

## *Productivity Commission*

### *Resources Sector Regulation Issues Paper - September 2019*

31 OCTOBER 2019

#### **INTRODUCTION**

AMEC appreciates the opportunity to be consulted on the Productivity Commission Issues Paper dated September 2019 on Resources Sector Regulation. We also appreciated the meeting with the Commission in Perth on 14 October 2019.

As stated at that meeting and in a media statement when the Review was announced, the Review needs to prune regulation cutting unnecessary and duplicative process and costs, while maintaining effective oversight and risk-based regulation. It will also need to be undertaken in close collaboration with the approvals and other reform processes already under way in most Australian jurisdictions.

#### **ABOUT AMEC**

The Association of Mining and Exploration Companies (AMEC) is the peak national industry body representing over 275 mining and mineral exploration companies across Australia.

The mining and exploration industry make a critical contribution to the Australian economy, employing over 255,000 people. In 2017/18, these companies collectively paid over \$31 billion in royalties and taxation, invested \$36.1 billion in new capital and generated more than \$250 billion in mineral exports.

In 2017/18 Australian mining and exploration companies invested \$1.97 billion to discover the mines of the future.

#### **STATE OF THE INDUSTRY**

It is undeniable that the resources sector (including mining and mineral exploration activity) has underpinned Australia's economic growth, wealth creation and employment opportunities over several decades. The long-term health of the Australian mining industry remains crucial to the nation's future economic landscape.

While we continue to increase our overall mineral production volumes we are not replenishing the mines that are coming to their natural end with new discoveries. Contemporary research shows that Australia's rate of mineral discovery is falling despite the fact that there remains incredible prospects for further mineral discovery across the continent. The Geoscience Australia Mineral Exploration Review 2017/18 clearly shows that there are still large areas of the Australian continent that have never been explored or are under explored.

Without new discovery, Australia's current production levels will begin to decrease, as existing mines exhaust their reserves and close. New mines are needed to sustain current production levels and Government revenue streams. New mine developments are needed to deliver increased employment and social dividends. Australia's natural resources potential is still enormous. However, much of our known resource reserves are deeper, under considerable cover and are not currently economic to

exploit. This opportunity is also significantly constrained, because exploration in 'greenfields' areas struggles to attract private investment in a globally competitive environment.

Greenfields mineral exploration in Australia is mainly undertaken by small companies, which rely on raising investment capital to undertake this work, or in entering joint venture partnerships. 'Greenfields' exploration is largely unattractive for private investment because of the high-risk profile, with roughly only 1 in 100 'greenfields' exploration projects leading to a discovery. These odds aside, few private investors seek such long-term returns, with the average mine taking 13 years to go from discovery to production in Australia. There can also be an additional long lead time during the initial land access, approval and exploration phases prior to any discovery.

The fact is that our rate of discovery and grades are dropping, and consequently the probability and our ability to develop economic new mines has significantly reduced.

The industry is also faced with a very tight and competitive investment environment.

These issues were all brought to the attention of the Resources 2030 Taskforce and highlighted in the National Resources Statement released by the Minister for Resources, the Hon Senator Matt Canavan in February 2019. The Statement received bi-partisan support from the Labor Party. It is now time to fully implement the 29 proactive recommendations made by the Taskforce, which were also brought to the attention of the COAG Energy Council in December 2018.

As the peak national industry body for mining and mineral exploration companies, the Association of Mining and Exploration Companies (AMEC) has developed a number of key public policy initiatives in its Federal Policy Platform<sup>1</sup> which are complimentary to the Productivity Commission Inquiry in order to maximise Australia's natural resources potential and aim to:

1. Increase economic growth, mining and mineral exploration activity (greenfield and brownfield), and
2. Reduce regulatory red tape and the cost of doing business in Australia.

## COMPLIMENTARY REFORM PROCESSES

There have been a number of previous Commonwealth, State and Territory reviews and recommended reform processes which have not been sufficiently addressed or implemented.

These include:

- [Productivity Commission Inquiry Report into Major Project Development Assessment Processes, December 2013](#)

The Commission found that there is substantial scope to improve Australia's development assessment and approval regulatory framework. It identified long approval timeframes, conflicting

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<sup>1</sup> [https://www.amec.org.au/Public/Advocacy/AMEC-Submissions/Pre\\_Election\\_Policy\\_Platform.aspx](https://www.amec.org.au/Public/Advocacy/AMEC-Submissions/Pre_Election_Policy_Platform.aspx)

policy objectives, duplicative processes, regulatory uncertainty, inadequate consultation and enforcement and regulatory outcomes falling short of their objectives.

Significantly, the Commission outlined how jurisdictions can establish a 'one project, one assessment, one decision' framework for environmental approvals, through bilateral assessment and approval agreements. It found this would reduce costly duplication between Australian and State and Territory Government processes.

These recommendations remain outstanding.

- Productivity Commission Inquiry Report into Mineral and Energy Resources, March 2014

The Commission made 22 recommendations in relation to non-financial barriers to exploration.

The Government's interim response indicated that the Commission's report will help advance the red tape reduction programme which aims to reduce unnecessary red tape costs representing approximately \$1 billion per year.

Unfortunately, the majority of the recommendations required the Commonwealth Government to work with relevant State and Territory Governments to consider implementation. Each recommendation also had an implementation timeframe.

Despite some follow up consultation by the Government with stakeholders (including AMEC in June 2015) no significant progress appears to have been made.

- Senate Red Tape Committee Report – Environmental assessment and approvals, October 2017

The Committee made 15 recommendations, of which several mirror those made by AMEC in its submission. The Government response of July 2018 noted several recommendations and disagreed with some others but did not commit to any actions.

AMEC considers that the recommendations should be re-visited through this Productivity Commission Inquiry in order to reduce red tape and unnecessary regulation.

- Review of Approval processes in Western Australia, April 2009

This Western Australian focussed review made 12 recommendations in phase one, and 3 in phase 2. The Government has considered and implemented some of the recommendations, however others remain outstanding and do not appear to be being dealt with by current reform processes.

Concurrent reform processes are underway and will require consideration by the Productivity Commission in its Report, which include:

- National Resources Statement and Taskforce recommendations being managed through the Minister for Resources and Northern Australia,
- Treasury / Cabinet Deregulation Taskforce being managed through the Minister Assisting the Prime Minister,

- The independent statutory review of the *Environment and Biodiversity Conservation Act*,
- Introduction of an Amendment Bill to streamline the *Native Title Act*,
- Implementation of the New South Wales Minerals Strategy,
- Environmental reform process in the Northern Territory,
- Mine Management Plan reforms in the Northern Territory,
- Queensland tenure and financial assurance reforms,
- Review of the Queensland *Cultural Heritage Acts*,
- *Mining Act* reform in South Australia,
- Stronger Partners, Stronger Futures reform process in South Australia,
- Appointment of a Better Regulation and Red Tape Commissioner by the Victorian Government,
- Implementation of the Victorian Mineral Resources Strategy 2018 – 2023,
- Streamline WA initiative,
- Reform of the WA *Aboriginal Heritage Act*,
- Work health and safety legislation and regulation reforms in WA, and
- The review of the WA *Environment Protection Act*.

## KEY REGULATORY REFORM PRINCIPLES

AMEC submits that the following key regulatory principles are essential for successful reform:

### Clarity, certainty, consistency and predictability

All mining and mineral exploration companies require clarity, certainty, consistency and predictability throughout the mine cycle, particularly for investment and business decision making in a globally competitive resources environment.

This includes policies and processes around taxation, royalties, fees and charges, approvals, compliance, red tape and regulation.

There are various critical decision points throughout the mine cycle, that is, if a company makes a successful discovery. These are reflected in **Appendix A**, and include:

- Area selection / land access / permitting / licensing,
- Greenfields exploration,
- Prefeasibility / scoping study,
- Feasibility study,
- Environmental approvals,

- Construction / commissioning,
- Mine production, and
- Rehabilitation and relinquishment.

### **Risk based outcome focussed assessment and compliance processes**

There has been considerable rhetoric between Government and Industry stakeholders about risk-based outcome focussed regulation. However, there does not appear to be a common understanding or application of risk-based outcome focussed regulation. This confusion has therefore been translated into the assessment, decision making and compliance processes.

This has resulted in the 'likelihood / consequence risk matrix', the ALARP (as low as reasonably practicable) model, and 'hybrid' models being used by regulators, which in some cases might not be fit for purpose or are disproportionate to the actual residual risk or benefit gained. Not only does this create confusion in the application and assessment stages it also impacts on condition setting and compliance.

AMEC members have therefore stated that there needs to be a clear definition on what 'risk-based outcome focussed' regulation means to ensure that a developing culture of risk aversion does not favour a practice of disproportionate over-regulation.

This has become evident in Western Australian government approvals agencies following the *Independent Legal and Governance Review into policies and guidelines for environmental impact assessments under the Environment Protection Act (also known as the Quinlan Review)*.<sup>2</sup>

### **Increased cost efficiency**

Increased cost efficiency should be a shared objective for industry and governments alike. However, insufficient progress has been made in achieving that objective across Australia.

Our members consider that significant cost efficiency improvements can be made in relation to environmental approvals, the Native Title and cultural heritage processes as follows:

#### **Environment Protection and Biodiversity Conservation Act reform**

Acknowledging that a statutory review of the *Environment Protection and Biodiversity Conservation Act* was announced on 29 October 2019, we consider that there are various important reforms of the Act which will remove duplication and improve its efficacy. These include:

#### **Single assessment and decision-making authority**

AMEC continues to be a long-term advocate for the implementation of the 'single assessment and decision-making authority' concept for environmental approvals. This involves delegation of the Australian Government's assessment and approval powers under the Environment Protection and Biodiversity Conservation Act to accredited State and Territory Governments.

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<sup>2</sup> <http://www.epa.wa.gov.au/sites/default/files/EPA%20Legal%20and%20Governance%20Review%20-%20Final%20Report%20-%20Quinlan%20et%20al-170516.pdf>

Implementation of the 'single assessment and decision-making' authority model through the bi-lateral agreement process will significantly increase efficiency and reduce duplication between Governments. It will also result in cost savings to Government.

### **Remove 'mining or milling uranium ore'**

Australian uranium projects have a track record of meeting the highest standards of environmental approval under mainstream project assessment and approval processes.

However, an analysis by the then Western Australian Department of Mines and Petroleum (DMP) showed the range and large number of approval steps required (including *EPBC Act* assessment). The analysis indicated an estimated timeline for:

- Mineral exploration approvals alone to be nearly 800 days, provided there are no objections or unforeseen delays in overcoming each of the approval related hurdles, and
- Mining approvals can take an additional estimated 800 days, provided there are no objections or delays through the Native title, environmental, native vegetation clearing, *EPBC Act*, mine safety, and other approval processes.

These time-consuming processes create significant 'holding' costs to companies that undertake extensive research and provide volumes of supporting data through the whole process.

Further delays are created, and costs incurred as uranium projects 'trigger' the duplicative involvement of the Australian Government by virtue of the *EPBC Act*. This can add a minimum of additional 6-9 months to the project timeline, particularly if the project is deemed to be a 'controlled action' under Section 67 of the Act.

In order to overcome this, a redefinition of the 'nuclear action' provisions contained in Section 22(1)(d) of the *EPBC Act* is required. This should remove reference to "*mining or milling uranium ore*" from the requirement for assessment, unless the project itself impacts on '*Matters of National Environmental Significance*'.

There is no scientific justification for the argument that uranium '*mining or milling of uranium ore*' poses an inherent danger to the environment, and therefore there is no need for the provisions of the *EPBC Act* to be 'triggered'. The regulatory framework for the uranium industry is 'best practice' without duplicative and, arguably, discriminatory treatment under the *EPBC Act*.

The Senate Red Tape Committee Inquiry into Environmental Assessment and Approvals completed in October 2017 recommended that uranium mining not be included as part of the 'nuclear actions' of the *EPBC Act*.

The Government simply 'noted' the recommendation on the basis that the regulatory framework is based on internationally recognised standards and fulfils obligations under treaties and conventions that Australia has ratified.

This, and other reform strategies detailed below, should be adopted in the current 10 years review<sup>3</sup> of the *EPBC Act*.

### **Remove duplicative processes within the ‘water trigger’ legislation**

The independent review of the *EPBC Act* ‘water trigger’ tabled in Parliament in June 2017 found that the ‘water trigger’ is an appropriate measure to address the regulatory gap that was identified at the time of its enactment in 2013.

In its submission to that review AMEC expressed strong opposition to the ‘water trigger’, as management of water resources has almost always been a matter for the States and Territories and not the Australian Government, or an independent expert Scientific Committee.

AMEC is extremely concerned that retention of the current provisions for large coal and coal seam gas projects being caught under the ‘water trigger’ has the potential for broader application through the resources sector and should be removed.

The Senate Red Tape Committee Inquiry into Environmental Assessment and Approvals completed in October 2017 recommended that the ‘water trigger’ be removed from the *EPBC Act*.

The Government did not support the recommendation as the trigger provided additional protection of water resources from coal seam and large coal mining developments.

In the event that the ‘water trigger’ is not removed from the EPBC legislation, duplicative processes should be addressed through bi-lateral agreements with complying State / Territory Governments.

### **Prevent anti-development appeals**

There have been an increasing number of appeals by sophisticated groups looking to ‘game’ the *EPBC Act*.

Australia already has a robust and extensive approvals framework in place to protect the environment for future generations.

Section 487 of the *EPBC Act* should be amended to prevent vexatious and frivolous appeals by third parties seeking to delay and block mining development. Such appeals should only be available for those with a ‘direct’ interest in the project.

This was supported by the Senate Red Tape Committee Inquiry into Environmental Assessment and Approvals completed in October 2017. The Government has noted the recommendation.

### **Reforms to the Native Title Act**

AMEC supports the development of reform strategies and initiatives that result in increased clarity, certainty, efficiency and effectiveness of native title processes in order to:

- reduce delays and costs for all stakeholders; and

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<sup>3</sup> Commenced on 29 October 2019



- ensure fair, equitable and quality negotiated outcomes and benefits for governments, industry and Aboriginal Australians.

There are still enormous opportunities to maximise the nation's resource potential as there are many areas throughout Australia which have never been explored or are under explored.

The associated benefits to Aboriginal people from fair, equitable and quality negotiated outcomes can be considerable, and where negotiated agreements have been reached there have been significant economic, financial and social benefits realised for traditional land holders, as well as for governments and industry.

AMEC considers that these outcomes can be further stimulated at the Australian Government level by streamlining processes, including native title approvals in order to reduce costly delays, which defer the benefits for all involved.

We note that the proposed reforms contained within the re-introduced *Native Title Legislation Amendment Bill 2019*<sup>4</sup>, are intended to improve efficiency and effectiveness of the native title system. AMEC is supportive<sup>5</sup> of the general thrust of reforms which seek to unlock economic development opportunities that can arise. However, great care needs to be taken to ensure that there are no unintended economic and social consequences for all stakeholders.

AMEC and our Members respect the rights of traditional landholders, and the deep and significant history and connection that Aboriginal Australians have with country. AMEC is only interested in supporting outcomes that benefit both industry and traditional landowners, and considers that streamlining the current process, following appropriate consultation, will create improvements that will realise benefits for industry and Aboriginal Australians.

### **Confirm the validity of existing and future Section 31 Agreements**

AMEC notes successful passage of the *Native Title Amendment (Indigenous Land Use Agreements) Act 2017* to remedy 'authorisation' uncertainties created by the Full Federal Court decision in relation to *McGlade v Native Title Registrar & Ors* (*McGlade* decision) and area Indigenous Land Use Agreements (ILUA)<sup>6</sup>. At the time of the passage of that legislation, AMEC expressed concern that the *McGlade* decision had also resulted in significant angst amongst mining and mineral exploration companies which may have entered a range of 'Future Act' Agreements under section 31 of the *Native Title Act*<sup>7</sup>.

While *McGlade* dealt with a series of stated questions of law specifically addressing ILUAs and is therefore arguably not directly relevant with regard to Agreements made under section 31, the

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4 [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r6304](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6304)

5 [https://amec.org.au/Public/Advocacy/AMEC\\_Submissions/Reforms\\_to\\_Native\\_Title\\_Act.aspx](https://amec.org.au/Public/Advocacy/AMEC_Submissions/Reforms_to_Native_Title_Act.aspx)

6 The court's decision was based on the fact that the ILUAs had not been signed by all of the named applicants in the relevant native title claims.

7 These s31 Agreements relate to such issues as compensation payments, training and employment opportunities, consents to acts or projects, and cultural heritage processes. The Agreements represent billions of dollars to Indigenous people Australia wide, particularly in Western Australia.



outcome is that the Court has determined all members of the 'registered native title claimant' must execute an ILUA if it can be considered a binding statutory Agreement under the Act.

The *Native Title Amendment (Indigenous Land Use Agreement) Act 2017* did not deal with the concerns raised in relation to s31 Agreements and still needs to be remedied.

The validity of some of these Agreements continue to be open to legal challenge as a result of the *McGlade* decision, particularly if the documents had not been signed by all of the named applicants in the relevant native title claim.

AMEC is fully supportive of appropriate amendments which urgently address the uncertainty as to the invalidity of existing and new section 31 agreements. Such amendments should be dealt with separately from the broader *Native Title Act* reform package

### **Validate proposed legislative changes to the *WA Mining Act***

It is vitally important that a proposed amendment<sup>8</sup> to validate Western Australian mining leases affected by the *Forrest & Forrest Pty Ltd v Wilson* case, is urgently progressed and de-coupled from any other broader *Native Title Act* reforms.

The Western Australian Government introduced legislation on 28 October 2018<sup>9</sup> to confirm the validity of mining leases that have purported to be granted and whose validity might be affected by failure to have strictly complied with the requirements of the *Mining Act*.

In that context, AMEC understands that such validating legislation may be regarded as a new "future act" under the *Native Title Act*, notwithstanding that the future act provisions of the *Native Title Act* were complied with at the time of the original purported grant.

In order to remove any uncertainty and secure the validity of tenure granted in reliance upon that compliance, the *Native Title Act*, should be amended to allow for validating legislation by the State or Territories, where it is necessary to address technical compliance with State legislation, but where there has otherwise been compliance with the *Native Title Act*.

It is critically important that relevant legislation is proclaimed in order to restore the assumption of validity in relation to the previous grant. In view of the prevailing uncertainty that has been created within industry by the *Forrest & Forrest* case and the associated validating legislation relating to the *WA Mining Act*, it is crucial that amendments to the *Native Title Act* are separately proclaimed.

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8 <https://www.ag.gov.au/Consultations/Documents/options-paper-proposed-reforms-to-the-native-title-act-1993.PDF>

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<http://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=7E35937E3EDD385F48258353000E9C9A>

### **Aboriginal heritage reforms essential**

AMEC is currently contributing to Aboriginal heritage related reforms in Western Australia and Queensland and looks forward to practical, sensible and cost-effective outcomes which do not diminish cultural heritage values.

Our members continue to have a long-standing objective for increased clarity, certainty, efficiency and effectiveness of cultural heritage processes in order to:

- ensure fair, equitable and quality negotiated outcomes and benefits for Aboriginal people, governments and industry;
- reduce delays and costs for all stakeholders;
- provide increased trust, integrity and confidence in decision making; and
- ensure compliance.

In order to improve the current processes, our members have made a number of constructive recommendations which are aimed at meeting these objectives and allow governments to also fulfil their primary functions to protect cultural heritage values, sites, objects and places. These include:

- A robust and accurate Register of Aboriginal Places and Objects, including site protection by mandatory disclosure,
- Fair and equitable consultation, notification, decision-making and appeal processes,
- Transferability of approvals / consents with the land to avoid duplication,
- Transparency and accountability in agency performance reporting, including agreed timelines,
- Fair and reasonable range and quantum of fees and charges.

### **Enhanced administrative and system processes**

It is evident from workshops that AMEC members have had with government agencies, and from practical experiences, that many issues and current blockages can be addressed with enhancements to administrative and system processes rather than specific legislative reforms. These include:

- Increased use of information and communications technology (including auto-approval / decision making capability, minimum standards for data collection, storage, interpretation and distribution),
- Clear and user-friendly guidance material and checklists describing the regulator's expectations to avoid irrelevant questions and uninformed feedback from government staff.

This is exacerbated by the lack of experienced and suitably qualified staff to deal with some of the complexities, idiosyncrasies and specialised nature of some projects,

- Provide clear process flow charts / maps for the assessment and decision-making processes,

- Encourage early engagement between the regulator and proponent for scoping purposes,
- Reduction in requests for duplicated information by multiple parties, including within the same agency.

It is conceivable that each recipient of the data might view it in different ways and in different contexts, which often require re-submission of the same data (often simply in a different format).

At the same time, data is required to be obtained at cost to the applicant to determine relevance to another government department (such as the native title status of landholdings in NSW, 'back to grant' searches to determine ownership of the minerals in WA and paying for multiple title searches to do so),

- Increased use of accredited environmental consultants, such as certifying that documents meet agreed standards and are able to be triaged by the regulator.

This will reduce the number of applications being returned to the applicant for further information, and reduce workload pressures in agencies,

- Full implementation of parallel processing where possible, including with the *EPBC Act* assessment process,
- Delegation of responsibility and escalation protocols,
- Full implementation of Memorandum of Understandings, Bilateral Agreements, and Administrative Agreements.

This should also include a clear understanding and rationale on why a referral to another agency might be required.

A reduction in the number of unnecessary referrals will result in significant savings in time and costs for industry and governments,

- Wider use of the Lead Agency / Significant Project status / Case Manager concept,
- Clear definition of roles and responsibilities between agencies to avoid duplication and confusion,
- Regular training for government and industry staff,
- Measurable and achievable project conditions that are fit for purpose,
- Improved sharing of data between all government agencies,
- Access to usable and fit for purpose government held data.

Fees are paid by proponents to access data from government systems, including to monitor ground availability. The required data is sometimes held within irrelevant data in an .xml format whilst most proponents do not have sufficient user friendly or free tools to access.

### **Transparent and accountable performance reporting**

AMEC notes that some regulators produce on a quarterly basis their performance measured against target timeframes. The nature, extent, quality and regularity on which that performance data tends to vary between agencies and jurisdictions.

These variances, and the use of different terminology and processes, does not create an environment which allows for jurisdictional benchmarking and performance comparisons.

Following a request from AMEC, the Department of Mines, Industry Regulation and Safety (DMIRS) has published valuable data for Quarter 2, 2019.<sup>10</sup> It shows that it takes on average 280 business days (56 weeks) for an Exploration Licence to be granted.

A breakdown of that timeframe indicates:

- 9 weeks with the proponent (probably providing supplementary information / supporting data),
- 8.6 weeks with DMIRS, and
- 38.4 weeks pending other agencies (Native Title / heritage processes, Wardens Court and other approvals related agencies).

It should be noted that whilst the exploration company is waiting for the Exploration Licence to be granted they are unable to access the land to commence activities, are paying tenement rentals in advance, and paying local government rates.

As the average mineral exploration company incurs holding costs of about \$2 million per annum.<sup>11 12</sup> these timeframe delays are excessive and place additional risk to the project profile.

The DMIRS has also subsequently provided AMEC with Mining Lease timeline data which showed a total average timeframe of 304 business days (60 weeks) to be processed, with the application taking:

- nearly 11 weeks in DMIRS,
- 40 weeks with other agencies (including Native Title and the National Native Title Tribunal), and
- 9 weeks with the proponent.

Both of these timeframes are excessive, particularly for the granting of an Exploration Licence.

### **No additional cost recovery on industry**

AMEC continues to be strongly opposed to any cost recovery regime to fund 'core' Government statutory based activities or generate additional income to support a budget shortfall. This has occurred with environmental approvals under the *Environment Protection and Biodiversity and Conservation Act* through the Department of Environment and Energy (DoEE); and with the regulatory functions of the Australian Securities and Investment Commission (ASIC).

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<sup>10</sup> <http://www.dmp.wa.gov.au/Investors/Approvals-14055.aspx>

<sup>11</sup> AMEC research of 52 mineral exploration companies Appendix 5b data

<sup>12</sup> This includes, staff, administration and corporate expenses and excludes actual drilling costs.

The mining and mineral exploration industry has limited discretionary expenditure or capacity to bear any further increases in business input costs without unintended economic and social consequences.

The mineral exploration sector should specifically be exempt from any form of cost recovery funding by adopting the current ATO 'Small Business Entity' aggregated annual turnover threshold of \$10 million<sup>13</sup>.

Cost recovery should only be considered as a last resort after all other alternatives have been fully assessed (such as through increased agency efficiency, removal of duplication, organisational restructure, delegation of responsibilities and improved industry guidance material).

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<sup>13</sup><https://www.ato.gov.au/General/New-legislation/In-detail/Direct-taxes/Income-tax-for-businesses/Increase-the-small-business-entity-turnover-threshold/>

## CASE STUDIES

The following case studies are provided for the information of the Productivity Commission and are indicative of the frustrations and delays encountered by mining and mineral exploration companies across Australia. The case studies relate to different jurisdictions.

AMEC is consistently calling for examples / case studies from members. However, the major proportion of member companies are reluctant to make details or a chronology publicly available as the implied criticism may be taken out of context.

### Company A – Queensland coal miner involving an EPBC Act referral

*Company A referred the matter (nominated as a controlled action) on 12 July 2019. Following considerable high-level enquiries, including through the Minister's office, a decision was finally reached on a controlled action on 30 September 2019. Further progress is now being made.*

*During the intervening period the Company did not receive any advice on when a decision would be made despite being considerably over the 10 days statutory timeframe for a decision to be made (which would have been 29 July). The Company was also not advised if there were any potential issues, or likely requests for further information.*

*Company A had submitted a EPBC referral for a train loadout facility (TLO) on the 5<sup>th</sup> July 2019. The TLO is planned to be constructed and operate adjacent to the Coal Mine that is owned and operated as a Joint Venture. The TLO is necessary to expand production at the operations from currently 500 ktpa to 1.5 mtpa.*

*The referral submitted nominated the proposed action as a controlled action due to the impact on a TEC (native grassland) and endangered species (Dicanthium Queenslandicum – Blue Grass).*

*There are two main approvals within the EPBC Act, the first is a decision as to whether it's a controlled action or not which has a 10 days statutory approval (after ten days public advertising) - this is the referral. This was significantly overdue.*

*The second decision is final approval and conditioning if the Department assess it as a controlled action they can then request further information to assess it on preliminary documentation if it's not an EIS. This is a 40 business days statutory timeframe plus public advertising.*

*Company A was awaiting decision on the first approval. The issue was they could not lodge the preliminary documentation until they got a decision on the first approval. With a 40 business days statutory approval period the company would have been looking at 2020 for any approval on the second decision.*

*This project needed to be commenced in November this year, in order for the rail loop to be completed by in Q2 2020. If this was not able to be achieved, it would have unintended operational and workforce consequences.*

*This can be avoided, as long as an approval is received to enable construction to begin in November 2019, which still leaves time for the matter to be positively resolved.*

AMEC was requested to intervene and approached the Minister for the Environment for assistance. This has now resulted in the controlled action, with preliminary documentation being submitted on 7

October. The Company received a direction to publish on 18 October 2019 and is going through the 10 days publication period. It is understood that the Department is experiencing difficulties in meeting workload demands.

#### Company B – Gold exploration company in WA

*Company B is awaiting a decision relating to a Section 10 Aboriginal and Torres Strait Islander Heritage Protection Act application over an area of land. As this application includes their Gold project, they are keen to have this issue resolved. They have received no indication that there any problems with the process.*

*In June 2018, the Department of the Environment and Energy (Department) advised Company B about the Heritage Protection Application under ATSIHP for the project. The company provided a submission the following month (July 2018), and the procedural fairness process commenced with closing in September 2018.*

*The company has now been awaiting a decision for over 1 year, and regular follow-ups with the Department has still not led to a decision or outcome. The company has not been asked for additional information or given any indication that there might be a problem.*

*Over a year later, this approval is now become time critical for the company, and is holding up the development of their project, incurring significant costs for the company and delaying the employment and economic opportunities that will flow from the project.*

AMEC was requested to intervene with the result that the company has recently received approval.

#### Company C - NSW water licence takes over 17 months to process

Company C is re-developing a mine in regional New South Wales. The re-developed mine life will be over ten years and employs approximately over 150 people – a majority of whom live locally. The company has invested in excess of \$200 million into the development of the project to date and is an active supporter of the local community and businesses.

As part of the development approval, Company C required a Water Access Licence to de-water the former mine workings to facilitate mine development that is set to a strict development schedule. Importantly, the water held within the mine workings is unpotable.

Due to policy change, increased regulation, re-structure and an apparent lack of coordinated communication systems between Water NSW, Natural Resources Access Regulator (NRAR), Department of Planning and Environment (DPE) Water and NSW Land Registry Services, the Company has encountered significant issues and waited over 17 months for an approval to de-water the mine workings, and is still waiting. This has caused critical delays to its mine development schedule requiring expensive workaround solutions that may not negate the impact of the delays. In addition, the Company has spent an enormous amount of time constantly following up with the different NSW Government departments for progress updates and simple clarifications.



### Company D - NSW 'Improved Management of Exploration Regulation' dramatically increases administrative burden for the minerals industry

The NSW Government implemented IMER (Improved Management of Exploration Regulation) in 2015 with a complete overhaul to introduce 'tough streamlined rules across all types of exploration activity'. In theory, this was intended to 'dramatically reduce regulatory duplication' by creating 11 standard conditions for all resource tenure.

In practice, this new system has dramatically increased the documentation required to be completed by industry. The documentation required from 'cradle to grave' (including one exploration licence application, one activity, one renewal and one relinquishment) includes:

- 9 forms (total 187 pages),
- 4 industry guides (total 112 pages),
- 4 codes of practice (total 93 pages),
- 8 guidelines (215 pages) and
- 4 factsheets (8 pages).

This is a total of 615 pages in 29 documents that are needed to be read and/or completed and submitted by industry then processed by Government.

This dramatic increase in administrative burden is a significant imposition, especially for exploration companies. These companies are typically small companies (less than 10 employees) with no income other than through capital raising.

As one industry member stated:

*"Now I spend 80% of my time on compliance and 20% of my time in the field trying to find the next mine for NSW – before IMER it was the other way around".*

### Company E – Nolan's Bore EIS approval

Arafura's Nolans Bore Rare Earth project is a world class critical mineral project in near term development. Located 135km north of Alice Springs, it will be the first in 20 years for the region and has a mine life estimate of +23 years with significant opportunity to extend this LOM to provide neodymium and praseodymium.

The Government's interaction with Arafura to receive the Environmental Impact Statement approval is a case study of the common challenges experienced in the current system but rarely commented upon.

#### Timeline

2008	Notice of Intent lodged with NT EPA
2010	Extension sought due to market conditions.
2012	Extension sought due to market conditions

2014		Final variation to Notice of Intent, lodged in December 2014
2015	29 May	Terms of Reference issued by the NT EPA.
2016	March	Environmental Impact Statement lodged (3,000 pages)
	July	EIS variation lodged with NT EPA July 2016 changing the processing method from sulfuric acid to phosphoric acid.
	August	NT EPA issues directive for supplemental document.
2017	February	Supplemental EIS document lodged (1,000 pages).
	October	Supplemental document accepted as correct.
	December	Final report and approval received.
2019	June	Variation document lodged reflecting project layout changes but with no identified increase in project impact or risk.
2019	September	NT EPA assessed variation and determined increased risk, approved variation with additional controls.

In total there were 608 comments received during the consultation period on the EIS. The most were from within the NT Government, whose own agency set the Terms of Reference: 332 from NT regulators, 182 from Commonwealth agencies and 94 for NGO's.

As Arafura's General Manager of Northern Territory, Brian Fowler explained, *"NT DPIR (Department of Primary Industry and Resources) made 191 comments across most areas of the EIS, many outside their regulatory responsibility and many were about the same issues but there was no co-ordination of responses by this agency. Also, there were conflicts in their responses on the same issues from person to person. We did raise this issue with the CEO DPIR and after consultation and about 4-6 weeks they withdrew their initial comments and reissued a much-reduced version but by that stages all comments had been made public, so we were required to respond to all. Also, there is no provisions for respondents to withdraw comments once lodged."*

Arafura were legally obliged to respond to every single comment received, despite some being later withdrawn.

The Terms of Reference did not address the risk-based approach that underpinned the legislation.

As outlined by Mr Fowler, *"the Government did a comprehensive risk assessment in the NOI and then before the EIS to check that we were covering the key areas. The ToRs in my view take little or no notice of the risk profile presented by the project. We are required to study everything irrespective of the risk rating. Many of the studies arguably didn't need to be done to the level they were as most rely on straight forward management processes during operation to manage and mitigate impacts. I think there needs to be a fundament change in the approach to the risk assessment process and getting the NT EPA to understand what is important and what is simple well understood management. There is a real need for greater interaction between proponents and regulators involved in the process. The NT EPA did display a willingness to help us when we were being frustrated by DPIR over AMD and DENR over groundwater. They did agree to coordinate the workshop which finally*

*resolved aspects of these matters but if this hadn't happened who knows when our approval would have happened.*

*The supplementary document was deemed to have adequately addressed all matters raised in comments on 31 Oct 2017. Final report and approval received on 21 Dec 2017. This timeframe included an extra 16 calendar day extension to provide the report. Timing of the approval was terrible from an ASX market perspective (Friday afternoon just before Christmas)."*

In total the documentation ran to +4,000 pages and the Environmental Impact Statement cost over \$2.2 million in documentation alone not including the other operating costs for the company in the intervening three years.

## Company F - Roper Valley Iron Ore Project Chronology – A Northern Territory Case Study

### Background

The Roper Valley Iron Ore Project (the Project) is being developed by Northern Territory Iron Ore Pty Ltd (NTIO).

Located in the Roper Gulf Region of the Northern Territory, the Project involves the mining, processing and export of saleable iron ore through the upgrade and use of existing public roads to the mouth of the Roper River and development of new Barge Loading Facility (BLF) about 14km upstream from the mouth of the river on the site of an abandoned trawler base. Ore would be barged 40km offshore to a Transhipment Mooring Point in the Gulf of Carpentaria around 7 km north-west of Maria Island.

The previous owners received approval from the NT DMP in early 2013 to extract a large bulk sample and mining commenced soon after at Area C. Subsequently, approval was received from the NT EPA in May 2014 to mine 2 Mtpa of ore from the Area C deposit and transport it 580km by road for export from Darwin, which proved to be uneconomic.

After acquiring the Project in September 2016, NTIO developed concept plans for the Project covering additional mining areas, processing of low grade ore, water supply, associated infrastructure, and its revised ore transport configuration. NTIO's intention is to substantially lower Project operating costs by transporting ore 160km by truck to the BLF, on existing public roads, upgraded with bitumen seal. From there, ore will be stockpiled and loaded onto barges for transhipment.

A Notice of Intent outlining these plans was submitted to the NTEPA in March 2017.

### Chronology

Date	Action	Comments
24 Dec 2015	NTIO executes purchase agreement	Allowed 6 months to finalise
6 Feb 2016	NLC briefed	NLC commenced DD

Date	Action	Comments
16 Jun 2016	NLC sets date for meeting at 23 August	Cost to arrange circa \$130,000
24 Jun 2016	Completion deadline extended.	Due to NLC meeting delay
25 Aug 2016	Traditional Owner approval	NLC meetings completed
20 Sep 2016	NLC agreements signed	Agreements executed
22 Sep 2016	DMP unable to accept Security Deposit	NTIO not the operator
29 Sep 2016	Settlement occurs	Sherwin receivers resigned as operator
4 Oct 2016	MMP lodged	NTIO applied to be operator
25 Oct 2016	DMP rejects MMP	DMP rejects Sherwin MMP update
3 Nov 2016	Revised MMP lodged	Follows DMP template – no new info
15 Nov 2016	DMP requested amendments to MMP	Either pedantic or irrelevant comments
16 Nov 2016	Amended MMP lodged	DMP said titles not issued!
24 Nov 2016	MMP accepted by DMP	Security Deposit paid. NTIO operator.
23 Mar 2017	NOI lodged with NTEPA	
24 Apr 2017	EPBC referral lodged	Publicised on 2 May 2017
25 May 2017	Exploration MMP lodged with DMP	
31 May 2017	EPBC advise delay in assessment	Told to expect delay up to 10 days
23 Jun 2017	EPBC advise further delay in assessment	Told to expect further delay up to 10 days
30 Jun 2017	EPBC notify decision to assess	
6 Jul 2017	Exploration MMP accepted	Lodged additional Security Deposit
20 Jul 2017	NTEPA notify EIS level of assessment	
4 Aug 2017	EPBC advise bilateral assessment applies	
4 Aug 2017	NTEPA provide draft ToR	Followed repeated requests

Date	Action	Comments
7 Sep 2017	Draft ToR comments provided	Included requests to avoid overlaps with MMP
26 Sep 2017	NTEPA advise intent to publish Statement of Reasons	Arbitrary decision – overturned after questioning
21 Oct 2017	NTEPA publish draft ToR for comment	Comments close 3 Nov 2017
17 Nov 2017	NTEPA issue final ToR	Include 12 weeks public review period – longest ever in the NT!!!

Key points in the chronology are:

1. NLC took 6 months to convene a TO meeting and a further month to act on wishes of TO's.
  - a. NLC briefed February 2016;
  - b. NTIO prepared novation agreements in May 2016;
  - c. NLC set date of meeting in June 2016;
  - d. NTIO agreed to pay \$130k to NLC to arrange meeting;
  - e. Required asset sale agreement to be extended
  - f. Meetings took place 23 and 25 August;
  - g. Agreements signed 20 September.
2. NTDMP took 7 weeks to appoint NTIO as operator despite NTIO agreeing to adopt previous operator's MMP.
  - a. Unable to accept Security deposit;
  - b. 3 weeks for DMP to advise that it was unwilling to NTIO to update previous owners MMP;
  - c. NTIO lodged DMP "pro-forma" MMP within 5 working days;
  - d. 2 weeks for DMP to review and comment on "pro-forma" MMP, including that granted tenements had not been granted;
  - e. 1 day for NTIO to address comments;
  - f. 8 days for DMP to review and accept MMP.
3. NTEPA took 4 months to decide on level of assessment and a further 4 months to set Terms of Reference.

- a. NOI covered entire project scope, including existing mining operations (already approved under 2012 EIS), accommodation, expanded mine, ore beneficiation (non-chemical process), water extraction, upgrade and use of existing public roads, barge loading facility (located at derelict trawler base on land owned by NTIO) and barging to offshore vessels with shallow draft barges requiring no dredging;
  - b. EPA briefed March 2017;
  - c. NTIO requested progress update on 5 May, to be told by NTEPA that they were busy and would not be able to determine level of assessment till mid-June;
  - d. NTIO requested progress update on 20 June, to be told that NTEPA was still very busy;
  - e. NTEPA advised on 20 July that the level of assessment will be EIS;
  - f. On 21 July, NTIO requested a review of the draft ToR as soon as possible;
  - g. NTEPA issued draft ToR to NTIO for review of 4 August with request to finalise comments by 11 August;
  - h. NTIO met with NTEPA officers on 9 August and presented mark up of draft ToR with over 60 comments and clarifications identified;
  - i. NTEPA responded that due to the extent of issues, it would need extra time to consider them;
  - j. On 6 September, NTIO provides a further, detailed critique of the draft ToR, including a fully marked up document and a six page cover letter explaining the rationale behind the comments made.
  - k. NTEPA published its version of the draft ToR on 21 October;
    - i. Comments provided by NTIO on the draft ToR relating to issues of materiality and risk were generally not accepted;
    - l. ToR finalised and issued to NTIO on 17 November.
4. NTEPA terms of reference are unclear;
    - a. Eg Vague and inconsistent language is used with requirements for “design concepts” in some areas then “detailed schedules” in others;
  5. NTEPA has not demonstrated risk assessment in its ToR.
    - a. Eg AMD Guidelines are invoked, regardless of risk of AMD generation;
      - i. NOTE: This includes reference to 12-24 months of kinetic testing PRIOR TO the proponent submitting the proposal to NTEPA for environmental assessment;
  6. NTEPA has imposed the longest ever public consultation period of 12 weeks.
    - a. No rationale given

- b. Published guidelines state “Not more than 28 days”
- 7. Project holding costs run at around \$115k per month.
  - a. NLC delay cost say \$345k (6 months instead of 3 months)
  - b. NTDMP delay cost say \$115k (6 weeks instead of 2 weeks)
  - c. NTEPA delay cost say \$460k (4 months instead of 8 months)
  - d. NTEPA public consultation period excess cost say \$230k (1 month instead of 3 months)
  - e. Total cost of delays \$1,150k (10 months delay).
  - f. This excludes the actual cost of preparing the EIS
- 8. NTIO missed the dry season window, so actual time lost was significantly more due to wet season access restrictions.

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