AMEC SUBMISSION

To: State Development, Natural Resources and Agricultural Industry Development Committee

Re: Mineral and Energy Resources and Other Legislation Amendment Bill (MEROLA)

27 February 2020

Introduction

AMEC appreciates the opportunity to be consulted on this proposal and has been active in engaging with the Department of Natural Resources Mines and Energy (DNRME) on this matter to articulate the real and potential operational problems that will arise for the mining and exploration industry. AMEC also appreciates DNRME taking consideration of our previous submission in the formation on this Bill.

About AMEC

The Association of Mining and Exploration Companies (AMEC) in a 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 payed 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,

Mineral and Energy Resources and Other Legislation Amendment Bill 2020 (MEROLA Bill) – additional information

#1 Change of control

The primary issue with this proposed amendment to the legislation is the uncertainty arising from it. The simplest example of this uncertainty is where a mining lease is held by a special purpose vehicle (Mining SPV) and the parent company of the Mining SPV proposes to sell the it to another entity. Upon the sale of the share in Mining SPV there will be a change of control. It is likely that the purchaser of the Mining SPV will want to know what conditions will apply to the mining lease prior to agreeing to the sale and the fact that the Minister has the right to change those conditions will be of material interest to the proposed purchaser. It is likely that the fact that the Minister can change the conditions may discourage potential purchasers from entering into the transaction.

To avoid this uncertainty, we would suggest that, similar to the process provided in section 23 of the Mineral and Energy Resources (Common Provisions) Act 2014 (MERCP Act), the holder of the mining lease is entitled to apply for indicative approval for the change in control and a decision on what conditions will apply to the mining lease if the change of control occurs. This will give all participants in the proposed transaction certainty of what conditions will apply to the mining lease if the change of control occurs.

#2 Care and maintenance

The proposal to regulate mines that are placed into care and maintenance by adding the requirement that all mining leases meeting certain production thresholds are required to have a development plan in place seems excessive, costly and unnecessary. The thresholds proposed for mineral projects should be adjusted or the measure altered altogether, as production thresholds can vary significantly throughout the life on mine.

In discussion with departmental officers, it was clear that the information that is to be included in the development plan for the mining lease will be contained in the plan of operations or progressive closure and rehabilitation plan (PRCP) submitted by the proponent to the Department of Environment and Sciences in accordance with the applicable environmental authority. Departmental officers acknowledge that this information will not be new information but will merely be submitted to DNRME in addition to DES. Given the repeated public statements that the Minister is seeking to reduce duplication of regulatory processes and remove unnecessary regulatory burdens on the resources industry and streamline approval processes, it seems a counterintuitive to now be introducing a duplication of production of information purely on the basis that the information needs to be submitted to a second government department. In addition, the submission of this information is not only for the purposes of informing the department, but the development plan must be approved before the mining lease can be granted. This gives rise to the incongruous prospect that the plan of operations or progressive closure and rehabilitation plan are approved by DES but the plan of operations is rejected by DNRME or vice versa.

In our opinion, the intent of this regulatory reform could be achieved by implementation of better information sharing between the departments rather than imposing additional burdens on the mining lease holder or through other means.

We also note that the process for granting a mining lease under this new regime, or the renewal of the mining lease, is this is different to those currently applying where a proposed development plan is required. This is illustrated by the insertion of subclause (4) into section 271A and subclause (3A) into section 286A of the Mineral Resources Act 1989. We query why these provisions are necessary for "prescribed mining leases" where a proposed development plan is to be required in the future when that provision is not necessary for coal mining leases where a proposed development plan is currently required.

#5 Mining lease tendering process

AMEC acknowledges that some changes have been made in the Bill to clarify the tendering process, but would like to restate the following.

AMEC supports the intent of this proposal to repurpose abandoned mine sites to ensure the exploitation of any commercially viable residual mineral resource remains. However, it has significant concerns with breadth of the power granted to the Minister in relation to this matter. Proposed section 317ZC allows the Minister to publish a gazette notice inviting tenders for a knowledgeable person to apply for a mining lease. The call must state the proposed area of the lease. Subsection (5) provides that the Minister must not act under this section if all or any part of the land is subject of an application for a mining tenement, other than a prospecting tenement. It is our view at subsection (5) should not only apply to an application for a mining tenement but also to a granted mining tenement.

The purpose of these provisions is to allow the minister to repurpose abandon mine sites. Abandoned mine sites are defined as an area for a which no current mining lease or mining claim is granted. However, this power will allow the minister to invite tenders for an application for a mining lease over an area where an explorer currently holds an exploration permit with the result that the holder of the exploration permit is excluded from applying for a mining lease over that area if the explorer is not the successful tenderer.

This goes against the fundamental tenets of mining law which provide that someone with an exploration tenure has priority and a first right to apply for a mining lease over the area of the exploration tenement. It is common practice within the exploration industry for an explorer to apply for an exploration tenement over the area of historical mining activity including historical tailings, workings and spoil dumps with a view to ascertaining whether those tailings, workings or spoil dumps contain an economically viable resource. The amendments proposed in MEROLA Bill will allow the Minister to essentially override that explorers priority and grant a mining lease to a third party.

As such, it is our view that either this competitive tender process should only apply to areas where there is no mining tenement or, the process is amended to essentially allow the holder of any exploration permit over the area to have a first right to apply for a mining lease over the proposed tender area.

#6 Dispute resolution framework for consent to overlapping resource applications under the Resource Acts.

AMEC supports the introduction of this process and particularly the clarification of whether this process applies to a transportation mining lease.

However, we query the practicality of the process for deciding the mining lease application provided in section 271AB. In particular, we query whether it is appropriate for the Minister to grant a later mining lease in circumstances where the holder will not be entitled to carry out any authorised activity on the area of that mining lease until an agreed coexistence plan is in place. This is particularly the case where "agreed coexistence plan" may be imposed on the holder of the later mining lease through arbitration.

This process raises the possibility that the holder of the mining lease may, if an "agreed coexistence plan" is determined by way of arbitration, decide that the proposed mining activities are no longer financially viable as a result of the restrictions imposed by the "agreed coexistence plan" and decide not to proceed with the mining activities. In such circumstances, we would suggest that any "agreed coexistence plan" process is dealt with prior to the grant of the mining lease application by the Minister so that the applicant for the later mining lease is aware of the restrictions it will be operating under. We also suspect that those restrictions will be relevant to any mining lease objections or mining lease compensation process in the Land Court.