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Dear Tiffanie

**ENVIRONMENTAL REGULATORY REFORM DISCUSSION PAPER**

Thank you for the opportunity to provide comment on the *Environmental Regulatory Reform Discussion Paper May 2017*.

As the peak national representative body for hundreds of companies in the mining and mineral exploration sector, several of which have projects in the Northern Territory, the Association of Mining and Exploration Companies (AMEC) has a direct interest in the proposed environmental regulatory reform.

Industry requires clarity, certainty and less prescriptiveness in the public policy setting framework in order that long term investment and business decisions can be made in a globally competitive market place.

Development and environmental approval processes can result in significant time and resources being used, both from the point of view of Government and industry.

It is fundamentally important all environmental and other public policies, procedures and guidance material are clear and unambiguous. This will avoid confusion, misinterpretation, duplicative and repetitive actions by proponents and assessing officers. The environmental regulatory framework must have clear assessment and decision making processes and be cost effective.

It is in this context that the following comments are made:

**Risk based outcome focussed**

**Recommendation: Implement a risk based outcome focussed and proportionate approach.**

Extreme care needs to be taken to ensure that the assessing and regulatory processes are not taking a prescriptive line by line / word for word assessment and compliance approach to projects. This is resource intensive, costly and causes unnecessary delays for proponents.

**Association of Mining and Exploration Companies**

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Accordingly, a risk based outcome focussed and proportionate approach should be taken, which balances economic and social dividends achievable from mining development, against protecting long term environmental values. Extreme care needs to be exercised to ensure that a 'one size fits all' assessment and compliance approach is not taken by agencies.

Environmental related decisions should be based on sound science research data, and not political bias or third party scaremongering and interference.

**Recommendation: Implement a streamlined environmental impact assessment process.**

Industry welcomes the proposal that the new framework will provide a more streamlined environmental impact assessment process; and approval by the Minister for Environment and Natural Resources<sup>1</sup>.

Industry supports removal of duplicative processes, and notes the proposal to ensure that mining authorisations issued by the Minister for Primary Industry and Resources will not contain requirements for managing the environmental impacts of the project<sup>2</sup>. There will however be some instances where projects with minimal environmental impact will not require referral to the EPA. At this point it is unclear on what the 'trigger' point is for such a referral<sup>3</sup>. There is also no clear definition of what constitutes a 'significant effect on the environment'<sup>4</sup>. A critical component of this will be to identify the Territory's Environmental Objectives. These issues need to be addressed.

**Early 'go-no go' decision point**

**Recommendation: Remove the early 'go-no go' decision point.**

The Discussion Paper states that the creation of an early 'go-no go' decision point will create more certainty for industry from the beginning<sup>5</sup>.

However, it should be noted that the Western Australian Environmental Protection Authority Administrative Procedures previously provided for an Assessment of Proponent Information, Category B (API B) level of assessment – where a proposal is unlikely to be environmental acceptable.

In its submission to the WA Government, AMEC indicated that there have been a number of instances where the inherent prejudgement of environmental acceptability has led to:

- Procedural fairness deficiencies, including:
  - prejudgement of the outcome of the assessment process,
  - not providing the opportunity for the proponent to be genuinely heard on how they will satisfactorily manage identified environmental concerns
- Failure to meet minimum requirements of the environmental impact assessment process, and

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<sup>1</sup> Environmental Regulatory Reform Discussion Paper - page 5

<sup>2</sup> Ibid – page 5

<sup>3</sup> Ibid – page 6

<sup>4</sup> Ibid – page 6

<sup>5</sup> Ibid – page 6 and 17

- Potential political bias and influence.

AMEC argued that the API B level of assessment process prevented all projects from being subject to a transparent and rigorous environmental impact assessment process. In early 2017, the EPA WA Administrative Procedures were amended accordingly and the API B level of assessment removed.

It is for these reasons the proposed early 'go-no go' decision point should be excluded from the reform framework.

### **Third party appeals**

**Recommendation: Third party appeals should be restricted to a person who is, or is potentially, directly affected by a proposal.**

The Discussion Paper indicates that community participation has been identified as an important principle for an assessment system, and building a process that allows for community input, and ensuring Aboriginal people and traditional environmental knowledge are included and recognised<sup>6</sup>.

Whilst industry acknowledges the intent behind such a proposal, it is vitally important that such involvement is limited to those with a direct interest in a development project. Prevention of vexatious third party appeals should be a feature of the revised framework to ensure that unnecessary and unwarranted costly delays do not occur.

The Discussion Paper indicates a proposal to allow limited third parties the right to appeal decisions<sup>7</sup>. The proposed list of groups that may appeal appears to be too broad, and should be limited to a person who is, or is potentially, directly affected by the decision.

This is a similar position that was considered by the Commonwealth Government when it sought to amend section 487 of the Environment Protection and Biodiversity Conservation Act to prevent third party appeals seeking to delay and block mining development. The proposal was debated in Parliament in late 2015 but did not progress at the time due to a hostile Senate.

**Recommendation: Consideration be given to adopting the Appeals Convenor model used in Western Australia.**

The Paper proposes that the NT Civil Administrative Tribunal (NT CAT) be responsible for hearing reviews<sup>8</sup>. As an alternative, the Western Australian Appeals Convenor takes submissions and makes recommendations to the Minister for Environment, details of which are located at:

[http://portal.appealsconvenor.wa.gov.au/portal/page?\\_pageid=1258,1&\\_dad=portal&\\_schema=PORTAL](http://portal.appealsconvenor.wa.gov.au/portal/page?_pageid=1258,1&_dad=portal&_schema=PORTAL). Industry considers that this process has worked in WA and should be considered in place of NT CAT.

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<sup>6</sup> Ibid – page 7

<sup>7</sup> Ibid – page 20

<sup>8</sup> Ibid – page 21

### **Clear environmental objectives**

**Recommendation: Identification of measurable and relevant Territory Environmental Objectives (TEOs) for assessment, approval and reporting purposes.**

A key component of the Reform agenda is the identification of measurable and relevant Territory Environmental Objectives (TEOs) for assessment, approval and reporting purposes.

The Discussion Paper indicates that the TEOs will capture matters associated with “*biodiversity, land management, water quality and use, air quality, marine environment, economic growth and stability, climate change, waste and resource recovery, and cultural and social values*”. (emphasis added)

It is noted that the development of TEOs will be the subject of separate consultation<sup>9</sup>. In undertaking this exercise great care should be taken to ensure that there is no duplication with other processes, particularly in respect of ‘*cultural and social values*’ administered under other specific legislation.

In this case, recognition should be given to the existence of the Native Title Act, the Aboriginal Land Rights (Northern Territory) Act, Northern Territory Aboriginal Sites Act, Heritage Conservation Act all of which provide different forms of protection for native title, cultural heritage sites, places, objects and values. The processes undertaken to comply with these pieces of legislation should not be duplicated by the NT EPA.

### **Disclosure of information / public participation**

**Recommendation: Project specific commercial in confidence information should not be made publicly available.**

Industry is particularly concerned with the proposal that all information should be publicly disclosed<sup>10</sup>.

In recent correspondence to the Deputy Chief Executive, Department of Primary Industry and Resources industry expressed extreme concern in relation to the proposed release of details surrounding environmental bonds. It added that any such release of the details of the bonding arrangements for individual companies would not increase public confidence in the system and in fact could be counterproductive.

Industry added that, in view of the confidential nature of such data, the potential for vexatious third party objections on calculation methodologies and the adequacy of existing bonding arrangements in the Northern Territory, the public release of individual company environmental bonding arrangements is not warranted. The proposal was not supported.

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<sup>9</sup> Ibid – page 10

<sup>10</sup> Ibid – page 12

Those views remain in respect of any commercial-in-confidence information that may be contained in documents submitted for the environmental impact assessment process, and then used for vexatious anti-development appeals by self-interest groups.

Although the spirit of the reference in the Discussion Paper to encourage public participation is understood by industry, it should be acknowledged a large proportion of the 'community' would not have the experience, expertise or qualifications to provide objective inputs to the environmental impact assessment process for mining projects. That function should be rightly undertaken by those experts appointed on the NT EPA and within decision making authorities.

**Recommendation: Clearly define the meaning of 'community' in relation to the environmental impact assessment process.**

In addition, clarity should be provided on the meaning of 'community'<sup>11</sup>, in order to clearly differentiate those with a direct interest in a project and those that are anti-development minority parties.

Industry further considers that the broad range of third parties which could make a referral to the NT EPA<sup>12</sup> is excessive and likely to stop development opportunities in the Territory. Industry is concerned that any of these listed third parties could make a referral to the NT EPA at any time, for any reason, and before the proponent has even had time to commence preliminary research or undertake baseline studies.

The suggestion that affected stakeholders can apply for an injunction is also cause for industry alarm, particularly if such a mechanism is used to delay a project unnecessarily and without due cause.

**Environmental offsets**

**Recommendation: Consider implementation of the WA Environmental Offsets Policy and Cost Calculator model.**

Industry notes the intention to conduct specific consultation in relation to the development and implementation of an offsets policy in the NT<sup>13</sup>. AMEC would appreciate the opportunity of being directly involved in that process.

AMEC was directly involved in the development of the WA Environmental Offsets Policy, Guidelines, Register and Cost Calculator<sup>14</sup>. Following a comprehensive education and awareness campaign the Policy and Guidelines appear to have been accepted and understood by industry. The WA offsets model is a good one to commence negotiations on Environmental Offsets.

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<sup>11</sup> Ibid – page 16

<sup>12</sup> Ibid – page 18

<sup>13</sup> Ibid – page 23

<sup>14</sup> <http://www.epa.wa.gov.au/policies-guidance/wa-environmental-offsets-policy-2011-and-guidelines>.

### **Approval timeframes and performance reporting**

**Recommendation: Implement an agreed approval timelines and quarterly performance reporting regime.**

Agreed approval timelines and quarterly performance reporting are an essential component of the overall environmental reform agenda. They will provide much needed transparency and accountability around the processes, and increased certainty for proponents.

In doing so an inter-jurisdictional benchmarking exercise should be undertaken to ensure that approval timeframes and performance reporting is domestically competitive.

### **Stop work orders**

**Recommendation: Implementation of unambiguous guidance material around enforcement, including stop work orders.**

Industry is concerned with the potential that stop work orders<sup>15</sup> and other penalties will be included in the legislation and used by the NT EPA to ensure that a project does not proceed in the absence of adequate information to properly consider its environmental risks.

Unambiguous protocols and guidance material around 'stop work' orders and other legislative enforcement powers will need to be in place to ensure that they are not circumvented by malicious third parties to stop, delay or stifle projects.

I would be pleased to answer any questions you might have on these comments and appreciate the opportunity of further close consultation as the Reform Agenda progresses.

Yours sincerely

**Simon Bennison**  
Chief Executive Officer

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<sup>15</sup> Ibid – page 13