

**To: Productivity Commission**

**Re: National Water Reform 2020 Draft Report**

**16 March 2021**

## **Introduction**

AMEC appreciates the opportunity to make a submission to the Productivity Commission's consultation on the National Water Reform 2020 Draft Report (the Draft Report). The findings outlined in the Draft Report, and the associated recommendations that will be published in the Final Report, will have a direct impact on the current and future management of water for the mining and mineral exploration industry.

## **About AMEC**

The Association of Mining and Exploration Companies (AMEC) is a national industry association representing over 350 members from all around Australia. Our members are explorers, emerging miners, producers, and a wide range of businesses working in and for the industry. Collectively, AMEC's member companies account for over \$100 billion of the mineral exploration and mining sector's capital value.

The mining and exploration industry make a critical contribution to the Australian economy, employing over 255,000 people, and in 2018/19 collectively paid over \$39 billion in royalties and taxation. In 2019/20 resources companies invested \$35 billion in new capital and generated more than \$176 billion in mineral exports. \$2.8 billion was spent on minerals exploration in 2019/20, representing an 18% increase from the previous year.

## **National Water Reform 2020 Draft Report**

### **General feedback**

AMEC has participated in numerous consultation processes regarding the effective management and proposed allocation of water at Commonwealth, State and Territory levels. Our view remains consistent across all of these processes, that the effective management of water is a necessary measure, to ensure no commercial or residential groups are disadvantaged, while simultaneously supporting sustainable economic development. We understand this is a challenging balance to achieve, but an important one for the ongoing success of our Industry. As such, the proposal to remove the current exemptions for the mineral and petroleum industries from water entitlements and planning (Recommendation 6.1), and the proposed shift towards national levels of prescription which remove required flexibility, is not supported.

The intent behind the renewed National Water Initiative (NWI) is understood to reflect the importance of both sustainable water resources management with effective, equitable and efficient water service provisions. As there are multiple contributing factors to water management, an adaptive management approach is needed in order for long-term governance models to be effective and mitigate the need for prescription of water allocations, without unintentionally creating ambiguity by being too broad.

Industry has a keen interest in the impending National Environmental Standards (NES), and questions how they will interact with the proposed amendments to the NWI.

Given the nature of the mineral exploration and mining industry, the majority of which is located in regional areas, natural water sources can be scarce, with significant hydrogeological variations across landscapes. There is significant concern amongst industry that any changes made at a national level, could have unintended consequences, diminishing economic viability of projects, and reducing investor confidence should challenges and / or increased costs in obtaining water arise.

Industry welcomes opportunities to work with relevant Government bodies to identify a way forward that achieves the outcomes the National Water Initiative is seeking to achieve, without creating additional duplication or resulting in further complexity and unintended consequences for industry.

### **Water entitlements and planning – 6.1**

Industry considers the 'potential enhancements' to the current agreement, the proposed removal of the mineral exploration and mining exemption, to be poor policy, we cannot support. Industry has been acknowledged by State and Commonwealth Governments as driving the Australian economy through the COVID-19 recession much of the world continues to experience. This acknowledgement of Industry and its significant contribution to the economy, needs to remain in the water framework, as per NWI Paragraph 34.

Western Australia's current water licensing framework is able to achieve the intended outcomes of the NWI, and provide water security to minerals projects and the community, without the need for the proposed prescription. Implementing a shared consumptive pool and perpetual entitlement arrangement with fluctuating levels of water allocations and increased costs, is not practical. It is recommended that Western Australia's approach is accepted and retained, whereby objectives are set in the NWI framework, but jurisdictions have the flexibility to meet these objectives based on their unique State / Territory circumstance.

In 2004, then Western Australian Water Minister and Premier, the Hon. Geoff Gallop had significant concerns with the NWI, and refused to sign up to it, prompting similar concerns from other jurisdictions. The concerns were primarily that there was an imbalance of proposed benefits from the adoption of the NWI, which Western Australia would be expected to financially support, with little incentive<sup>1</sup>. Western Australia, under the Carpenter administration eventually signed the NWI in 2006, on the proviso that there would be benefits for Western Australian projects<sup>2</sup>. Given the situation at the time, of declining rainfalls, expanding populations and the depletion of natural ground water resources, the State Government was already investing in the long-term water management initiatives to guarantee the supply of water to the State's communities. To change the terms of this initial agreement which took years to achieve, is not recommended.

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<sup>1</sup> <https://www.mediastatements.wa.gov.au/Pages/Gallop/2004/09/Howard%27s-National-Water-Initiative-in-disarray.aspx>

<sup>2</sup> <https://www.abc.net.au/news/2006-04-06/wa-to-sign-national-water-initiative/1724998>

The quote from the Productivity Commission in this section appears to contradict the intent of the NWI, which is stated in the beginning of the NWI paragraph 34, acknowledging that resources projects require economic and social considerations to be factored into decision making processes, and flexibility in entitlements and planning arrangements is required given the nature of the sector's water extraction requirements. The flexibility required by mineral explorers is unique to the Industry, as, for example, by definition, greenfield mineral exploration occurs where there is no prior knowledge of what is underground, to try and make a successful geological discovery. To be required to plan for potential underground water sources that are currently unknown, when searching for mineralisation that is also unknown, to 'assess entitlements on their merits' does not make sense. Industry questions why this recommendation has been made, when the Supporting Paper<sup>3</sup> acknowledged there are flaws with the inconsistent implementation and management of entitlements and planning arrangements, and questioned the efficacy of the trade-off between proposed benefits and increased costs to industry?

The concerns raised by agricultural bodies about 'two sets of rules', one for the resources industry and one for farmers, are acknowledged, but appear inconsistent. Most Australian jurisdictions legislate a right to water for 'domestic and stock use' whereby an owner or occupier of a landholding is entitled to take water from a source which fronts their land or underlies their land, for domestic consumption and stock watering<sup>4</sup>.

AMEC reiterates that it is prudent that the exemption for the mineral exploration and mining sector remains in place. As a significant contributor to Australia's economy and employment, to remove Industry recognition could have widespread economic consequences.

### **Implications of water management for Industry**

Water management can be a contentious issue, subject to frequent change dependent on seasonality and changing climates. For industry in particular, investors look favourably upon the ability to access water supplies, as this provides an element of necessary confidence in projecting operating costs. A robust regulatory framework is also an important factor for investor consideration, and increased prescription which will ultimately create higher costs for businesses for little-to-no actual benefit, and could have a detrimental impact on industry's ability to continue attracting investment when there is strong competition in the international market.

While we understand the Government is seeking a way forward to provide more consistency in the management of water resources, we believe the introduction of wide-spread rights to trade water will not guarantee the outcomes sought, and will reduce water security in jurisdictions which are currently managing water well. If clear outcomes are to be achieved, there are more direct opportunities worth considering without the need for prescribing a national-scale methodology.

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<sup>3</sup> <https://www.pc.gov.au/inquiries/current/water-reform-2020/draft/water-reform-2020-draft-supportinga.pdf>

<sup>4</sup> <https://www.waternsw.com.au/customer-service/water-licensing/blr/domestic-and-stock-rights>

## Identification of a best practice model

AMEC is concerned that the Murray Darling Basin (MDB) has been identified in this report, and the Productivity Commission's Report into Resources Sector Regulation, as best practice. There have been recent reviews into the efficacy of the model which have identified issues with the plan, its implementation and management, and "the dramatic reduction in inflows that has been experienced in the River Murray system over the last two decades."<sup>5</sup>

Decisions about water allocations made at a Commonwealth level, based on this model, do not give appropriate recognition to the large variances in each region's ecology or hydrogeology. As such, it is challenging to make recommendations based on the suggested best practice. Which there may be some benefits to the MDB model, they should be recognised as benefits unique to a particular location with its own specific circumstances, and may not be as effective in another location with a different biosphere, geology or climate.

## National Environmental Standards

AMEC is concerned that proposed measures to enact the NWI will duplicate or conflict with national environmental standards (NES), due for imminent release.

Graeme Samuel's Independent Review of the *Environment Protection and Biodiversity Conservation Act 1989* (EPBC Act) recommended the introduction of NES. Industry has not yet seen the proposed NES, and is uncertain there will be an opportunity to participate in consultation, before they are introduced. It is expected there will be a NES regarding water use and planning, and the water trigger, with significant impacts on Industry. We are not supportive of the duplication and complexity arising from current legislative requirements, such as the water trigger, and believe there is opportunity through this process, to alleviate some of this complexity. It is recommended this review process aligns with the NES, and allows for appropriate consultation processes to make long-lasting improvements to the system.

While it is difficult to identify leading practice for the aforementioned reasons, so too will it be challenging to apply one national standard for water management to all jurisdictions. Even within a single jurisdiction, there can be vast geographical and ecological differences, which will impact the availability, demand and use of water. Western Australia's Pilbara region for example, is renowned across the globe for being a leading mining location. However, the size of the Pilbara cannot be understated, spanning 179,000 square kilometres. The Pilbara's many diverse habitats consist of "mangroves, grassland savannahs, mountain ranges, gorges, wetlands and tropical woodlands" and "is identified as one of only fifteen national biodiversity hotspots."<sup>6</sup>

Water availability in one part of a vast landscape does not remain consistent across the whole region, and management of resources should reflect these ecological differences. Rather than prescribing

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<sup>5</sup> <https://www.abc.net.au/news/rural/2020-04-17/mick-keelty-murray-darling-basin-water-sharing-review-released/12151148>

<sup>6</sup>

<https://www.epa.wa.gov.au/sites/default/files/Publications/Pilbara%20s16e%20advice%20%20270814.pdf>

how each jurisdiction should meet its requirements, there needs to be an element of flexibility, whereby States and Territories can meet national objectives, akin the intent sought by introducing bilateral approvals.

### **Aboriginal and Torres Strait Islander water considerations**

The Productivity Commission has asked for feedback on whether a third headline requirement that planning processes for new infrastructure are culturally responsive should be added to reflect requirements for Traditional Owner consultation. Industry does not believe this recommendation should be adopted when there has been minimal detail of the proposal's implementation and operation. In its current format, it is unclear what 'culturally responsive' entails, how this would impact infrastructure required at different stages of mineral exploration and mining, who will determine what constitutes cultural responsiveness, and what governance processes would be in the event proposed developments are not supported by relevant interest groups.

In our submission to the Independent Review of the EPBC Act, AMEC acknowledged the need for improved relationships with Traditional Owner and Indigenous groups, built on respect, clear communication and understanding. We also recognise the cultural importance of water to Aboriginal and Torres Strait Islander people's heritage.

However, we believe the NWI is not the most appropriate legislative framework to regulate this outcome. This proposed recommendation to introduce a specific NWI element to be developed by the Committee on Aboriginal Water interests will create duplication.

We recommend that existing frameworks should be utilised, as they give significant consideration to these important issues, rather than introducing additional requirements which only partially consider a wide range of heritage issues. Western Australia for example, is considering removing Aboriginal Cultural Heritage from environmental considerations, and manage it through distinct legislation. Industry continues to support consultation processes with Traditional Owners, but believes ambiguous water management initiatives will not achieve the desired outcome.

### **Final comment**

AMEC appreciates opportunities to participate in the Productivity Commission's thorough inquiry processes. These opportunities are important, as findings, recommendations and the eventual changes made by Government, will have long-term impacts on Industry. As a number of significant influencing factors surrounding water availability and management are dependent on the climate and natural influences, finding an effective way to protect sustainable water resource management with equitable water service provision is not an easy task.

Industry welcomes opportunities to collaborate with Government as the Report is finalised and recommendations begin to be implemented, to find a way forward that achieves these outcomes without creating an unnecessary layer of restrictiveness that will have long term negative impacts on Industry and the availability of water as Australia continues to develop new projects.

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