



Submission to:

Queensland Parliament's Agriculture, Resources and
Environment Committee

Reducing regulatory burdens for Queensland's agriculture and resource
industries

ASSOCIATION OF MINING AND EXPLORATION COMPANIES

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Introduction

Thank you for the opportunity to provide a submission to the Queensland Parliament's Agriculture, Resources and Environment Committee's inquiry into 'Reducing regulatory burdens for Queensland's agriculture and resource industries'.

AMEC is the peak national industry body for mineral exploration and mining companies within Australia. The membership of AMEC comprises over 360 explorers, emerging miners and the companies servicing them, many have projects and operations in Queensland.

AMEC's strategic objective is to secure an environment that provides clarity and certainty for mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

Executive Summary

AMEC understands that the Agriculture, Resources and Environment Committee's (the Committee) has been asked to investigate and report on methods to:

- reduce regulatory requirements impacting on agriculture and resource industries in Queensland; and
- further promote economic development while balancing environmental protections.

Furthermore, the Committee has resolved to focus on '*methods to reduce regulatory requirements or 'regulatory burdens' having regard to the need to promote economic development whilst balancing environmental protections*¹. In this regard the Committee listed 15 methods on which it is seeking feedback.

AMEC has interpreted 'regulatory burdens' as costs to business, both in time and money. These costs may be due to complying with excessive amounts of regulation and/or to the high cost of the regulatory activity.

AMEC has had considerable experience with regulatory reform processes. This submission provides a short commentary and critique, given AMEC's experience, of each of the methods listed by the Committee for their effectiveness in reducing regulatory burden. In addition, AMEC has listed five other methods it is aware of for the Committee's consideration.

AMEC monitors regulatory reform activity across Australia through its office's in Perth, Sydney and Brisbane. AMEC uses this wide coverage to benchmark the regulatory systems of each of the states and then advocate the parts of the each of the systems that are considered to be best practice regulation.

¹ Agriculture, Resources and Environment Committee. Reducing regulatory burdens for Queensland's agriculture and resource industries. Paper No. 1, July 2012

Commentary

Better policy development

Primary legislation and regulation is one of many policy tools that Governments can use to regulate business behaviour. However, of all the tools available, primary legislation requires that the policy supporting it provides clarity and certainty in its intent. In AMEC's view and experience poorly considered, researched and prepared policy results in unintended consequences. The policy development must include a wide consultation process with affected stakeholders. The unintended consequences often could have been dealt with in the infancy of the policy development. Policy development is therefore crucial to the efficiency and effectiveness of the regulatory system.

Also important to ensure policy across government (agencies) is consistent and complementary. For a business dealing with multiple regulatory agencies with differing policies for the same issue the regulatory burden is a significant. Governments should ensure that their agencies are following their stated policies, not those of previous governments (unless they are in agreement) or an agency agenda.

Sitting above coordination across a single jurisdiction is the need for coordination across jurisdictions. The Committee can appreciate that there are many businesses operating across state borders and therefore coordination of policy (and regulation through harmonisation, discussed later) can be a successful mechanism to reduce regulatory burden.

Benchmarking of regulatory costs

Benchmarking can be a valuable tool but requires the establishment of a meaningful benchmark that makes sense from a business perspective (generally dollars and time saved) which may or may not be the same for government. The benchmark must also be established before the cost of benchmarking is incurred. Benchmarking also requires ongoing and committed funding to keep the monitoring and surveillance update. If these conditions are not met, then benchmarking reports become just another report that does not achieve its goal.

Regulatory impact assessments

AMEC finds that the regulatory impact assessment (RIA) process consumes a significant amount of resources when the regulatory decision has already been made by decision makers. If Ministers are given a target to reduce regulation, any new legislation that increases regulation must be signed off by the Minister involved. An RIA would appear to be outsourcing the accountability for the new legislation. On the balance they appear to just add another layer of bureaucracy to the regulatory system.

In AMEC's view regulatory impact assessments rarely find that a regulation will have significant negative costs. Perhaps cynically RIA's are often just lip service to the regulated group. If they are to value add the process then they need to have tight terms of reference so as not to allow the findings to be pre-de results to become skewed. Nonetheless, the RIA process can provide an opportunity regulated groups to put their issues on the record.

Regulatory reduction targets

AMEC recognises the difficulty in determining a meaningful target for regulatory reduction and that 'number of pages of regulation' is widely used. However, modernising the language and structure of legislation can result in a reduction in the size (number of pages) but not in the

intent of the legislation and have no impact on regulatory burden in terms of dollars and time saved. AMEC recommends that government proceed with caution in using this as a measure. This method needs to be used in conjunction with information gleaned from benchmarking.

Reviews of legislation

Regular reviews of legislation are a safe option to assess whether legislation is still performing its intended purpose. This should include whether or not the legislation has been used. Legislative reviews should be written into legislation (see Sunset clauses and review periods below).

Regulatory offsetting arrangements

AMEC is aware of the existence of this novel method, but has no knowledge of its use. In principle the method appears valid and AMEC would support its use when combined with a consultation process.

Cabinet gatekeepers

AMEC does not consider this to be an effective method of reducing regulatory burden, mainly because if Cabinet wants the measure in place they will ensure it is put in place, despite the contrary advice it may receive.

Regulatory review office/committee

In principle AMEC supports the use of regulatory review office/committee. However it needs to be well resourced and empowered to truly affect the process and/or stop the implementation of poor legislation and regulatory systems; otherwise it's just another level of bureaucracy. In addition, to what or whom the review office/committee reports to is important to ensure that its activities result in meaningful reductions in regulation.

Harmonisation

As mentioned under 'Better policy development' AMEC supports harmonisation as a means to reduce regulatory costs. However harmonisation should be pursued with caution. For harmonisation to be successful there needs to be both political and bureaucratic will. If these are not present then harmonisation will be a slow drawn out process and consume more resources than is necessary, potentially never reaching its goal. The current national harmonisation of occupational health and safety laws is a good example.

It is also necessary for jurisdictions to consider the entire benefit of harmonisation across jurisdictions, not focus solely on their own. It is easily imagined that a jurisdiction would find no net benefit to harmonisation for its state, and reject harmonisation, without consider the national benefits. Furthermore, if harmonisation is achieved it must be carefully monitored to ensure that jurisdictions do not creep beyond the original harmonised laws. If this occurs then the original intent is lost and the regulatory burden returns.

Tiering

AMEC is a strong advocate of risk-based regulation (discussed below) and in AMEC's view tiering is one aspect to this. Critical to the use of tiering is information regarding the risks that certain sized business and their activities pose to the regulators objectives.

Better regulatory information

AMEC considers the provision of better regulatory information is secondary to simplifying the regulatory system because its suitability is limited where the regulatory system is clear, simple and easily navigated. If the regulatory system is complicated, is hard to apply regulations then no amount of information will make it easier to comply.

Electronic services

AMEC is a strong advocate for the use of electronic systems as a means of reducing regulatory burden. Capturing technological advancements in regulatory systems provides the greatest opportunities for reducing regulatory burden on industry.

However, the start-up costs can be significant, and is often unpalatable to governments with budget constraints. Furthermore there are two potential downfalls that must be considered before Government's spend large amounts of tax-payer funds, that is, any system:

- is simply not replicating a paper-based bottle-neck with an electronic form but that it is truly removing the need for time spent assessing application and similar processes, and
- must be future-proofed, in that it is expandable, scalable or able to be integrated into further technological developments. Stand-alone, custom designed solutions are not always the best long-term solutions.

One-stop shops

The term 'one stop shop' means different things to different stakeholders and therefore it is important to define exactly what the goal is. For example, a one stop shop might mean:

- a central point of information about regulatory services (as described in the discussion paper)
- a central point of contact for facilitating approval from various agencies for a regulated activity (lead agency)
- a central agency for approving all aspects of a regulated activity (single decision making authority (DMA))

From AMEC's perspective when the term 'one stop shop' is raised it is generally in the context of the last option above. However both of the later two models described above require significant political commitment and cultural change within agencies to relinquish control to others. In addition, the respective lead agency or DMA needs to be provided the necessary powers to compel action from the various approval agencies. This is especially the case for lead agencies. AMEC has observed that lead agencies relying on administrative controls are not as effective as one that has been given powers to compel other agencies to act.

AMEC would support a single DMA or a lead agency framework under the appropriate conditions and circumstances.

Common commencement dates

AMEC considers this a practical idea and supports this method.

Consolidating the original act and subsequent amendments into one act.

This method is particularly useful if the legislation and regulations are many years old and not reflective of contemporary legislative writing and modern industry practices.

AMEC Suggestions

Risk-Based/Outcomes focused regulation

Historically regulation has been prescriptive, that is, the government tells a business owner how to run its business in the belief that its rules reduced risk (of whatever activity that may be). The contemporary approach is what is widely known as risk-based/outcomes focused regulation.

'Risk-based' means that governments are able to prioritise regulatory activities and deploy resources against the real risks that regulated firms pose to the regulator's policy objectives.

'Outcomes focused' means a regulatory system that focuses on high-level principles and a requirement to achieve the best outcomes for business and the community. It should enable business to use appropriate methods of achieving outcomes which suit their business, their type of client and their workplace without having to follow prescriptive rules.

Risk-based/outcomes focused regulation can reduce costs for government by directing scarce resources to businesses of higher risk. While for industry, businesses that are compliant with the regulation and are low risk can have a reduced level of regulatory scrutiny.

This method integrates a number of the methods listed by the Committee, including better regulatory information, tiering, and the use of electronic systems.

Separation of the regulation from the activity of regulation

AMEC considers that regulation can be divided into two parts - the directive to regulate and the activity of regulation, that is, the 'what' and 'how'. In some regulatory circumstances the activity (how) of regulation can be performed by third-parties. A good example is airport security where the security guards may not necessarily be government employees. When this separation occurs, the role of the government becomes an auditing role to ensure its regulations are being enforced. The benefit for industry is that the third-parties are businesses in a competitive environment that have an imperative to reduce costs, which ultimately flow on to the regulated businesses.

Delegated regulation

Delegated regulation such as self-regulation or co-regulation can be effective low cost regulatory models for both industry and government. Good definitions on what is meant by self regulation or co-regulation are provided by the United Kingdom Department of Business Innovation and Skills² :

***Self-regulation** is an approach in which an industry, occupational group or profession imposes requirements on itself. In essence, rules are developed, administered and enforced by the people whose behaviour is to be governed, or by their direct representatives. Typically, such rules are set out in a code of practice and are used to promote ethical conduct, professional standards and fair trading, as well as providing a mechanism for administering complaints.*

² United Kingdom Department of Business Innovation and Skills
<http://www.bis.gov.uk/policies/bre/alternatives-to-regulation/co-regulation>

Self-regulation is not a single approach. It encompasses action that is entirely independent of government to approaches that are formally sanctioned or endorsed by government. As the level of government intervention increases it shades into co-regulation.

Co-regulation may be distinguished from self-regulation in that it involves some degree of explicit government involvement. In other respects it shares similar characteristics, typically involving an industry and government working together to develop standards to govern the behaviour of the relevant market. Typically the government will set out or indicate its objectives, leaving at least some aspect of the delivery of those objectives to others. For example, an industry group might work with government to develop a code of practice which is enforced by the industry itself, or by a professional organisation, rather than the government. Alternatively a set of standards, or consumer rights, might be agreed on by both government and non-government actors, and enforced by the latter. As the extent of government involvement in any particular scheme decreases, co-regulation shades into self-regulation: the boundary is blurred.

Sunset clauses and review periods

This method is an extension on the 'Reviews of legislation' method and is suggested here because the method described above implies that a review is undertaken on an as needs basis. The method suggested by AMEC requires a sunset clause and/or review period to be explicitly written into the legislation. This means that the parliament of time must undergo a conscious renewal process to assess whether the legislation and regulations reflect the circumstances of that time.

Stakeholder Consultation and Engagement

While it seems that stakeholder consultation and engagement should be a prerequisite for regulatory reform, it often isn't, or isn't done well. AMEC considers that significant efficiencies can be gained from regulatory reform and ongoing regulatory activity with appropriate consultative and engagement mechanisms. Often those being regulated are the best sources of information on how to be regulated.

AMEC considers ongoing stakeholder input is a fundamental component in regulatory systems. In AMEC's view this feature promotes:

- openness, transparency and accountability;
- provides a direct link for the agency with industry for communication purposes, for example when changes are proposed; and
- the regulator is able to better utilise the industry's knowledge and experience to improve the overall service.

In AMEC's view a regulatory impact assessment (RIA) is a one-off consultation that in most cases the implementing agency pays little attention to after the introduction of the regulation. In addition, the RIA only considers the impacts of the regulatory activity in isolation and does not take into consideration the full economic conditions in which businesses operate, i.e. they do not consider other government policies. This narrow use of the RIA does not and cannot take into account the full array of challenges and future changes in business or Government circumstances.