The consideration for the sale is:

a) $200,000 representing reimbursement of the Company's previous expenditure on the Tenements by way of:
   (i) payment to the Company of $50,000 upon AKD listing on the ASX;
   (ii) payment to the Company of $100,000 on or before 1 July 1994 provided that AKD lists on the ASX;
   (iii) the issue and allotment to the Company by AKD of 250,000 ordinary shares of 20 cents each in the capital of AKD upon AKD obtaining listing on the ASX. AKD and the Company have entered into a standard escrow agreement under which the Company shall receive the 250,000 shares in AKD upon completion of the escrow period;
b) the provision to the Company by AKD of 49% of all diamonds and other valuable minerals recovered by AKD from the Tenements during exploration and until completion of a Mining Feasibility Study. The Delivery to the Company of such diamonds and other valuable minerals should be made by AKD on a regular basis and in each case within 3 months of recovery of same.

AKD obtained the approval of the ASX to list on the ASX on 29 November 1993. AKD listed on the ASX on 9 December 1993.

Condition Precedent

It is a condition precedent that the transfer of the 51% interest in the Tenements from the Company to AKD receives the approval of the Minister responsible for the administration of the Mining Act 1978 (WA) and is duly registered at the Western Australian Department Minerals and Energy pursuant to the Act.

If approval of the Minister to the transfer of the interest in t Tenements from the Company to AKD is not forthcoming by 30 Mar 1994 or such later date as agreed in writing between the parties, th this agreement will be at an end and all moneys paid by AKD to t Company shall be reimbursed by the Company to AKD.

Mining Feasibility Study

Following execution of the agreement AKD shall carry out su exploration and development of the Tenements as will enable it complete a Mining Feasibility Study.

In the event of a Mining Feasibility Study not being completed withir years from the date of the agreement, AKD shall transfer the 5' interest in the Tenements to the Company.

Joint Venture Agreement

The parties shall enter into and execute a Joint Venture agreement ir form reasonably acceptable to the parties within 90 days commencement of mining operations. The Joint Venture agreeme shall contain all the usual terms and conditions for a joint venture of th nature.

Right of First Refusal

In the event of any party receiving a bona fide cash offer to acquire t whole or any part of its interest in the agreement or the Tenements, t other party shall have the first right of refusal to acquire the selli party's interest on the same terms and conditions contained in t offerer's offer.

SALE OF CAMBRIDGE GULF PROSPECT "B"

Parties and Nature of Agreement

By an agreement dated 25 June 1993 between Australian Kimberl Diamonds N.L. ("AKD") and the Company (at the time of th agreement known as "Offshore Diamond Mines N.L.") AKD has agre to acquire 80% of the Company's interest in E80/1368, E80/155 E80/671 and E80/734.

Settlement occurred on or before 24 July 1993.

The agreement was lodged for stamping on 15 October 1993.

Price

The consideration for the sale is:

a) $175,000 representing reimbursement of the Company expenditure on the Tenements by way of:
   (i) payment to the Company of $25,000 upon AKD listing on th ASX;
   (ii) the issue and allotment to the Company of 750,000 ordina 20 cent shares in the capital of AKD upon AKD listing on th ASX. AKD and the Company have entered into a standa escrow agreement under which the Company shall recei the 750,000 shares in AKD upon completion of the escro period;
b) the provision to the Company by AKD of 50% of all diamonds ar other valuable minerals recovered by AKD from the Tenemen during exploration and until completion of a Mining Feasibil Study. The delivery to the Company of such diamonds and oth valuable minerals shall be made by AKD to the Company on regular basis and in each case within 3 months of recovery same.

AKD obtained the approval of the ASX to list on the ASX on 29 November 1993. AKD listed on the ASX on 9 December 1993.

Condition Precedent

It is a condition precedent that the transfer of the 80% interest in the Tenements from the Company to AKD receives the approval of the Minister responsible for the administration of the Mining Act 1978 (WA) and is duly registered at the Western Australian Department of Minerals and Energy pursuant to the Act.

If approval of the Minister to the transfer of the interest in the Tenements from the Company to AKD is not forthcoming by 30 September 1993 or such later date as agreed in writing between the parties, then this agreement will be at an end and all moneys paid by AKD to the Company shall be reimbursed by the Company to AKD. As of the date of this Solicitor's Report, the agreement has not been lodged with the Minister and both parties have consented to an extension of the 30 September deadline to enable AKD to stamp the agreement at the State Taxation Department and then lodge it at the Department of Minerals and Energy. The agreement is currently lodged with the Valuer General and it is anticipated it will be lodged with the Department of Minerals and Energy shortly.

a further condition of this agreement that AKD on or before 1 December 1993 or such other date as agreed in writing by the parties obtains an underwriting for a subscription of at least $2 million for the purposes of AKD obtaining listing on the ASX. This condition has been satisfied by AKD.

Mining Feasibility Study

Following execution of the agreement, AKD shall carry out such exploration and development of the Tenements and will enable it to complete a Mining Feasibility Study.

In the event of a Mining Feasibility Study not being completed within 3 years from the date of the agreement, AKD shall transfer the 80% interest in the Tenements to the Company.

Right of First Refusal

In the event of any party receiving a bona fide cash offer to acquire the whole or any part of its interest in the agreement or the Tenements, the other party shall have the first right of refusal to acquire the selling party's interest on the same terms and conditions contained in the offerer's offer.

tion to Take Net Profit Interest

Within 90 days of commencement of mining the Company must elect whether to retain a 20% working interest in the Tenements or to convert its interest to a 20% net profit interest. If the Company retains a 20% working interest, a Joint Venture shall be established and the Joint Venture agreement shall contain all the usual terms and conditions for a Joint Venture of this nature.

Calculation of Net Profit

In the event that the Company elects to retain a 20% net profit interest then it shall be entitled to be paid an amount equal to 20% of the sale proceeds of diamonds and other valuable minerals from the Tenements in each financial year less the aggregate for the year of the following sums:

a) amounts paid by AKD on account of commissions for sales representation and other sales representation costs in connection with such sales;
b) an amount equal to the costs attributable to the mining of such diamonds and minerals and to processing the same;
c) the amount of freight, transport, insurance and other costs in respect of the transport of diamonds to the point of sale;
d) the amount of royalties, taxes, excise duties, levies and charges payable by AKD as a result of the sale of diamonds.

The Company shall be entitled to appoint independent auditors to audit AKD as and when required to ensure compliance by AKD with the terms of the calculation of net profit.

PURCHASE OF SENATOR PETROLEUM (NZ) LTD

Parties and Nature of Agreement

By an agreement dated on or about 1 December 1993 between Stirling Resources N.L. ("Stirling") and Senator Petroleum (NZ) Limited ("Senator") (now called Senator Minerals (NZ) Ltd) and the Company, the Company has agreed to purchase 99/100th of the issued and paid up capital of Senator. The other 1/100th of the issued and paid up capital of Senator is held by Mr E.J. Ellyard on trust for the Company and Mr E.J. Ellyard has executed a Deed of Trust dated 17 January 1994 with respect to that interest.

Settlement occurred on 1 December 1993.

The agreement was lodged for stamping on 10 January 1994.

Price

The consideration for the sale is payment by the Company to Stirling of NZ$99 upon execution of the agreement.

BENDOC GOLD PROSPECTS

Parties and Nature of Agreement

By an agreement dated 8 December 1993 between Welkin Pty Ltd ("Welkin"), Stirling Resources N.L. ("Stirling") and the Company, the Company has agreed to acquire 80% of Welkin's interest in Victorian exploration licence EL3464 ("the Bendoc Gold Prospects"). Stirling agrees to jointly covenant with the Company to contribute to tenement expenditure as detailed below, however Stirling shall not acquire any interest in the Tenement following such contribution.

Price

The purchase price is the payment to Welkin of $8,000 on execution the agreement and the execution of a contract of employment between the Company and Mr Brady ("Brady") to undertake work on the Tenements to a minimum value of $10,000.

Additional Payments

The Company agrees to solely contribute to tenement expenditure in the amount of $26,000 within 9 months of execution of the agreement and, in the event that the Company has not abandoned and surrendered the Tenements after 9 months, the Company agrees to solely contribute to tenement expenditure in the amount of $29,500 in the following 12 months.

The Company also agrees to comply with all the requirements of the Victorian Department of Energy and Minerals upon which the grant of the licence to the Tenements is conditional and which conditions have been annexed to the agreement and in particular:

a) to take out and keep current for the term of the agreement a policy of public liability insurance for the sum of $2 million;
b) enter into rehabilitation bond on behalf of Welkin in accordance with Section 80 subsection 1 of the Mineral Resources Development Act for an amount to be determined by the Minister under that Act.

Condition Precedent

It is a condition precedent that the transfer of the 80% interest in the Tenements from Welkin to the Company receives the approval of the Minister responsible for administration of the Act and is duly registered at the Victorian Department of Energy and Minerals pursuant to the Act. If the approval of the Minister for the transfer of the interest in the

Tenements from Welkin to the Company is not forthcoming by 31 May 1995 or such later date as agreed in writing between the parties, then this agreement will be at an end.

Settlement

Settlement shall occur upon expenditure of $100,000 of exploration costs or upon completion of a bankable mining feasibility study, whichever should occur first, or upon such earlier date as may be mutually agreed between the parties

Free Carried Period

The Company acknowledges that Welkin is not obliged to meet any expenditure requirements on the Tenements until completion of a bankable mining feasibility study provided that Welkin shall receive no income from its 20% interest in the Tenements until the Company recoups an amount equal to 20% of the exploration costs the Company has expended on the Tenements up to and including the completion of the bankable mining feasibility study from the proceeds of the sale of ore.

Joint Venture

The parties shall enter into a Joint Venture agreement in a form reasonably acceptable to the parties upon the transfer of the interest in the Tenements. Pending execution of the Joint Venture agreement, the Company shall control operations on the Tenements.

Pre-emptive Rights

In the event that Welkin seeks to transfer the whole or part of its interest in the Tenements it must first offer that interest to the Company on the same terms and conditions.

Rehabilitation

The Company covenants to rehabilitate all areas within the Tenements upon which the Company has undertaken mining activities to the complete satisfaction of Welkin and the Department of Energy and Minerals and furthermore to indemnify Welkin against any claims made by the Department of Energy and Minerals where in the opinion of Welkin such claims are due to the fault or negligence of the Company in the conduct of its mining activities.

Royalties

The Company shall pay to Brady effective from the settlement date the right to receive a 1% gross royalty on gold value of all gold produced by the Tenements

Brady shall be entitled to inspect and audit all records and accounts of all ore and of all sale proceeds received from the sale of the ore.

Brady shall be entitled to nominate a nominee as recipient of the royalty in the place of Brady.

Condition Subsequent

It is a condition subsequent that each party shall use its reasonable endeavours to enable the conversion of exploration rights in the Tenements to mining rights by the Company applying to be granted a mining lease over the Tenements. If the consent of the Minister to the granting of a mining lease over the Tenements applied for is not granted, then the agreement shall be at an end and the Company shall deliver back to Welkin all mining information and thereafter no party shall have any claim against the other party.

Caveats

The Company may lodge such caveats as it thinks fit to protect its interest in the Tenements.

Abandonment and Surrender

If the Company abandons and surrenders the Tenements during period 12-18 months from execution of the agreement, the Comp agrees to repay to Welkin an amount equal to the expend requirements up to the date of any notice of abandonment surrender which are equivalent to the unexpended expend requirements for that period to the date of giving notice.

KIRWANS HILL TENEMENTS

Parties and Nature of Agreement

By an agreement dated 6 January 1994 between Senator Minerals Limited, previously known as Senator Petroleum (NZ) Lim ("Senator"), Silver Surf Investments Ltd ("Silver Surf"), Kame Management Ltd ("Kamedon") and the Company, the Compa subsidiary, Senator, has agreed to associate with Silver Surf Kamedon in a Joint Venture pursuant to the terms of which Ser shall earn an interest in prospecting licence PL31/1939 prospecting permit application PP(a)39/040.

The agreement has not yet been lodged for stamping.

Price

The consideration for the parties associating with effect from execu of the agreement in a Joint Venture is a transfer to Silver Surf Kamedon in equal shares of 250,000 fully paid ordinary shares o cents each in the capital of the Company upon the Company listing the ASX.

If the Company is unable to list on the ASX the agreement shall b an end and all right, title and interest in the Tenements shall transferred back from the Company to Silver Surf and Kamedon thereafter no party shall have any claim against any other party.

Joint Venturers

The Joint Venturers are Senator, Silver Surf and Kamedon, who s have participating interests according to project expenditure as deta below.

Project Expenditure

The Joint Venturers are required to contribute to tenement expendi in proportion to their participating interests save that Senator s expend or commit to expend NZ$100,000 on exploration expenditure the Tenements within 12 months of the Company listing on the ASX

Following expenditure of NZ$100,000 Senator shall have earned a 4 interest in the Tenements.

Thereafter, Senator may earn a further 30% interest in the Teneme by a further expenditure of NZ$250,000 on exploration and developm within 24 months of the Company listing on the ASX.

Upon Senator having expended a total of NZ$350,000 within 36 mon of the Company listing on the ASX on exploration and developm Silver Surf and Kamedon will have the right to elect to:

a) maintain a 30% participating interest in the Tenements a contribute to further expenditure as and when required determined by a Joint Venture Management Committee to formed ("the Committee");
b) accept a further allotment of 250,000 vendor restricted ordin shares of 20 cents each in the capital of the Company and redu their participating interest in the Tenements to 20% and therea contribute pro-rata in accordance with their reduced interests expenditure; or
c) elect to dilute their respective interests.

In the event that their interests in the Tenements dilute to a total of 5% they undertake to transfer their respective interests to Senator for the nominal consideration of $1.

Management

Senator shall be the Manager of the Tenements while it is earning its interest and thereafter so long as it maintains the largest interest in the Joint Venture.

The Manager shall be entitled to charge a management fee of 15% of Joint Venture costs (not including costs and expenses of a capital nature, including interest on borrowings and leasing costs in respect of mining, processing and tenement plant and equipment, or his management fee, to cover overhead costs not otherwise recovered).
At such time as Silver Surf or Kamedon are required to contribute to expenditure, the Committee shall be established and the management and control of the activities of the parties shall be vested in the Committee. All decisions of the Committee must be by a majority vote, each party being entitled to a number of votes equal to its participating interest at the time of the meeting.

Royalty

The Manager shall provide Silver Surf and Kamedon with the nager's calculation of all processed product delivered to a .nimously agreed gold account with a recognised bullion refinery ("the Gold Return"). The Manager shall deliver to Silver Surf's and Kamedon's account with the said refinery a total royalty of 1.5% of the Gold Return within 30 days of each calendar month after the commencement of mining.

Silver Surf and Kamedon shall have the right within 1 month of the receipt of the Manager's calculation of the Gold Return to audit at their own cost the calculation made by the Manager of the relevant Gold Return.

OOLDEA TENEMENT

Parties and Nature of Agreement

By an agreement dated on or about 27 November 1992 between the Company and Cosmo Developments Pty Ltd ("Cosmo"), and in consideration for Cosmo acquiring the Company's 95% interest in South Australian exploration licence 1620, Cosmo agreed to pay the Company a 1.25% royalty on 95% of the market value per ton of magnetite iron ore contained in ore mined from the Tenement which is concentrated by Cosmo in the production of a magnetite concentrate to ~eater than 65% Fe and sold to third parties or contained in magnetite ets which are sold to third parties.

The market value of the ore shall be declared by Cosmo on the 1st of January each year and shall be determined by reference to the fair market value of magnetite ore produced in and sold as magnetite ore for export purposes for use in making iron.

The Company shall be entitled to conduct check assays at its own expense on up to 20 samples or ore retained by Cosmo in each three month period.

Any dispute as to royalty (including as to the volume of ore extracted, the results of assays conducted and the manner in which assays are conducted) shall be referred to an independent expert.

The royalty payable to the Company shall be payable not later than the 14th day after the end of each three month period. In the event that any sum is not paid on the due date, interest shall accrue at a commercial rate prescribed in the agreement.

The agreement continues and inures for the benefit of the Company until Cosmo has no further interest in any tenements in the present Ooldea Tenement area.

If Cosmo defaults in paying the royalty and such default continues for 60 days, the Company shall be entitled to require Cosmo to suspend all operations carried out by or on behalf of Cosmo upon the area until payment is resumed.

The royalty and obligations under the Agreement shall be binding on any successor in title who derives an interest in an existing Tenement or a replacement Tenement from Cosmo. Cosmo may not assign any interest in the Tenement unless it first obtains a deed of covenant to assume and discharge all Cosmo's obligations pursuant to this agreement.

EMPLOYMENT AGREEMENT WITH ANDREW DRUMMOND

The Company entered into an employment agreement dated 11 August 1993 with Andrew Drummond under which Andrew Drummond agreed to provide geological and managerial services for the Company's mineral projects and to be employed as general manager of the Company ("the agreement").

The term of the agreement is six months commencing on 13 September 1993.

Andrew Drummond is to be issued 500,000 Options in the Company subject to shareholder approval at a General Meeting to be held within three months following the Company listing on the ASX (as detailed in Section 6.15 of this Prospectus). In addition, the Company shall pay to Andrew Drummond during the continuance in force of the agreement a fee equal to $350 per day and shall provide and maintain a motor vehicle for Andrew Drummond and reimburse to Andrew Drummond agreed expenses.

Andrew Drummond has agreed to be bound by confidentiality provisions contained in the agreement.

The agreement contains such covenants as to the duties of the general manager as are usual in an employment agreement of this nature.

The Company shall indemnify Andrew Drummond and keep him indemnified against all actions, suits, claims and demands whatsoever against him or the Company which may arise out of his carrying out of his or the Company's obligations under the agreement except as may be proved to be a result of the gross negligence of Andrew Drummond.

The parties to the agreement have agreed that the term of the agreement shall be extended for a further three month period commencing on 13 March 1994 and that a supplemental agreement shall be drawn up to give effect to such verbal agreement.

The parties have agreed that it shall be a term of such supplemental agreement that, in the event of a change in the composition of the Board of Directors resulting in the termination of the employment agreement by the Company, the Company shall pay to Andrew Drummond a total of six months remuneration to be calculated by reference to the current rate of remuneration at the date of termination.

UNDERWRITING AGREEMENT

By an agreement dated 27 January 1994 and made between the Company and CIF Capital Limited (ACN 005 296 186 ("CIF") it was agreed that CIF would underwrite 25,225,000 fully paid ordinary shares of 20 cents each together with one free option exercised at 20 cents on or before 30 June 1995 for every 2 ordinary shares subscribed in the capital of the Company to be issued pursuant to this Prospectus.

APPENDIX D.

NUCLEAR POWER IN THE WORLD TODAY

Nuclear Power in the World Today

Nuclear Issues Briefing Paper 7

APPENDIX D

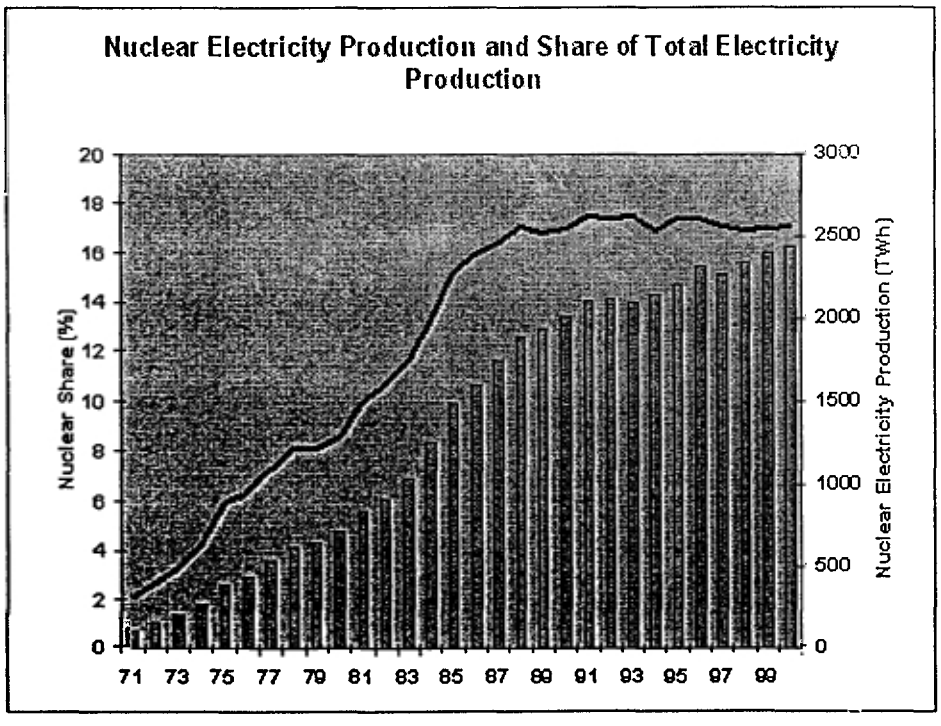
September 2001

- **The first commercial nuclear power stations started operation in the 1950s.**
- **There are now some 440 commercial nuclear reactors in 31 countries, with over 350,000 MWe of total capacity.**
- **They supply 16% of the world's electricity, as base-load power, and their efficiency is increasing.**
- **56 countries operate a total of 284 research reactors.**
- **Canada is the world's leading supplier of uranium.**

Nuclear technology uses the energy released by splitting the atoms of certain elements. It was first developed in the 1940s, and during the Second World War research initially focussed on producing bombs by splitting the atoms of either uranium or plutonium.

Only in the 1950s did attention turn to the peaceful purposes of nuclear fission, notably for power generation. Today, the world produces as much electricity from nuclear energy as it did from all sources combined in 1960. Civil nuclear power can now boast over 10,000 reactor years of experience and supplies 16% of global needs. Many countries also built research reactors to provide a source of neutron beams for scientific research and the production of medical and industrial isotopes.

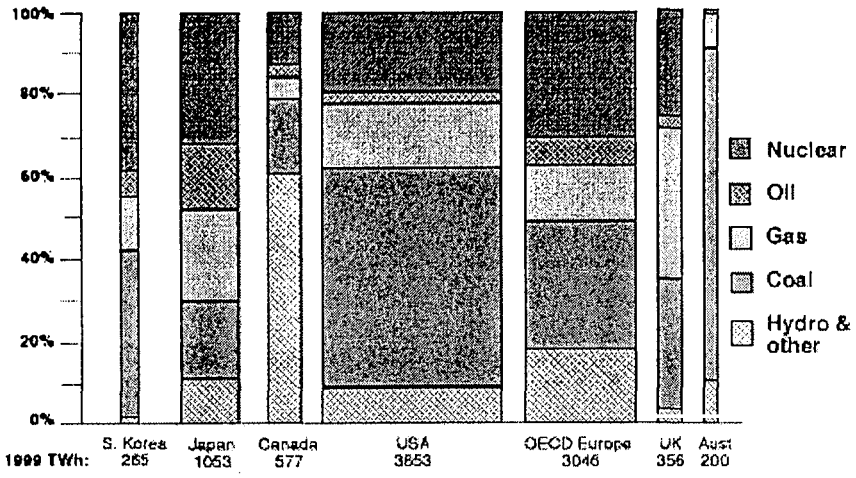
Today, only eight countries are known to have a nuclear weapons capability. By contrast, 56 operate civil research reactors, and 31 have 440 commercial nuclear power reactors with a total installed capacity of 353 000 MWe (see table). This is over three times the total generating capacity of France or Germany from all sources. A further 26 power reactors are under construction, equivalent to 8.6% of existing capacity, while 44 more, on order or planned, are equivalent to 11.6%.



A list of the countries with nuclear power projects is appended.

Fifteen countries depend on nuclear power for at least a quarter of their electricity. France and Lithuania get around three quarters of their power from nuclear energy, while Belgium, Bulgaria, Hungary, Japan, Lithuania, Slovakia, South Korea, Sweden, Switzerland, Slovenia and Ukraine get 35% or more.

Fuel for electricity generation (percent)



Width of each bar is indicative of power generated (gross production)
Source: OECD/IAEA 2000: *Electricity Information 2000 with 1999 Data*

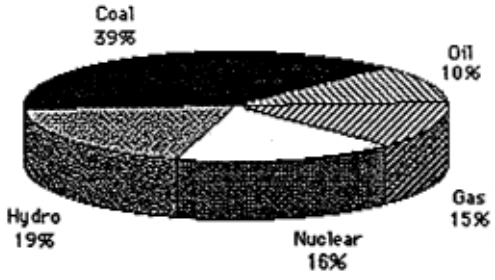
IMPROVED PERFORMANCE FROM EXISTING REACTORS

Although fewer nuclear power plants are being built now than during the 1970s and1980s, those now operating are producing more electricity. In 2000, production was 2447 billion kWh, an increase of 15% (317 TWh) over the previous six years. This is equal to the output from over 30 large new nuclear plants. Yet between 1995 and 2000 there was a net increase of only five reactors (3% in capacity). The rest of the improvement is due to better performance from existing units.

Two thirds of the world's nuclear reactors (apart from Russia and Ukraine) have load factors of more than 75%, compared with only 39% in 1990. For the past 15 years Finnish plants have topped the performance tables, with average load factors now around 92%. Reactors in Belgium, Czech Republic, Germany, Hungary, Japan, South Korea, Spain, Switzerland, Taiwan and the US achieve at least 80%.

US nuclear power plant performance has shown a steady improvement over the past 10 years, and the average load factor now stands at around 85%, up from 65% in 1990. This places the US among the performance leaders with 17 of the top 25 reactors. The US accounts for nearly one third of the worldÕs nuclear electricity. In 1999-2000 Japanese plants achieved an 80.6% average load factor while French reactors averaged 71.2 %. The contrast in this case is due to many French reactors being run in load-following mode, rather than purely for base-load power.

World Electricity Generation



OTHER NUCLEAR REACTORS

In addition to commercial nuclear power plants, there are more than 280 research reactors operating, in 56 countries, with more under construction. These have many uses including research and the production of medical and industrial isotopes, as well as for training.

The use of reactors for marine propulsion is mostly confined to the major navies where it has played an important role for four decades, providing power for submarines and large surface vessels. Over 150 ships are propelled by more than 200 nuclear reactors. The US Navy has accumulated over 5400 reactor-years of accident-free experience. Russia and the USA are now decommissioning many of their nuclear submarines. Russia also operates a fleet of eight large nuclear-powered icebreakers which are more civil than military

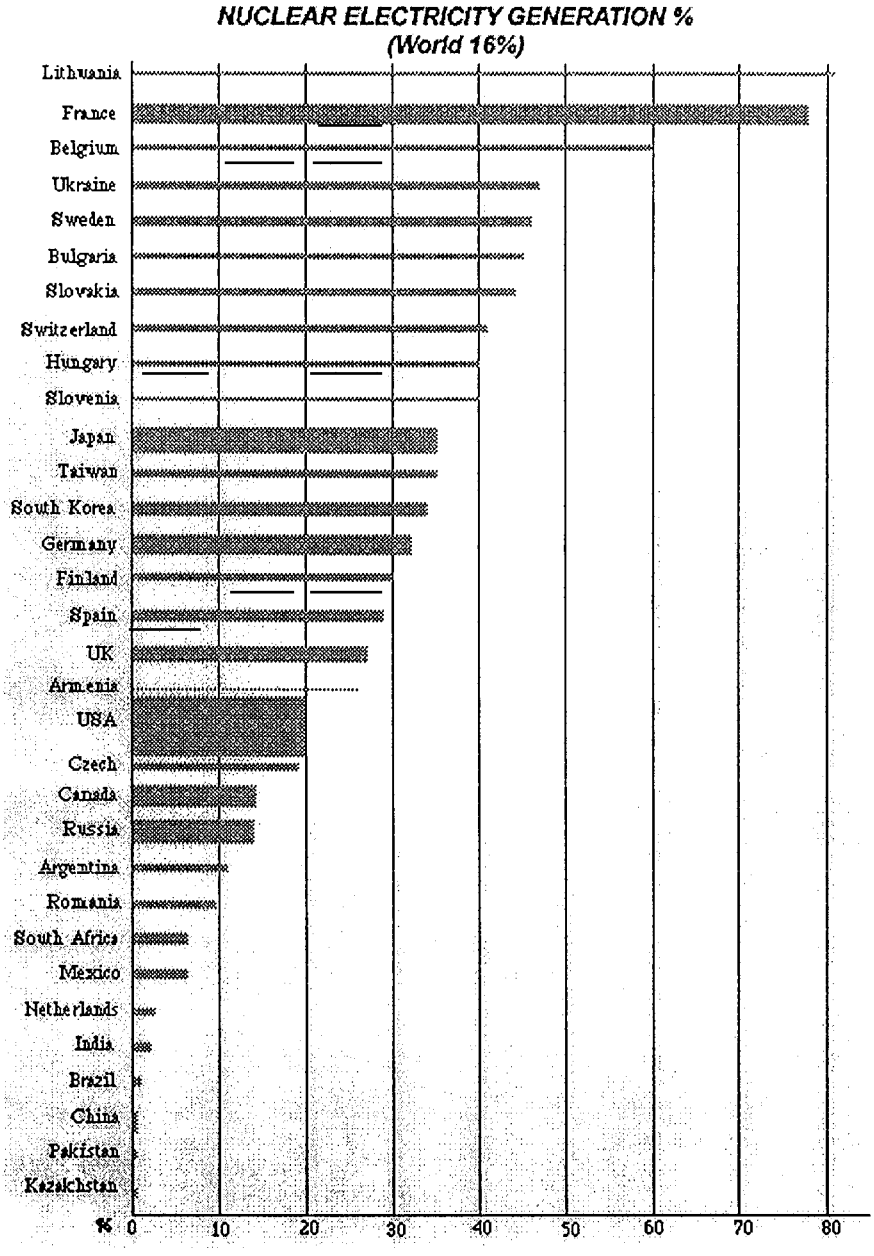


Table of the World's Nuclear Power Reactors

SOURCES:

ANSTO, data to February 2001

ENS NucNet background # 16/00

Nuclear Engineering International, February 2001

For further information ***Search this site*** or Return to Index

Uranium Information Centre Ltd

A.B.N. 30 005 503 828

GPO Box 1649N, Melbourne 3001, Australia
phone (03) 9629 7744
fax (03) 9629 7207
Email : *uic@mpx.com.au*

APPENDIX E.

COMMUNITY SURVEY - FRANCE

THE WORLD'S NUCLEAR NEWS AGENCY
29 May 2001 / News N°181/01 / A

APPENDIX E.

Opinion Poll Underlines Strong French Support for N-Power

Nearly 70% of the French population have a 'good opinion' of nuclear activities in their country, and 63% want France to continue efforts to remain one of the world's nuclear industry leaders, according to a new opinion poll.

The poll was conducted by IPSOS of France last month on behalf of the country's atomic energy commission (CEA), using a representative sample of 1015.

A larger majority of those questioned thought that nuclear power was important for France's energy independence – and an even greater majority expressed confidence in scientists to inform them about nuclear power. Details of the poll are as follows.

- 68% have a "good opinion" of French nuclear activities.
- 76% of those questioned had confidence in scientists to inform them about nuclear issues.
- 62% thought it "indispensable" to continue with research into the nuclear field.
- 63% want France to continue trying to remain "one of the world's nuclear industry leaders".
- 88% said it was important to consider the danger of greenhouse gases as a major factor in France's choice of energy production methods. One in two recognised nuclear energy as one solution for avoiding such emissions.
- 67% said nuclear was important for France's independence of energy supply.
- 59% thought nuclear power would lessen the impact of high oil and gas prices.

Of those polled, 34% said they never or rarely thought about the risks associated with nuclear activities.

Asked specifically about the risk of nuclear accidents, 56% thought a major accident could happen "at any moment" while 38% thought there was only a relatively minor risk.

Questioned about which type of facility they would be more worried about living near to, 46% said they would "worry more" if they lived near a nuclear power plant. The remainder said they would worry more about living near a chemical factory (37%), an incineration plant (9%), a water purification plant (4%) and a further 4% did not say.

Asked about the future of nuclear in France 50 years' on, 33% of those polled thought nuclear power would still be France's principal source of energy, while 52% thought it would be one of a number of sources. Only 36% wanted to abandon the use of nuclear power.

On the subject of nuclear waste, 76% were confident that scientific research would "find a solution to the problem".

Source: CEA

Editor: John Shepherd

APPENDIX F.

MINISTER FOR STATE DEVELOPMENT MEDIA RELEASE

Government of Western Australia
Media Statement

APPENDIX F.

The Hon. Clive Brown MLA
Minister for State Development; Tourism; Small Business

Statement Released: 22-Jun-2002
Portfolio: State Development

Mining of uranium and thorium prohibited in Western Australia

22/06/02

State Development Minister Clive Brown announced at the State ALP Conference that the Government would prohibit the mining of uranium for nuclear purposes from any mining leases granted after today, other than pursuant to existing rights.

Initially, the mining of uranium will be prohibited under Section 110 of the Mining Act 1978. This allows the Minister to limit mining, in the public interest, to only those minerals specified in a lease. Accordingly, the Minister will ensure that mining leases issued after today will not authorise mining for uranium.

The decision that has been made meets the policy of the Labor Government, which came to power on a platform that included banning the mining and export of uranium.

The policy will be ratified with a Government bill which will also specifically amend the Mining Act 1978 to prohibit the mining of uranium for nuclear purposes.

The Minister emphasised that the decision would not interfere with existing rights under the Mining Act, nor where the mining of uranium was incidental to the mining of other minerals and was not extracted for sale.

By introducing the bill into Parliament, the Government is both implementing its previously announced policy and providing certainty to the resources industry.

Mr Brown also announced that the mining of thorium would be strictly controlled by requiring companies to obtain a separate licence where the thorium content in the ore exceeded prescribed limits. The mining of thorium where it was intended to be used for its nuclear properties would not be permitted.

Uranium and thorium are present in many soils and rocks. These can contain significant economic deposits of other valuable minerals. The implementation of the policy is designed to allow for the extraction and sale of these minerals, while preventing the mining of uranium and thorium for nuclear purposes

Minister's office: 9222 9699

APPENDIX G.

THE ECONOMIC IMPLICATIONS OF AN EXPLORATION INCENTIVE SCHEME

APPENDIX G.

The Economic Implications of an Exploration Incentive Scheme

REPORT FOR ASSOCIATION OF MINING & EXPLORATION COMPANIES

JUNE 2002

Economics Consulting Services

THE PURPOSE OF THIS PUBLICATION

The purpose of this publication is to describe an incentive scheme that will facilitate exploration in the Australian mining sector. The flow through share scheme outlined in this report has operated successfully in Canada for more than fifteen years. It provides an alternative mechanism for junior explorers to access capital for exploration activities. While tax effective for investors, it does not distort investment decisions, as miners still need to find and develop projects if the investment is to be profitable. This report outlines the essential elements of the scheme and the value to the Australian economy and resource sector if adopted here. The report has been prepared from published literature.

Economics
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A.C.N. 077 989 550

97 Broadway, Nedlands
PO Box 3003, Broadway, Nedlands, WA 6009, Australia
Telephone: 08 9386 8311, Facsimile: 08 9386 8033, Email: ecs@daa.com.au
http://www.daa.com.au/~ecs

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Executive Summary

Exploration in the Australian mining and petroleum sector has declined as a consequence of a range of factors including weak commodity prices, delays in gaining project approvals, access to land difficulties and lack of investor support given these underlying problems. Junior explorers have reported considerable difficulty in raising funds and many moved overseas or transferred their focus into other sectors to survive.

Exploration is the foundation of a healthy mining industry. It not only ensures the continuation of production from existing projects but also the discovery of resources for future projects. A prolonged decline in exploration not only reduces future resource production but also reduces Australia's exploration infrastructure and skill base. Geoscience professionals have already moved overseas or onto other operations and drilling companies have closed down or transferred their operations overseas. It is vital that we ensure our capacity to respond to future improvements in commodity prices by retaining a viable exploration industry in this country.

This report outlines a scheme that has operated successfully in Canada for more than fifteen years. The Canadian Government has judged the scheme to be a cost-effective mechanism for encouraging mineral exploration, stimulating equity based investments in resource companies, and assisting junior exploration companies.

A flow through share scheme offers incentives to investors and an alternative mechanism for junior exploration companies to raise equity. Theoretically it will result in some loss of immediate government taxation revenue, but in practice this is by no means certain given the range of alternative taxation minimisation products already on offer to investors. More importantly, the scheme will increase future revenue from new projects as a consequence of the increased exploration effort. Unlike other tax minimisation arrangements, the taxation benefits alone will not ensure investor interest - there will need to be an expectation of future production to attract investment.

The proposal is for a five-year trial of a scheme structured on similar lines to the Canadian scheme with guidelines to ensure that the scheme achieves the objectives in a cost-effective manner.

1. INTRODUCTION

This report has been commissioned by the Association of Mining and Exploration Companies (AMEC) to present an effective means of encouraging exploration in the Australian resource sector. Exploration is the lifeblood of the industry and exploration activity is in a poor state. For a variety of reasons, exploration investment has been declining and companies are moved out of the industry. Only lately has the trend reversed. The future value of the resource sector is not only threatened, but a loss of capital and intellectual property has occurred in a country striving to be a knowledge based economy.

The mining and petroleum sectors are an important part of the Australian economy and are vital to regional development. We must maintain an exploration industry during periods of low commodity prices to ensure a capacity to meet the cyclical increase in demand and hence prices.

The scheme described in this report has been used in Canada for over fifteen years. It is aimed at encouraging exploration investment by assisting junior explorers raise equity capital. The scheme provides an incentive to companies to pass on potential taxation deductions to investors. It is appealing to junior explorers without an income taxation liability and to investors seeking a taxation effective investment. It will not necessarily result in a reduction in taxation revenue as this report illustrates. At worst, it will result in a deferment of collection to a later date. There is medium to long term potential for greater taxation payments.

AMEC proposes that a scheme, on similar lines to the Canadian arrangements be adopted by the Australian Government for a five year trial period. The scheme will then operate during the forecast period of weak commodity prices and should be reviewed at the end of the trial. The aim is to help junior explorers, along with their support companies and geoscientists, survive the downturn in prices and be in a position to capitalise on a future improvement in prices. The scheme offers a very cost-effective mechanism for the Australian government to support the resource sector and to prevent a decline in regional Australia.

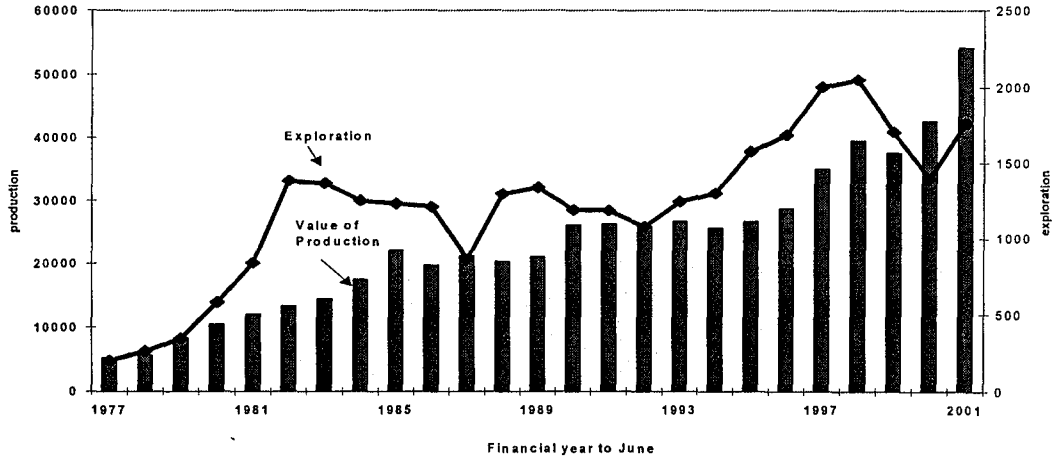
The Scheme is not specifically targeted at the larger mining companies. These companies have greater access to capital and ongoing gold production revenue. Increasingly, they have gold projects in a number of countries and their exploration investment decisions take into account a wide range of fiscal, risk, and prospectivity factors. They are less influenced by national exploration imperatives and slower to respond to national incentive arrangements.

AMEC would be pleased to work with any Commonwealth agencies in developing a scheme for adoption in this country.

2. THE ROLE OF EXPLORATION

The level of exploration expenditure is a crucial indicator of the future of the mining industry. It has a direct relationship with the value of mineral production and thus the net worth of the mining industry to the Australian economy. Exploration is the foundation on which the mining industry is based. However, lags in bringing mines into production and fluctuating changes in the production levels of existing mines make it difficult to define a mathematical relationship between the level of exploration investment and level of gold production. Nonetheless, statistics for Australia over the last 25 years reveal a correlation coefficient of 0.80, which means that around 65% of the variation in production can be explained by changes in exploration investment. Further, the data suggests that there were lags of three to four years from the peak expenditures in 1982, 1989 and 1998 and the following high production levels (Figure 1).

Figure 1: Value of Australian Mineral and Energy Production and Exploration Expenditure, 1977-78 to 1997-98



Source: ABARE Australian Commodity Statistics and Australian Commodities

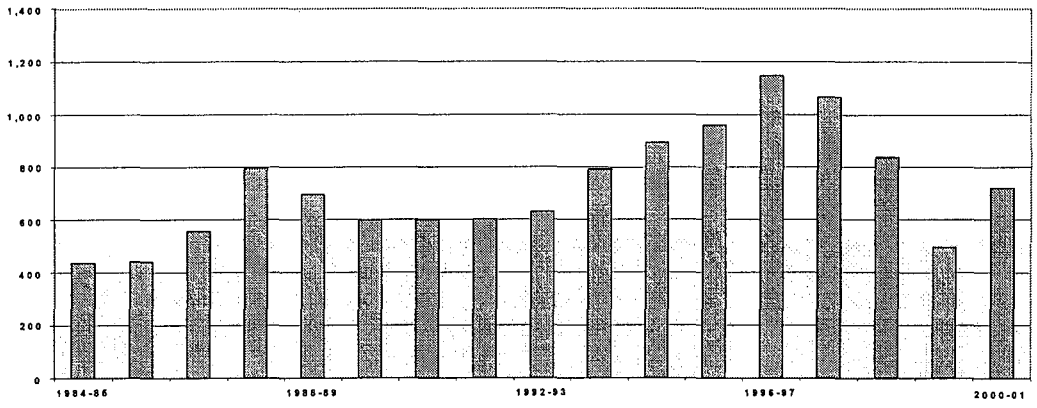
The relationship between exploration investment and gold production was explored by ABARE as part of a study commissioned by the Western Australian Chamber of Minerals and Energy. The study found that gold production levels could be adequately explained using four related variables – gold prices, exploration investment, technology and the level of economic discovered resources. These variables explained about three-quarters of the variation in gold production.

It is clear therefore that in order to maintain the success of the mining industry in the long term, mineral exploration must be encouraged to continue to grow. If a slow down in exploration occurs then its effects will be felt through lower production, employment levels and exports.

2.1 Exploration Levels

When exploration on petroleum activities are excluded, mineral exploration investment in Australia has declined significantly from the peaks of the late 1990's to between $600 and $800 million in 2000-01 (Figure 2).

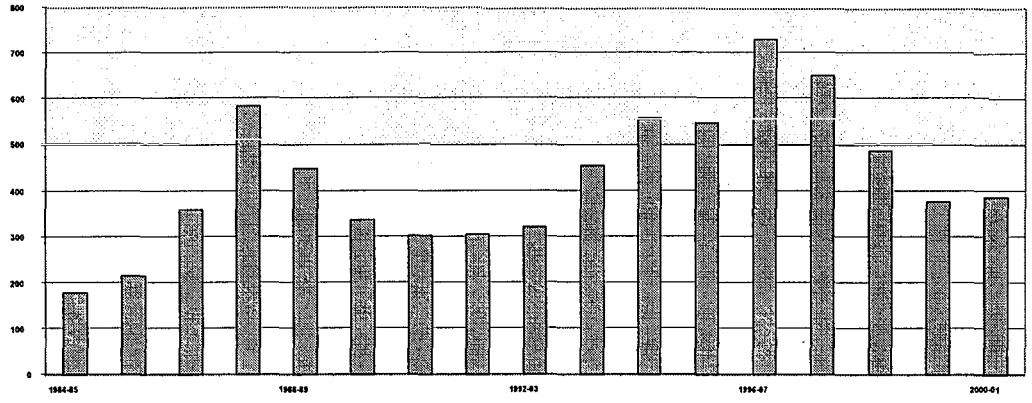
Figure 2: Mineral Exploration Investment in Australia ($million)



Source: ABS Catalogue 8412.0

Gold exploration makes up a substantial proportion of mineral exploration expenditure. It has been volatile over the last 26 years, rising to peaks in 1987-88 and 1996-97 with substantial troughs each side of the peaks (Figure 3). Exploration investment across Australia in 2000-01 was similar to the to the levels achieved 8 and 14 years earlier in 1992-93 and 1986-87.

Figure 3: Gold Exploration Investment ($million)



Source: ABS Catalogue 8412.0

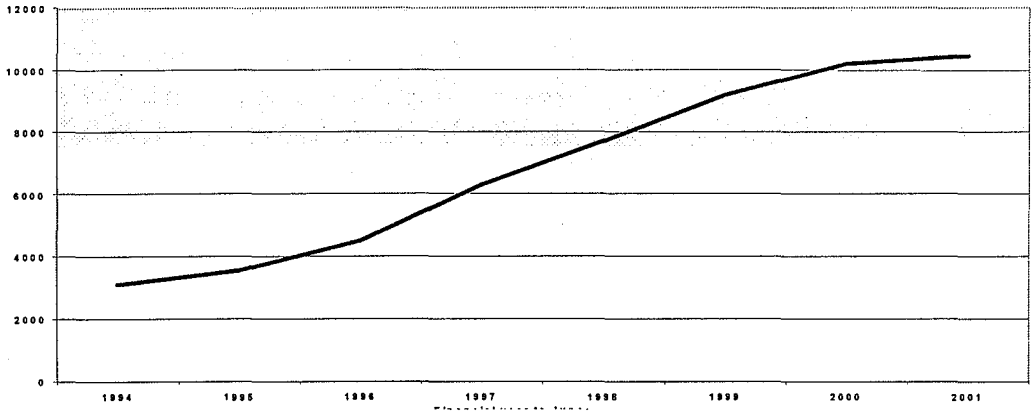
2.2 Exploration Impediments

To better understand the reduction in exploration investment, it is useful to look at the World Investment Risk Survey' conducted by *Australia's Mining Monthly* magazine. The survey asks Australian mining companies for their assessment of the risks associated with doing business in a range of countries. In the 1999 survey, Australia ranked as the best country in

the world in which to invest in resources based on its very low risk of civil unrest, infrastructure difficulties, social risk and natural disasters. However, Australia was also voted among the world's riskiest in terms of land claims by traditional owners (Native Title). Potential investors in Australia view native title as a major impediment to development. This is not surprising given that the backlog of pending exploration, prospecting and mining lease applications in Western Australia has gone from approximately 2,700 in 1994 prior to the implementation of the Commonwealth Native Title Act to over 10,500 at June 2001, an increase of 290 per cent (Figure 4).

Native Title impediments have not been the sole cause of the reduction in exploration effort. A range of other factors have played a role including other land access impediments and a flight of investor capital to other sectors such as technology stocks.

Figure 4: Mining Tenement Applications Pending (Year ending June)



Source: Department of Mineral and Petroleum Resources

An indication of just how depressed the small end of the mining industry became, is an index of exploration companies maintained by the Stockbroking Company CIBC Eyres Reed. That list included 258 companies with 120 having a reported capital at the end of March 1999 of $500,000 or less. Only nine companies reported cash assets in excess of $10 million. The companies with cash reserves of less than $500,000 were not in a position to carry out any effective exploration without raising further capital. Given the real challenges they faced raising funds, many headed overseas or switched to other industry sectors.

The mineral exploration and mining industries are slowly emerging from the current downturn but a full recovery appears some time away. When it occurs, there will be limited skilled employment to benefit. There will be few new discoveries as a consequence of the reduced exploration effort and the resultant stagnation in production will leave Australia frustrated as we lose market share to those countries able to meet the growing demand.

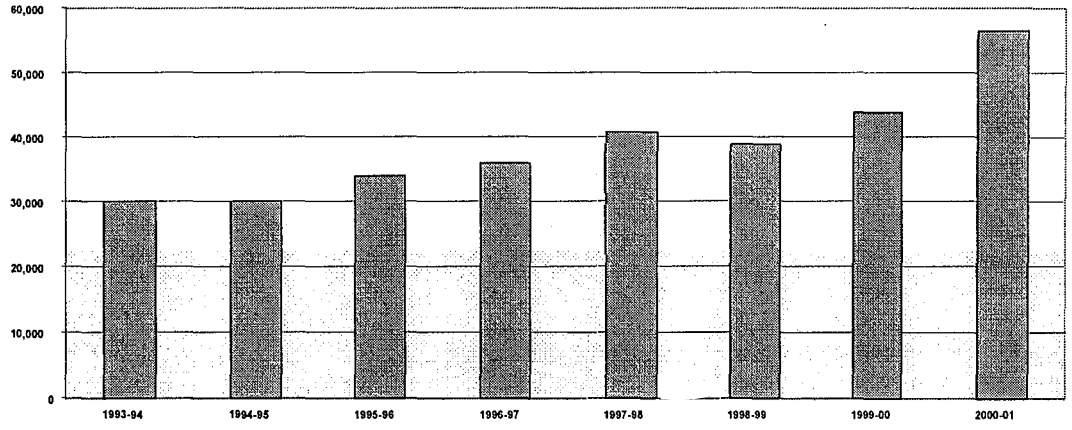
3. MINING AND THE ECONOMY

The mining and minerals exploration sectors play a vital part in both the Western Australian and Australian economies. In three decades, the gross value of minerals produced has increased ten fold from around $5 billion to $54 billion in 2000-2001.

Over the last 5 years, Western Australian mining has generated more than $99 billion in mineral and energy production and $2.8 billion in mineral exploration expenditure (excluding petroleum). In the same period, Australia as a whole has generated $190 billion in mineral and energy production and $9 billion in mineral and energy exploration expenditure. These are impressive financial performances and the industry's impact on the economy is correspondingly significant.

Perhaps the most important role mining plays in the Australian economy is in the export sector. Australia is the world's largest exporter of coal, alumina, lead, mineral sands and refined zinc ores. Mineral and energy exports currently represent 36% of Australian exports. They have grown from just under $30,000 million to over $56,000 million in eight years and they continue to expand (Figure 4).

Figure 4: Value of Australian Mining and Energy Exports ($million)



Source: Australian Bureau of Statistics

The next most important sector after the mining and petroleum sectors is farming with just under half the level of exports provided by these sectors.

Exports are even more important to the Western Australian economy. An estimated 85% of the value of mineral and energy production is destined for export markets providing an output estimated at $23,400 million in 2000-01. Mineral and energy exports are estimated to contribute more than 70% of the exports from WA in most years.

The Australian community benefits from growth in the mining industry through contributions to government revenue in the form of mineral royalties, direct taxes such as income tax and indirect taxes such as stamp duty, sales and payroll tax. The Minerals Council of Australia

has estimated that the Australian mining industry contributed a total of $4.7 billion to State and Federal government revenues in 1999-2000 in the form of direct and indirect taxes including those levied on lenders and shareholders as well as rail and port charges.

The minerals and energy industry directly employed 80,000 persons in 1999-2000[1]. In Western Australia, the mining industry provided over 40,000 jobs, 27 per cent or nearly 11,000 of which were in the gold mining industry[2]. It is estimated that for every person employed in the industry, another 3.1 jobs are created elsewhere in the Western Australian economy. The Western Australian gold industry alone therefore provides a total of some 45,000 jobs in the state, or about 1 in twenty jobs.

The downturn in the exploration industry is also reflected in employment levels of those skilled in this industry. The Australian Institute of Geoscientists (AIG) estimates that there were 2,600 geoscientists working in Australia in May 2002, compared with around 5,200 in 1996. A substantial number of these are considered to be under-employed[3].

The loss of geoscientists to other activities while the mineral exploration industry experiences a downturn, albeit temporary or permanent, will deplete the pool of geoscientific knowledge and experience that leads to mineral discoveries. Once geoscientists have found employment offshore or have retrained in other areas, it is unlikely that their skills will be available when the industry recovers.

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[1] ABARE Australian Commodity Statistics

[2] Western Australian Department of Mineral and Petroleum Resources, Statistics Digest 2000

[3] Australian Institute of Geoscientists, Annual General Meeting, May 2002

4. AN EXPLORATION INCENTIVE SCHEME

A scheme to promote exploration involving flow-through shares has been in operation in Canada since at least 1983. The scheme was introduced to assist mining and petroleum companies finance their exploration and development activities. The scheme operates through the sale of special shares termed *flow through shares.* These shares have conditions attached, which include the ability for the company to renounce its taxation deduction entitlements to the shareholder. The shares thus help to stimulate exploration and development by allowing exploration companies to transfer otherwise unusable or unused tax deductions relating to these investments to investors in exchange for a premium over the market price over the companies' common shares. These are tax-effective equity instruments that are a means of financing exploration activity. For every flow-through share purchased from a mining or petroleum company under an agreement, investors receive an equity interest in the company plus the right to income tax deductions associated with new expenditures on exploration and development.

For mining and petroleum companies, flow-through shares can provide a less costly means of raising equity-based finance for exploration and development. In addition, by permitting a widespread share issue, they allow access to a broad range of investors while minimising the impact on corporate management and control. Although the shares in Canada have been available to all mining and petroleum companies, the mechanism has been designed to be of principal benefit to non-taxpaying junior exploration companies – ie. those companies which are unable to utilise income tax deductions and whose access to alternative sources of finance are limited.

For investors, flow-through shares are an alternative type of resource investment that offers substantial liquidity, has taxation advantages relative to other forms of risk capital, and can reduce the risk associated with mining and petroleum investments. Under a flow-through share agreement, the investor enjoys limited liability, a specified share in any profits of the corporation and a residual right of the property of the corporation upon dissolution.

An evaluation carried out by the Canadian Federal government in 1992 indicated that a typical issuing company was a non-taxpaying public corporation. Mining companies were more likely to issue shares than petroleum companies. A 'typical' flow-through share investor was a male employee in the top income tax bracket. In 1999, the Canadian scheme provided flow-through taxation deductions equivalent to 100% of eligible exploration expenditure by the mining or petroleum company. Companies were able to retain some expenditure such as management costs that do not flow through to the investor. An important part of the scheme is the agreement between the company and the investor as to the extent of eligible expenditure involved in the share and hence the flow-through benefit.

Under the Canadian scheme, the proceeds upon dispossession of the shares are subject to income tax as a capital gain. Investors thus principally gain through the timing. The benefits

of the taxation deduction are gained in the early years with capital gains tax paid at a late point on share dispossession. A review of the Canadian system conducted in 1992 demonstrated that the flow-through share had been generally effective in meeting the federal government's policy objectives of encouraging exploration in Canada, stimulating equity-based investments in mining and petroleum companies and assisting junior exploration companies. Flow-through shares were judged the most readily accessible financing alternative available to junior mining companies and have resulted in their relatively widespread commercial application. They had helped to stimulate exploration and development and had accounted for 60% of funding for mining exploration in the period 1987–1991.

5. FLOW THROUGH SHARE SCHEME KEY PRINCIPLES

The Canadian scheme has been operational for many years and has been refined to maximise its effectiveness. It provides an excellent model for a similar regime in Australia. Canada has a similar legal system to Australia and a mining and petroleum industry that forms an important part of the regional economy. Gold and petroleum activities are important sectors and junior exploration companies play key roles in exploration activity. The Canadian scheme provides a system of registration to ensure that only eligible companies can offer flow-through shares. Eligible exploration expenditure is defined to ensure that the investments are spent on exploration activity and not simply used to sponsor increased company administration or other ventures. The legislation requires agreements to be entered into between investors and the company that protect the rights of both parties. The Canadian scheme does not provide any limitation on corporate size under the scheme but it is clearly more attractive to small companies without any taxation liabilities and hence most funding has occurred with junior exploration corporations.

6. THE BENEFITS OF A FLOW THROUGH SCHEME

6.1 Introduction

The benefits of a flow through scheme will depend on the level of investment it attracts, the proportion of investment that flows into exploration and the effectiveness of that exploration effort. These issues are discussed here before a description of the benefits and costs of such a scheme.

6.1.1 Investment Levels

The Canadian scheme provides some guidance as to what might be expected in Australia. Between 1983 and 1991, around $C3 billion appears to have been invested in flow through shares. The amount rose from $C45 million in 1983 to a peak of $C1,100 in 1987. The investment level declined quickly after 1987 to $C65 million in 1991, the last year of the published government evaluation. The average of $C330 million per annum is skewed by the exceptional levels for 1985 to 1987 period which represented an all time high in share market enthusiasm before the September 1987 crash. Excluding these years, the average would be less than $C100 million. The level of investment will clearly depend on the outlook for commodity prices with investment decisions primarily a function of perceived exploration success and project profitability.

For mining companies, flow through benefits averaged 60% of investment while for petroleum companies it was only 6%. This reflects the greater role played by small exploration companies in the mining sector as well as the price cycles of the commodities over the evaluation period and the high level of government incentives already available to the petroleum industry.

The Government evaluation of the scheme estimated that mining exploration expenditure for a range of companies sampled had increased by around 50% between 1988 and 1991. Junior explorers, as expected, dominated the use of the scheme. An incremental increase of about 30% in investment levels in Australia would result in about $240 million invested in such a scheme based on 1998 exploration levels. This is four times the 1991 level in Canada and is probably a high side estimate.

6.1.2 Flow Through Benefit

The Canadian scheme saw over 90% of the share investments passed back to investors as legitimate, deductible exploration expenditure. Very little was thus used to fund general company expenditure or administration effort. The scheme has thus been judged effective in its aim of increased exploration effort on the ground.

6.1.3 Exploration Effectiveness

There were substantial discoveries made in Canada between 1983 and 1990. Most were gold discoveries and the poor price in 1991 meant that many had not been developed at the time of the evaluation. While this outcome reduced the scheme's effectiveness in the short term, those deposits will be developed when prices improve producing community benefits and taxation payments. In essence, the scheme achieved its aim but commodity price cycles reduced its impact. The inventory of discoveries nonetheless represents an asset base for the future.

6.2 Economic Benefits

A 30% increase in exploration investment would produce around an extra $240 million in exploration activity. This would fund, for example, 160 exploration programs of $1.5 million each. These programs would involve a range of activities from one program for the smallest company to perhaps 3 programs for a more established company with access to prospective areas. A single program would result in the ex□enditure pattern outlined in Table 1 with the equivalent of 17 full time jobs for a year.

Table 1: Exploration Program Investment and Employment

Activity	Expenditure ($'000)	Employment (Full time equivalent jobs)
Heritage Survey	20	0.2
Geophysical survey	200	2.0
Consultant geophysicist	20	0.3
Soil/geochemical survey	200	2.0
Consultant geochemist	20	0.3
Company Geologists	150	2.0
Survey for drill grid	20	0.2
Drilling Contractor	700	6.0
Office administration (5%)	80	4.0
Tenement holding costs	40	0
Total	**1,500**	**17**

The exploration expenditure would in turn produce substantial flow on benefits for the rest of the economy. Research into the mining sector has typically produced employment multipliers in the range 2.9 to 4.7. (Clements and Ye, 1995). Assuming the lower end of the scale and a multiplier of only three, flow on jobs from the exploration activity would be 50 people for each program and 2720 people for the whole scheme. The flow on jobs would include people working in analytical laboratories, engineering and fabrication, survey, transport, catering, accounting, legal, accommodation and recreation. Work carried out in Western Australia has shown that many downstream jobs arise in the industrial areas and the metropolitan region.

6.3 Regional and Social Benefits

The Government's policy for regional Australia is to provide the economic, environmental and social infrastructure necessary for Australia's regions to realise their potential. The encouragement of the mining industry in regional areas will play a major role in the fulfilment of that objective. The Commonwealth Regional Minerals Program is one tangible example of that objective and reflects the importance the Government places on exploration and regional mineral development.

The mining industry is an important part of many regional centres and in many cases is the underlying factor behind most economic activity. The economic importance of the pastoral industry is declining and a greater reliance is being placed on the mining industry to sustain many regional areas.

The mining industry is a significant employer in regional areas. A study by Clements and Ahammad entitled *What does Minerals Growth mean to WA?* (1997) found that economy-wide employment over the last half decade would have been lower by 7 per cent or 50,000 jobs without growth of the minerals industry in Western Australia alone. This refers to both direct and indirect employment by the industry. The study found that strong growth in the minerals sector played a significant role in the superior performance of the WA economy.

Much of the employment by mining and mineral exploration companies is in regional areas despite the fact that many mines use fly in/fly out arrangements. Many employees and mining contractors are sourced from local towns or choose to move to the area where they have found employment. It is significant that Western Australia now has the lowest unemployment rate in the country and also a high employment growth. The mining industry is a significant employer in mining centres such as Kalgoorlie and it is evident that the industry has played a significant part in reducing the State's unemployment rate and contributing to the State's superior economic performance throughout the 1990s.

The increase in exploration activity which would arise from a flow through shares scheme would see regional areas throughout Australia experience an increase in local employment and populations whilst exploration occurs. Employment would then follow from any exploration success. For many small communities, this boost in economic activity and population may be vital to their survival.

As important as the regional impact is the potential benefit from the protection of Australia's intellectual capital. The Australian resource sector has developed a strong reputation for the quality of its geoscience and mining technology. The downturn has forced many exploration geologists and small companies offshore. If we are to retain our intellectual capital the exploration sector must retain a minimum level of viability. The alternative is to see expertise flow offshore. This will not only assist our competitors to locate new resources and improve their mining techniques, but it will also provide them with a head start when prices improve. The next up-turn in prices will thus see Australia lose market share as our competitors move to negotiate contracts on the back of an assured supply.

7. THE RISKS OF A FLOW THROUGH SCHEME

There are two potential risks to the Australian community associated with a flow through share scheme. Both may be minimised with careful design of the program guidelines. The first is a potential reduction in taxation revenue as a consequence of the transfer of deductions to investors. The potential reduction will depend on the taxation paid by the investor and subsequent payments by the Exploration Company. From the investor perspective, the taxation consequences will depend on the taxation alternatives and the capital gains tax that may arise on the shares. The typical investor is likely to be someone prepared to take a risk on a small company exploration program and able to benefit from the taxation deductions. Many of these investors will already be involved in, or seeking, taxation effective investments including products such as vineyards and plantation forestry enterprises. The opportunity to invest in mining exploration may attract some new investors but it is more likely to divert funds from other schemes with very little change in actual taxation liability. The advantage of a flow through mining share scheme is that the shares will still need to increase in value if the investment is to be a profitable one. This scheme is not simply a taxation driven scheme but an actual equity investment in mining with some positive taxation benefits for an investor. If the company is successful in its exploration program and the company shares rise in value, capital gains tax is payable and much of the original taxation deduction will be recouped by the government.

From the mining company side, taxation deductions are being transferred to investors. Had the company not been successful, some of the potential deductions may have never been claimed against revenue. This means a reduction in taxation payments over the situation without a transfer capability.

The second potential risk to the community is the potential for less efficient investment decisions and inefficient exploration programs as a consequence of the taxation transfer benefits. The Canadian scheme suffered from some shortcomings in its years and Australia can benefit from the mistakes. A carefully designed scheme can avoid the costs of excessive and poorly targeted exploration programs.

8. SUMMARY

Exploration incentives are urgently needed in Australia to maintain a vital part of our economic capacity and retain a healthy geoscientific base. Commodity prices are starting to improve and we need to be able to respond to overseas demand for our minerals with proven resources and technological capacity. The depressed state of gold prices has had a severe effect on regional Australia and the exploration sector. An exploration incentive scheme will provide significant benefit to both and will produce long term economic benefits for Australia.

The Canadian share scheme provides a carefully developed model for exploration incentives. It has been fully evaluated by the Canadian Government and found to have been a cost-effective arrangement for supporting mineral exploration.