



# **AMEC`s Blueprint for Approvals Reform in Western Australia**

February 2012

ASSOCIATION OF MINING AND EXPLORATION COMPANIES



## Contents

Contents .....	1
1. Executive Summary .....	3
2. Strategic recommendations .....	3
Driving Approvals Reform .....	3
Wider Adoption of Information Communication Technology .....	4
Driving efficiencies and resourcing of approval agencies .....	4
3. Operational recommendations .....	4
Improving the effectiveness of the Lead Agency framework .....	4
Approvals and timelines for project implementation .....	5
Natural justice and procedural fairness .....	5
Reporting and Design of performance targets .....	5
Cumulative impact assessment .....	6
Environmental Offsets .....	6
Aboriginal heritage issues .....	6
Consideration of Aboriginal heritage issues by the EPA .....	7
4. Background .....	7
Government Achievements .....	8
5. Key Issues requiring resolution .....	8
Driving Approvals Reform .....	8
Recommendations .....	9
Wider Adoption of Information Communication Technology .....	10
Recommendation .....	10
Driving Efficiencies and Resourcing of approval agencies .....	11
Recommendations .....	11
Improving the effectiveness of the Lead Agency framework .....	12
Recommendations .....	12
Approvals and timelines for project implementation .....	13
Recommendations .....	14
Promote natural justice and procedural fairness .....	15
Recommendations .....	16
Reporting and Design of Performance Targets .....	16
Recommendation .....	17
Cumulative impact assessment .....	17
Recommendations .....	17

Environmental Offsets.....18  
    Recommendations.....18  
Aboriginal heritage issues .....19  
    Recommendations.....20  
Consideration of heritage issues by EPA .....20  
    Recommendation .....21

## 1. Executive Summary

Western Australia has relied upon its resource wealth, and unprecedented demand for those resources, to undergo a decade long period of sustained growth. However, as global demand driven by China and India attracts new commodity producers from South America, Africa and the sub-continent, Western Australia's distinguished position as a preferred investment destination will come under increasing threat from other resource rich jurisdictions. To compete, WA must continue to expand current projects and bring new development projects online. Efficient Government approval processes are critical in ensuring that opportunities and subsequent revenue streams are not lost.

The Association of Mining and Exploration Companies (AMEC) is seeking a commitment from the Government on further reforms to the Western Australian approvals system to ensure efficient project approvals without compromising environmental, important Aboriginal heritage, and health and safety standards. AMEC has already made a number of submissions and representations to Government, and on behalf of industry has been a major driver on approvals reform. In this regard, AMEC recognises that the Government, particularly through the Department of Mines and Petroleum, has commenced and implemented some important initiatives in the coordination of the approval reform agenda, such as in increased transparency and accountability.

However, AMEC remains concerned about a number of approval issues that require further immediate attention. The purpose of this document is to provide a strategic blueprint for Government to address the next phase of approvals reform over the next 12 months. In doing so AMEC has made a number of strategic and operational recommendations that can be readily implemented, or committed to, in the short to medium term without major legislative change. There may however be a need to undertake some legislative amendments at a later date.

AMEC believes these changes will deliver significant and immediate improvements in the WA approvals system, and provide industry with increased clarity and certainty for the investment and business decision making process. This document does not attempt to address Commonwealth related approval processes.

AMEC fully understands the importance of case studies to substantiate some of the comments and recommendations made in this document, most of which has been based on confidential information provided directly by AMEC members. However, in view of the sensitivities involved, the identity of the company or project location has not been revealed.

## 2. Strategic recommendations

### Driving Approvals Reform

1. *Formation of a Mining Industry Strategic Advisory Committee with representatives from AMEC, Chamber of Minerals and Energy WA and Australian Petroleum Producers and Explorers Association to provide high level policy advice to the Ministerial Taskforce on Approvals, Development and Sustainability on the planning, development and implementation of approval reforms. The key tasks of this Committee will be:*

- *Provision of strategic and high level policy advice on the coordination and development of an approvals reform program*

- *Assessment and publicly reporting on agency approval processes and reform performance against an agreed universal set of performance criteria*
- *To identify and provide advice on priorities and efficiencies which would enhance the State's approval processes with regard to the resources sector, including processes, legislation and regulation*

### **Wider Adoption of Information Communication Technology**

2. *Implementation of an across government integrated electronic lodgement and tracking system be accelerated through the application of appropriate resources to approval agencies*
3. *A renewed emphasis is placed on integrating agency-based GIS information databases through Landgate*

### **Driving efficiencies and resourcing of approval agencies**

4. *Require the development of a standard set of generic conditions (or regulations) by all agencies for issues common to a number of projects*
5. *Drive increased efficiencies through all approvals agencies by reviewing and promoting a reduction in existing approval timelines, develop and implement clear escalation policies, parallel processing, devolution of responsibilities, and development of an approvals related training package*
6. *Conduct a full review of all approvals agencies to identify where duplications are occurring, and implement strategies to eliminate unnecessary overlapping administrative and decision making processes*
7. *Where appropriate, increase the resources available to approval agencies through:*
  - *Secondments or work exchanges between industry and approval agencies to increase mutual awareness of process issues*
  - *Appointment of external independent/accredited assessors with approval practitioner experience at the time of high work load in addition to adequately resourced standard staff levels*
  - *The option of proponents subsidising the cost of independent/accredited peak load assessors*

## **3. Operational recommendations**

### **Improving the effectiveness of the Lead Agency framework**

8. *Cabinet provide appropriate authority to Lead Agencies to resolve issues, enforce timelines for the completion of approval processes and timing of advice from agencies*
9. *Increase the capability of Lead Agencies to more efficiently and effectively fulfill their role through increased resourcing and the appointment of experienced senior level case managers who may be recruited on a contractual basis during peak times*

## **Approvals and timelines for project implementation**

10. *Reduce the number of secondary approvals required by delegating appropriate responsibilities under Part V of the EP Act and RIWI Act to the DMP to be addressed as part of the Mining Proposal process*
11. *Adopt a more flexible approach to the definition of 'proposal' and allow proposal options in the Part IV approval process in order to subsequently allow minor changes to project without approval*
12. *Allow preliminary or minor works (such as exploration or construction camps) to be conducted without approval through the development of appropriate regulations provided the works are unlikely to have significant impact on the environment and are consistent with the native vegetation clearing principles*
13. *Apply universal outcome-based conditions which set the outcome or the monitoring standards to be achieved and not require the preparation and approval of management plans and monitoring programs before construction or ground disturbance*
14. *Development of 'stop the clock' guidelines*
15. *Sign off by senior officers when the "stop the clock" mechanism is applied*

## **Natural justice and procedural fairness**

16. *Amend EPA's 2010 Administrative Procedures as follows:*

- *Remove the requirement for a seven day comment period on referral to EPA*
- *The EPA should advise a proponent of its preliminary view that a proposal is environmentally unacceptable, the basis of that view, and provide a proponent with the opportunity of submitting modifications to the proposal or further information in a reasonable timeframe in order for the EPA to finalise its level of assessment*
- *Restore the right of appeal to the Minister for Environment by the proponent where the EPA sets an API Category B level of assessment*
- *Eliminate third party referral of projects*
- *Make relevant EPA policies, guidelines and procedures and proponent information publicly available and ensure that the assessment procedures are applied fairly and consistently, in accordance with the requirements of procedural fairness*
- *The EPA provide the proponent with all information adverse to its position and a reasonable opportunity to comment*

## **Reporting and Design of performance targets**

17. *The Government develop approvals key performance indicators and targets in consultation with industry*

### **Cumulative impact assessment**

18. *EPA and DEC should determine (on a regional basis) and jointly publish on an ongoing basis the cumulative effect of existing and approved activities as well as any environmental constraints that may be identified from their determination in consultation with industry*
19. *Clear guidelines should be developed in consultation with industry which describe the cumulative impact assessment process, and the definition of 'reasonable foreseeable future'*

### **Environmental Offsets**

20. *Determine, as a priority, a standard set of offset metrics to be applied by relevant agencies in the calculation of need and magnitude of offsets in consultation with industry for signing off by appropriate Ministers*
21. *Base the offset metrics on:*
  - *an annual reconciliation of impact based on monitoring*
  - *credits for the extent to which environmental values are restored by rehabilitation*
  - *the ability to formally 'bank' offsets where offset opportunity exceeds current offset requirements*
  - *satisfy as far as possible both State and Commonwealth requirements*
22. *Ensure that all direct and indirect offset arrangements are available through a publicly available Offsets Register, and retrospectively applied over the last two financial years*

### **Aboriginal heritage issues**

23. *Providing clear guidelines to the Department of Indigenous Affairs that supports the following:*
  - *Enable proponents/landowners to rely on existing survey data regardless of its age*
  - *Allow for more frequent use of the Minister for Indigenous Affairs power (s18(4)) to issue directions to the ACMC to provide a recommendation within a specific timeframe*
  - *Progress consideration of amendments to the Aboriginal Heritage Act 1972 (WA) to ensure that consents pursuant to section 18 of the Act are transferrable to new proponents/landowners*
  - *Ensure that DIA staff understand that Other Heritage Places are not sites pursuant to section 5 of the Aboriginal Heritage Act 1972 (WA) and that they provide advice to DMP in relation to assessment of Program of Works (POWs) that reflects this*
24. *Continue implementation of an administrative processes reform program, including the transparency of ACMC processes, on line lodgement and tracking of applications and*

*development of fast track procedures for emergency purposes (such as weather conditions)*

*25. Continue implementation of improvements to the integrity, accuracy and functionality of the Aboriginal Sites Register, including smaller buffer zones and a full audit on the integrity of registered sites and Other Heritage Places*

#### **Consideration of Aboriginal heritage issues by the EPA**

*26. Manage Aboriginal heritage issues through the Department of Indigenous Affairs and under the auspices of the Aboriginal Heritage Act 1972, and that such issues should be resolved through comprehensive consultation and negotiation between proponents and the relevant Aboriginal groups*

#### **4. Background**

The Association of Mining and Exploration Companies (AMEC) has been actively leading, promoting and driving an efficient, effective, open, transparent and accountable regulatory environment that provides clarity and certainty while ensuring that health and safety standards remain high and important environmental and heritage values are protected at all times.

AMEC has made several submissions and representations to Government on behalf of its members to improve the regulatory environment to reflect the interests of its members and ensure that the economic potential of Western Australia can be achieved through an efficient approvals system.

There have also been many reviews and reports which have made recommendations to improve the approvals processes in Western Australia including:

- Review of Project Development Approvals System, Report of the Independent Review Committee chaired by Dr Michael Keating AC April 2002,
- Performance Examination, Improving Resource Project Approvals, Auditor General's Report, October 2008,
- Review of approval processes in Western Australia, Report of Industry Working Group Report, April 2009,
- Reducing the burden, Report by the Red Tape Reduction Group 2009.

The implementation of the recommendations of these reports has been patchy over the last decade, but more serious attempts at reform have been made by the WA Government over the last few years. The approvals reform process has predominantly been lead through the Department of Mines and Petroleum (including the provision of special resources to the Department of Indigenous Affairs for the partial re-mapping of the Aboriginal Sites Register), and more recently approvals reform has been driven through the Department of Premier and Cabinet.

Nevertheless, AMEC still remains concerned about a number of approval issues that require further attention to improve approvals efficiency which in turn will increase minerals discovery, mining production rates and government revenue streams. AMEC has submitted a number of papers and arranged various forums and meetings with the Government on the administration of approval processes to drive change including:

- Environmental Approvals Forum Report, October 2010

- Indigenous Affairs and Native Title submission, September 2010
- AMEC Roundtable and other high level meetings on environmental and Aboriginal heritage and Native Title issues

This strategic blueprint document concentrates on providing a way forward on key outstanding concerns with State approval processes administered by the Department of Mines and Petroleum (DMP), Department of Environment and Conservation (DEC), Environmental Protection Authority (EPA), Department of Indigenous Affairs (DIA) and Department of Water (DoW) which may be resolved in the shorter term while not losing sight of fundamental reforms that will be eventually required.

AMEC will separately address concerns with the administration of the EPBC Act and the Native Title Act (1993) (Cth) as they relate to State approvals processes.

### **Government Achievements**

AMEC recognises that the Government has implemented a number of important and welcome reform initiatives including:

- central coordination of approvals reforms by the Department of Premier and Cabinet (DPC)
- formation of the Regulatory Gatekeeping Unit in the Department of Treasury and Finance (DTF)
- creation of a standalone EPA
- establishment of a Lead Agency framework
- publication of a set of Government policy principles on environmental offsets
- development of a WA Native Title policy and an Indigenous Land Use Agreement
- commenced the implementation of departmental tracking systems for applications for some agencies
- establishment of performance measures and timeframes in some agencies for the processing of applications
- reduction in the backlog of Program of Works (POWs) applications

## **5. Key Issues requiring resolution**

AMEC has a number of ongoing concerns about the administration of approval processes in Western Australia including the extent to which reforms are being implemented and the resources that are being applied to achieve reforms.

### **Driving Approvals Reform**

There have been numerous attempts to reform the exploration and mining approvals system in Western Australia. In AMEC's view a crucial element that has been missing from prior approvals reform attempts has been the lack of strategic input at the Ministerial and Director-General level from the mining and exploration industry (particularly exploration companies and medium and small cap mining companies).

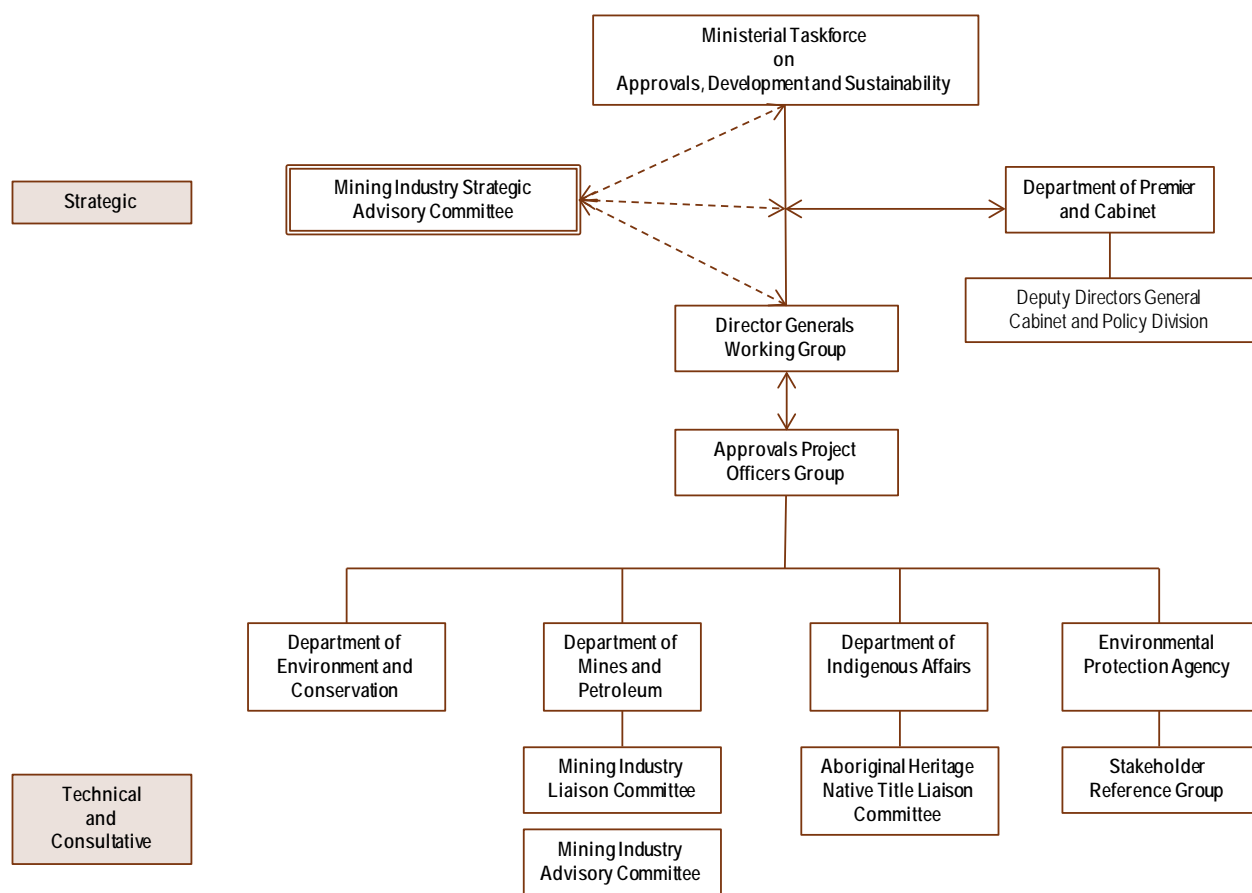
Whilst DMP, EPA and DIA have their own technical liaison or consultative groups for various specific purposes (see Figure 1 below), there is no across government consultative mechanism in the current approvals reform framework for the resources industry to assist the Government

in the strategic and policy planning, development and implementation of reforms across Government.

AMEC is strongly of the view that this needs to change if WA is to fully capitalise on its resource wealth, unprecedented demand for those resources and the period of sustained growth that lies ahead. The time has therefore come to build a closer strategic partnership between the Western Australian Government and the industry to drive approvals reform.

AMEC is proposing the establishment of a high-level industry advisory committee to provide strategic and policy advice to Ministers and Director-Generals in order to drive and monitor the critically important approvals reform agenda.

The proposed approvals reform consultative framework is shown in Figure 1 below.



**Figure 1. Recommended Strategic Approval Reform Consultative Framework**

### Recommendations

AMEC recommends that the approval reform framework should be amended as follows:

***Formation of a Mining Industry Strategic Advisory Committee with representatives from AMEC, Chamber of Minerals and Energy WA and Australian Petroleum Producers and Explorers Association to provide high level policy advice to the Ministerial Taskforce on Approvals, Development and Sustainability on the planning, development and implementation of approval reforms. The key tasks of this Committee will be:***

- ***Provision of strategic and high level policy advice on the coordination and development of an approvals reform program***
- ***Assessment and publicly reporting on agency approval processes and reform performance against an agreed set of performance criteria***
- ***To identify and provide advice on priorities and efficiencies which would enhance the State's approval processes with regard to the resources sector, including processes, legislation and regulation***

### **Wider Adoption of Information Communication Technology**

In the past, after a proponent submitted a development application, they have had no way of knowing at what stage of the approvals system the application was. This uncertainty translated into the inability of the proponent to properly plan the development.

However, the advances in information communication technology (ICT), including the internet, should be fully utilised and provide proponents with real-time tracking of the progress of their application. The use of ICT in the approvals process will improve the transparency and accountability of decision making of the approval agencies.

AMEC acknowledges that the Government is moving towards integrated electronic lodgement and tracking system for applications. DMP has made significant progress in the development and implementation of on line lodgement systems for some approvals, which is welcomed by AMEC. Notwithstanding this, AMEC is concerned that it will take a number of years before these systems are universally implemented across government because of resource constraints and difficulties arising from the different ICT systems in agencies.

Implementation of these systems, particularly in DEC, DIA and DoW should be fast tracked in order that the benefits can be realized as a matter of urgency. In the case of DEC, on line tracking of any native vegetation clearing permits and mining proposals would significantly enhance the transparency, accountability and timeframe processes.

In addition the Government should have a renewed emphasis on integrating through Landgate the geographic information system (GIS) databases held by the various agencies. In AMEC's view Landgate has been a positive initiative and its products have proven to be extremely valuable tools in the approvals process. This is because they allow proponents to understand better environmental and cultural heritage sites surrounding their development. Further integration of GIS databases would greatly improve its value to industry. For example, inclusion of environmental offsets locations (discussed later) would ensure greater consistency in their application.

### **Recommendation**

AMEC recommends that:

***Implementation of the across agency integrated electronic lodgement and tracking system should be accelerated***

***A renewed emphasis is placed on integrating agency-based GIS information databases through Landgate***

## Driving Efficiencies and Resourcing of approval agencies

The mining industry is incurring substantial delays and unnecessary costs as a result of inefficiencies in the approval process. AMEC is aware of the increasing approvals workload on agencies but is also aware that the efficient assessment of applications is a key to ensuring that Western Australia realises its economic potential. AMEC appreciates the efforts made by agencies over the past few years to improve performance and to meet internally derived performance targets. The move to electronic lodgement of applications in some agencies has also led to some improvements.

However, AMEC considers that further agency level reform is required in order to address:

- The level and capability of agency resourcing, and
- Driving efficiencies within each approval agency.

AMEC appreciates that Government budgets are under pressure. However, resourcing the Departments it entrusts with sufficient funding to properly execute their regulatory functions should be a priority. In AMEC's view successive agency budget cuts have only served to exacerbate the problems in the approvals system.

However, just increasing funding to solve the issue is not enough. Government needs to undertake a systematic review of its regulatory agencies to find and drive efficiencies to reduce the costs of approvals. For example efficiencies may be obtained through:

- Development of a set of standard conditions (or regulations) that can be applied to projects of a similar nature
- Reducing/consolidating the number of approvals required thereby reducing the number of assessments
- Develop and implement clear escalation policies within each approval agency
- Parallel processing
- Devolution of responsibility and delegated instruments
- Improving capacity and capability of officers assessing approvals (including development of an approvals related training package focusing on administrative decision making)
- Instilling a service culture in agencies and
- Use of third-party assessors, workplace exchanges, proponent subsidisation

The current Administrative Agreement between the Department of Environment and Conservation (DEC) and Department of Mines and Petroleum (DMP) concerning the management of native vegetation clearing permit applications is a good example of a sensible, practical and effective example of devolution of responsibility and should be more widely promoted throughout government agencies involved in the approvals processes.

## Recommendations

AMEC recommends the following actions should be implemented by the Government:

***Require the development of a standard set of generic conditions (or regulations) by all agencies for issues common to a number of projects***

***Drive increased efficiencies through all approvals agencies by reviewing and promoting a reduction in existing approval timelines, develop and implement clear escalation policies, parallel processing, devolution of responsibilities, and development of an approvals related training package***

***Conduct a full review of all approvals agencies to identify where duplications are occurring, and implement strategies to eliminate unnecessary overlapping administrative and decision making processes***

***Increase the resources available to approval agencies through:***

- ***Secondments or work exchanges between industry and approval agencies to increase mutual awareness of process issues***
- ***Appointment of external independent/accredited assessors with approval practitioner experience at time of high work load in addition to adequately resourced standard staff levels***
- ***The option of proponents subsidizing the cost of independent/accredited peak load assessors.***

### **Improving the effectiveness of the Lead Agency framework**

The Government established the Lead Agency Framework in 2009 in order to prescribe the responsibilities and accountabilities of the five lead agencies in the framework and to give agencies the ability to manage their interests. As a concept AMEC considers the Lead Agency framework has some merit but still requires further refinement to ensure more efficient and effective outcomes for all parties.

However, its implementation by agencies to date has not met the expectations of the mining industry in delivering approvals efficiency. In AMEC's view the problem stems from the Lead Agency's lack of authority to influence or resolve specific issues between the proponent and other agencies. In the absence of a single decision maker model, greater authority needs to be provided to lead agencies to enforce timelines and resolve issues. Furthermore, some agencies have not been sufficiently resourced nor have adequate capability to implement the role of Lead Agency.

### **Recommendations**

AMEC makes the following recommendations to improve the effectiveness of the Lead Agency Framework:

***Cabinet provide appropriate authority to Lead Agencies to resolve issues, enforce timelines for the completion of approval processes and timing of advice from agencies***

***Increase the capability of Lead Agencies to more efficiently and effectively fulfill their role through increased resourcing and the appointment of experienced senior level case managers who may be recruited on a contractual basis during peak times***

## Approvals and timelines for project implementation

Case studies have demonstrated that the number of approvals required for a project can run into the 1000's. It has become increasingly apparent that there are substantial overlaps and duplication in the topics addressed in separate approvals. AMEC questions whether many of these approvals are justifiable or cost effective.

AMEC recognises that approval agencies are looking for precise project definition and environmental data during the approval process which may not be possible as project finance for detailed design is often contingent on obtaining approvals in the first place. The hierarchy of approvals (primary, secondary and tertiary) imposes substantial cost burdens on industry, creates delays to project implementation and consumes valuable resources of approval agencies. Primary and secondary approvals often require detailed environmental data which takes an inordinate amount of time to collect and is very costly.

AMEC acknowledges that the Government has made some improvements in this area, for instance the EPA announced that their consent is not required for works associated with environmental or design investigations and is unlikely to have a significant effect on the environment. Nonetheless, these activities may be subject to other approvals.

For example, a recent major project involving mine, rail and port has required a total of about 2000 State and Commonwealth approvals to implement the project to date. This included 14 primary approvals under Part IV of the *Environmental Protection Act 1986* and *Aboriginal Heritage Act 1972* and 88 secondary State approvals under Part IV and Part V of the *Environmental Protection Act 1986* (EP Act), *Mining Act 1978* (Mining Act), *Section 5c of the Rights in Water and Irrigation Act 1914* (RIWI Act) and *Dangerous Good Safety Act 1984* just for the implementation of the mine component of the project. In addition, 28 tertiary approvals were required for the mine through conditions of primary and secondary approvals under the EP Act and the Mining Act.

This case study demonstrates the:

- Escalating requirements for greater amounts of data over time
- Longer timelines for approvals and requiring approvals after initial approvals are granted
- Delaying the consideration of the project until the information has been gathered (stop the clock)

The significant growth in the volume of data being requested by agencies is re-inforced in the following graph (Figure 2) provided by the Chairman of the EPA, and shows the large increase in the number of pages in EIS documentation submitted to the EPA.

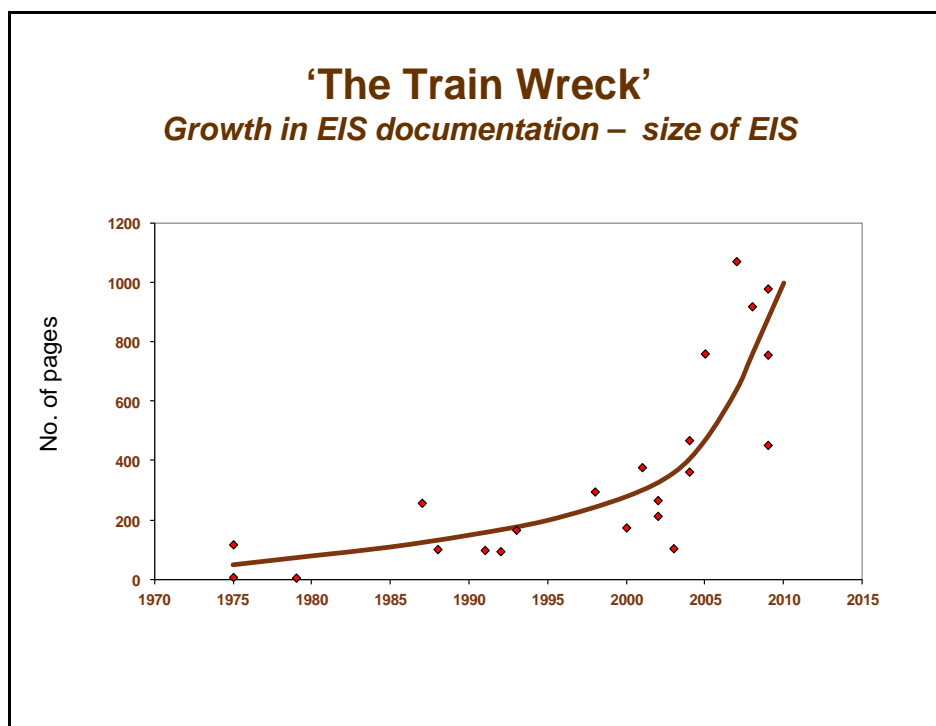


Figure 2. The Train Wreck – Source: Chairman EPA, Australian Uranium Summit 2011 presentation

In industry's view the 'stop the clock' principle has not been applied in a consistent, open and transparent manner. Furthermore it is often applied without the proponent having an opportunity to address whatever inadequacies have required the 'stop the clock' mechanism to be applied. AMEC considers that the Government should publish 'stop the clock' guidelines to provide certainty and clarity to proponents on when the principle is applied.

AMEC believes that there is considerable scope for reducing delays and the number of approvals through delegating secondary approvals under *Environmental Protection Act 1986* (EP Act) and *Rights in Water and Irrigation Act 1914* (RIWI Act) to the Department of Mines and Petroleum (DMP).

AMEC also considers that preliminary or minor works should be allowed to be conducted without approval through the development of appropriate regulations provided the works are unlikely to have significant impact on the environment and are consistent with regulatory requirements. In particular the consideration of exploration or construction camps through the Mining Act would significantly enhance project delivery times.

### Recommendations

AMEC recommends the following to reduce the regulatory burden on both industry and Government and improve the timeliness of development without lowering standards:

***Reduce the number of secondary approvals required by delegating appropriate responsibilities under the EP Act and RIWI Act to the DMP to be addressed as part of the Mining Proposal process.***

***Adopt a more flexible approach to the definition of 'proposal' and allow proposal options in the Part IV approval process in order to subsequently allow minor changes to project without approval.***

***Allow preliminary or minor works (such as exploration or construction camps) to be conducted without approval through the development of appropriate regulations provided the works are unlikely to have significant impact on the environment and are consistent with the native vegetation clearing principles.***

***Apply universally outcome-based conditions which set the outcome or the monitoring standards to be achieved and not require the preparation and approval of management plans and monitoring programs before construction or ground disturbance.***

***Development of 'stop the clock' guidelines.***

***Sign off by senior officers when the "stop the clock" mechanism is applied.***

### **Promote natural justice and procedural fairness**

AMEC is concerned about the lack of procedural fairness and transparency during the consideration of referrals by the EPA. AMEC considers this is an unintended consequence which has arisen out of recent amendments to the EP Act and the EPA 2010 Administrative Procedures which provide for no appeal for proponents against the level of assessment set by the EPA and a public comment on all referrals respectively.

The current EPA Administrative Procedures are silent on the application of transparency, natural justice and procedural fairness during the comment period and subsequent consideration of comments received.

The comment period on all referrals provides an opportunity for community input but little opportunity for a response from the proponent to any comments. Any decisions made on environmental acceptability at this early stage in the absence of full information will not lead to an informed judgement on the merits of the proposal. The comment period at the referral stage also creates delays to the approval process and only serves to provide an opportunity for dissenting groups to apply pressure on the EPA process before comprehensive technical information is available on the proposal.

There is also no right of appeal by a proponent against an API Category B (environmentally unacceptable) level of assessment set by the EPA. An appeal is only possible against the EPA assessment report for the proposal.

The recent decision relating to the Vasse Coal Project provides a good case study. This project was not obviously at odds with established environmental policy in that the proposed mining process is already allowed in Australia, however the proponent was denied the opportunity to conduct the investigations necessary to demonstrate environmental acceptability. Furthermore the referral decision making process was unduly lengthy, was not transparent and the proponent was denied adequate opportunity to respond to submissions made during the comment period on the referral. The proposal was also referred to the EPA by a third party, which appears to be contrary to procedural fairness principles. AMEC considers that this practice does not align with Commonwealth Government processes.

AMEC welcomes the EPA review of the 2010 Administrative Procedures and understands that the EPA is seeking input to this process from stakeholders. Some of the matters being considered by EPA and which are relevant to procedural fairness include:

- Making explicit reference to natural justice and procedural fairness particularly where API Category B (environmentally unacceptable) level of assessment is being considered by the EPA
- Clarifying the seven day comment period on referrals being for comment only.

AMEC will be taking the opportunity to make a submission during the review period. Within this submission AMEC will be proposing that the EPA 2010 Administrative Procedures should be amended to remove the 7 day comment period or if this is not removed, the procedures be amended to provide an adequate opportunity for the proponent to respond to comments before the EPA makes a decision. Furthermore, the right of appeal by a proponent should be restored where the EPA sets an API Category B level of assessment, and the principles of fairness adhered to.

### **Recommendations**

AMEC recommends that the unintended lack of procedural fairness, delays in the Part IV approval process and the lack of transparency in the process of decision making on referrals should be addressed through the following recommendations:

#### ***Amend EPA's 2010 Administrative Procedures as follows:***

- ***Remove the requirement for a seven day comment period on referral to EPA***
- ***The EPA should advise a proponent of its preliminary view that a proposal is environmentally unacceptable, the basis of that view, and provide a proponent with the opportunity of submitting modifications to the proposal or further information in a reasonable timeframe in order for the EPA to finalise its level of assessment***
- ***Restore the right of appeal to the Minister for Environment by a proponent where the EPA sets an API Category B level of assessment***
- ***Eliminate third party referral of projects***
- ***Make relevant EPA policies, guidelines and procedures and proponent information publicly available and ensure that the assessment procedures are applied fairly and consistently, in accordance with the requirements of procedural fairness***
- ***The EPA provide the proponent with all information adverse to its position and a reasonable opportunity to comment***

### **Reporting and Design of Performance Targets**

Government agencies have internally developed their own key performance indicators and targets. The Director General's Working Group is monitoring approval timeline information and DMP, EPA, DEC and DIA have been publishing approval performance against target timelines. However, the methodology and design of these monitoring programs is not communicated to industry. The Department of Water (DoW) has yet to publish timeline performance targets for

approvals under the Rights in Water and Irrigation Act, or to make available hydro-geological reports.

AMEC considers that current reporting of performance targets is overly simplified and that the key performance indicators (KPI's) have no real commercial meaning. AMEC is of the view that the design of performance key performance indicators and targets varies between agencies and often the way performance is reported can disguise delays in processing applications.

Opening the design and methodology of these to industry scrutiny is a key component of improving the Governments openness, transparency and accountability.

### **Recommendation**

*AMEC recommends that:*

***The Government develop approvals key performance indicators and targets in consultation with industry***

### **Cumulative impact assessment**

The EPA is requiring proponents to address impacts of their proposal cumulatively with proposals that are approved (but not implemented), in the EPA assessment process and existing activities.

AMEC is aware of the work of the EPA chaired Shared Environmental Assessment Knowledge Taskforce which aims to enhance the sharing of environmental assessment knowledge and build a business case for implementation. The progress of this project seems to have slowed in recent years.

AMEC is concerned that proponents are being required to address cumulative impacts in the absence of being able to obtain the necessary data to conduct a meaningful assessment on the 'reasonably foreseeable future'. This information may not be available because of commercial sensitivity or is unpublished.

AMEC considers that it is the approval agency's role to assess cumulative impacts in advance of the assessment of proposals. Given that much of the information required is already within government agencies, it may be appropriate for government to determine cumulative impacts in consultation with industry. Government sponsored research into the impacts of activities can also provide valuable contextual information.

However, AMEC is cognisant that agencies are not resourced sufficiently to process and gather data in their possession or acquired from proponents to determine the cumulative effect of approved or proposed activities.

### **Recommendations**

*AMEC recommends that:*

***EPA and DEC should determine (on a regional basis) and jointly publish on an ongoing basis the cumulative effect of existing and approved activities as well as any environmental constraints that may be identified from their determination in consultation with industry***

***Clear guidelines should be developed by Government in consultation with industry which describe the cumulative impact assessment process, and the definition of 'reasonable foreseeable future'***

## **Environmental Offsets**

The provision of environmental offsets for residual impacts on high value or critical environmental assets has become a common requirement of conditions of approval since the release of the Western Australian Government Environmental Offsets Policy. AMEC accepts the concept of environmental offsets provided there is appropriate guidance in place. While the financial burden on smaller companies is of extreme concern, AMEC is also concerned about the following aspects of environmental offsets:

- Lack of certainty when offsets are to be offered
- Uncertainty in the determination of what is a “significant” impact on a critical asset that is not “significant enough” to be unacceptable. Notwithstanding this, any impact on a critical asset seems to be considered “significant”
- Lack of clarity around the extent of offset required – for instance, what is the relationship between the residual impact and the extent of offset required?
- Inconsistencies and potential duplication between offsets required by the State and Commonwealth approval processes
- Difficulties in providing ‘like for like’ offsets in many instances
- Uncertainty in forecasting the magnitude of indirect impacts on which to calculate offsets
- Inconsistency in the calculation of offsets by different agencies creates difficulties.
- Offset requirements may be determined upfront regardless of uncertainties in the forecasting of impact.

AMEC is not confident that the capability or resources are currently available in agencies to implement the Government’s Policy in a transparent, equitable, timely and fair manner. The setting of offset requirements needs to be transparent and defensible.

AMEC considers that the Government’s Offsets policy should also be underpinned by a publicly available Offsets Register, and that all negotiated offset arrangements over the last two financial years should also be recorded therein.

## **Recommendations**

AMEC recommends that the EPA:

***Determine, as a priority, a standard set of offset metrics to be applied by relevant agencies in the calculation of need and magnitude of offsets in consultation with industry for signing off by appropriate Ministers.***

***Base the offset metrics on:***

- ***an annual reconciliation of impact based on monitoring***
- ***credits for the extent to which environmental values are restored by rehabilitation***

- ***the ability to formally 'bank' offsets where offset opportunity exceeds current offset requirements***
- ***satisfy as far as possible both State and Commonwealth requirements***

***Ensure that all direct and indirect offset arrangements are available through a publicly available Offsets Register, and retrospectively applied over the last two financial years***

### **Aboriginal heritage issues**

The Government has made significant progress over the last 12 months in attempting to address many of the recommendations made in the AMEC submission of September 2010. However, AMEC still has some concerns relating to some aspects of the *Aboriginal Heritage Act 1972* and notes that the Government is currently completing a review of the Act.

Continued reform of administrative processes is still required, particularly relating to the capacity for online lodgement and tracking of section 18 notices and DIA assessment of POW impact on heritage sites and requests to amend heritage site boundaries.

AMEC notes there has been progress made in relation to the Aboriginal Sites Register. However, continued improvements to the integrity, accuracy and functionality of the Aboriginal Sites Register are still required. These include, reducing the size of buffer zones and a full audit of the integrity of registered sites and Other Heritage Places.

The Government (through DMP and DIA) has made significant progress over the last 12 months in supporting and attempting to address many of the recommendations made in the AMEC submission of September 2010 surrounding the Sites Register and administrative processes.

The key achievements of the Government have included:

- Extensive re-mapping of the Aboriginal Sites Register,
- The development of a WA Native Title Policy and an Indigenous Land Use Agreement, including a fee schedule (this includes an incentive scheme to encourage Prescribed Body Corporates to expedite the granting of title),
- Revision of various Guidelines in consultation with industry,
- Administrative process reform, including the recent appointment of a Chief Heritage Officer to drive those changes, and
- Recent establishment of an Aboriginal Heritage Native Title Industry Liaison Committee in order to drive relevant reforms and policy issues.

Notwithstanding these achievements, AMEC still has some ongoing concerns regarding the administration of processes under the Aboriginal Heritage Act including:

- Significant increases in costs to industry in having to undertake heritage surveys despite previous heritage survey reports being available that are more than five years old,
- The Aboriginal Sites Register still contains Other Heritage Places which have large buffer zones associated with them which adds uncertainty for proponents,
- Administrative processes for section 18 applications are complex and there is a lack of transparency around the Aboriginal Cultural Material Committee (ACMC) process and recommendations to the Minister,

- Total processing time for section 18 applications still represents a considerable burden on industry,
- Need for a publically available register of previously granted s18 consents,
- Need for more frequent use by the Minister for Indigenous Affairs of power to force the ACMC to provide a recommendation within a reasonable timeframe,
- Section 18 approvals are not transferred or available to new proponents.

## **Recommendations**

AMEC recommends:

***Providing clear guidelines to the Department of Indigenous Affairs that supports the following:***

- ***Enable proponents/landowners to rely on existing survey data regardless of its age***
- ***Allow for more frequent use of the Minister for Indigenous Affairs power (s18(4)) to issue directions to the ACMC to provide a recommendation within a specific timeframe***
- ***Progress consideration of amendments to the Aboriginal Heritage Act 1972 (WA) to ensure that consents pursuant to section 18 of the Act are transferrable to new proponents/landowners***
- ***Ensure that DIA staff understand that Other Heritage Places are not sites pursuant to section 5 of the Aboriginal Heritage Act 1972 (WA) and that they provide advice to DMP in relation to assessment of POWs that reflects this***

***Continue implementation of an administrative processes reform program, including the transparency of ACMC processes, on line lodgement and tracking of applications and development of fast track procedures for emergency purposes (such as weather conditions)***

***Continue implementation of improvements to the integrity, accuracy and functionality of the Aboriginal Sites Register, including smaller buffer zones and a full audit on the integrity of registered sites and Other Heritage Places***

## **Consideration of heritage issues by EPA**

AMEC is concerned that the consideration of Aboriginal heritage issues under the EP Act is usurping the role of the Minister for Indigenous Affairs in making decisions in the interests of the community under the Aboriginal Heritage Act. The EPA may determine proposals environmentally unacceptable on the basis of impacts of heritage and culture; however this is a matter on which the EPA has confessed it is not an expert, and that it is an issue which may be resolved through means which are not environmental.

AMEC believes that these issues should be resolved through comprehensive consultation and negotiation between proponents and the relevant Aboriginal groups. At some later date it may become necessary to amend the Aboriginal Heritage Act to make it clear that Aboriginal heritage issues are only determined by the Minister for Indigenous Affairs.

The EPA believes it has a statutory duty to consider Aboriginal heritage and culture issues arising from proposals under assessment where the impacts arising from a proposal on the biophysical environment may adversely affect such matters.

Recently, the EPA in one of its assessment reports concluded that a physical place having a cultural significance to Aboriginal persons may properly fall within the definition of 'environment' in the EP Act. In addition, the EPA advised that if it becomes aware that Aboriginal heritage (relevant to a specific site or sites) is a potential issue, it is obliged to determine its relevance.

The EPA expressed the opinion that it cannot defer its decision to a section 18 decision under the Aboriginal Heritage Act as this decision is taken by the Minister for Indigenous Affairs with regard to the general interests of the community. These general interests of the community may include non-environmental factors which the EPA cannot consider in making its decision.

The EPA's approach has the potential to exclude the operation of the Aboriginal Heritage Act. This is because:

- Section 41 of the EP Act precludes determination being made under the Aboriginal Heritage Act until the conclusion of the EP Act process, and
- While the Minister for Indigenous Affairs may be consulted under the section 45 process, such consultation may be illusory where Aboriginal heritage is determined as an environmental consideration and section 45(6) of the EP Act applies (i.e. since conferral as to whether or not a proposal may be implemented and conditions and procedures agreed "shall not be agreed or decided....otherwise than in accordance with the decision made on appeal)."

AMEC is concerned that the EPA may determine proposals unacceptable on the basis of impacts of heritage and culture; a matter which the EPA has confessed it is not an expert and which is an issue which may be resolved by addressing other factors which are not environmental. This usurps the role of the Minister for Indigenous Affairs who is responsible for protecting Aboriginal sites in the general interests of the community.

### **Recommendation**

AMEC recommends that while the EPA may consider Aboriginal heritage as an environmental factor the following apply:

***Manage Aboriginal heritage issues through the Department of Indigenous Affairs and under the auspices of the Aboriginal Heritage Act 1972, and that such issues should be resolved through comprehensive consultation and negotiation between proponents and the relevant Aboriginal groups***