To: Professor Graeme Samuel AC

Re: Independent Review of the Environment Protection and Biodiversity Conservation Act – Discussion Paper, November 2019

17 April 2020

INTRODUCTION

AMEC appreciates the opportunity to be consulted on the Independent Review of the *Environment Protection and Biodiversity Conservation Act* (EPBC Act) Discussion Paper, dated November 2019. We also sincerely appreciated the opportunity to appear before Panel members in Perth on 28 November 2019.

This submission reflects the numerous issues raised at that meeting, and similar in nature to our submission dated 31 October 2019 to the Productivity Commission inquiry into Resources Regulation.

In making this submission the following essential outcomes have been identified by AMEC member companies:

- Clarity, certainty and predictability in the assessment process,
- Reduced unnecessary delays and duplication, and
- Cost effective regulation without reducing environmental values or standards.

ABOUT AMEC

The Association of Mining and Exploration Companies (AMEC) is 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 paid 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.

STATE OF THE INDUSTRY

The resources sector (including mining and mineral exploration activity) has underpinned Australia's economic growth, wealth creation and employment opportunities over several decades. The long-term health of the Australian mining industry remains crucial to the nation's future economic landscape.

While we continue to increase our overall mineral production volumes, we are not replenishing the mines that are coming to their natural end with new discoveries. Contemporary research shows that Australia's rate of mineral discovery is falling despite the fact that there remain incredible prospects

for further mineral discovery across the continent. The Geoscience Australia Mineral Exploration Review 2017/18 clearly shows that there are still large areas of the Australian continent that have never been explored or are under explored.

Without new discovery, Australia's current production levels will begin to decrease, as existing mines exhaust their reserves and close. New mines are needed to sustain current production levels and Government revenue streams. New mine developments are needed to deliver increased employment and social dividends. Australia's natural resources potential is still enormous. However, much of our known resource reserves are deeper, under considerable cover and are not currently economic to exploit. This opportunity is also significantly constrained, because exploration in 'greenfields' areas struggles to attract private investment in a globally competitive environment.

Greenfields mineral exploration in Australia is mainly undertaken by small companies, which rely on raising investment capital to undertake this work, or in entering joint venture partnerships. 'Greenfields' exploration is largely unattractive for private investment because of the high-risk profile, with roughly only 1 in 100 'greenfields' exploration projects leading to a discovery. These odds aside, few private investors seek such long-term returns, with the average mine taking 13 years to go from discovery to production in Australia. There can also be an additional long lead time during the initial land access, approval and exploration phases prior to any discovery.

The fact is that our rate of discovery and grades are dropping, and consequently the probability and our ability to develop economic new mines has significantly reduced.

The industry is also faced with a very tight and competitive investment environment. The recent impact of COVID-19 is only increasing the financial pressure on companies.

These issues were all brought to the attention of the Resources 2030 Taskforce and highlighted in the National Resources Statement released by the then Minister for Resources, the Hon Senator Matt Canavan in February 2019. The Statement received bi-partisan support from the Labor Party. It is now time to fully implement the 29 proactive recommendations made by the Taskforce, which were also brought to the attention of the COAG Energy Council in December 2018.

As a nation, we need to be increasing economic growth, mining and mineral exploration activity (greenfield and brownfield) and reducing regulatory red tape and the cost of doing business in Australia. Especially as the recent impact of COVID-19 has increased the need for a strong economic recovery. Particular focus needs to be directed towards addressing environmental related development approval processes across all Australian jurisdictions, including the Commonwealth Government's *Environment Protection and Biodiversity Conservation Act (EPBC Act).*

Industry acknowledges its environmental and corporate social responsibilities and does not wish to diminish standards or values but does seek certainty in timeframes and cost-effective application processes without unnecessary and duplicative regulatory delays. This Review is an opportunity for that to occur and invest in Australia's future economic growth.

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COMPLIMENTARY REFORM PROCESSES

There have been a number of previous Reviews, Inquiries and recommended reform processes which to date have not been sufficiently addressed or implemented.

These include:

Productivity Commission Inquiry Report into Major Project Development Assessment Processes, December 2013

The Commission found that there is substantial scope to improve Australia's development assessment and approval regulatory framework. It identified long approval timeframes, conflicting policy objectives, duplicative processes, regulatory uncertainty, inadequate consultation and enforcement and regulatory outcomes falling short of their objectives.

Significantly, the Commission outlined how jurisdictions can establish a '*one project, one assessment, one decision'* framework for environmental approvals, through bilateral assessment and approval agreements. It found this would reduce costly duplication between Commonwealth and State and Territory Government processes.

These recommendations remain outstanding.

Productivity Commission Inquiry Report into Mineral and Energy Resources, March 2014

The Commission made 22 recommendations in relation to non-financial barriers to exploration.

The Government's interim response indicated that the Commission's report will help advance the red tape reduction programme which aims to reduce unnecessary red tape costs representing approximately $1 billion per year.

Unfortunately, the majority of the recommendations required the Commonwealth Government to work with relevant State and Territory Governments to consider implementation. Each recommendation also had an implementation timeframe.

Despite some follow up consultation by the Government with stakeholders (including AMEC in June 2015) no significant progress appears to have been made.

Senate Red Tape Committee Report – Environmental assessment and approvals, October 2017

The Senate Committee made 15 recommendations, of which several mirror those made by AMEC in its submission to the Inquiry. The Government response of July 2018 noted several recommendations and disagreed with some others but did not commit to any actions.

AMEC considers that the recommendations should be re-visited through this Review in order reduce red tape and unnecessary regulation.

Productivity Commission Inquiry into Resources Sector Regulation 2019

AMEC has made a comprehensive submission dated 31 October 2019 in response to the Productivity Commission Issues Paper dated September 2019, and now await release of the draft Report in March 2020. In that submission, AMEC made a number of significant observations around environmental reform priorities.

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Other concurrent environmental reform processes are underway and will require consideration by the Review, including:

- National Resources Statement and Taskforce recommendations being managed through the Minister for Resources and Northern Australia,
- Treasury / Cabinet Deregulation Taskforce being managed through the Minister Assisting the Prime Minister, and
- Various State / Territory based environmental reform processes that are already underway.

KEY REGULATORY OUTCOMES

AMEC submits that the following key regulatory outcomes are essential for successful reform:

Clarity, certainty, consistency and predictability

All mining and mineral exploration companies require clarity, certainty, consistency and predictability throughout the mine cycle, particularly for their critical investment and business decision making in a globally competitive resources environment.

In order for this to occur the industry needs:

Improved referral and Environmental Impact Assessment (EIA) scoping processes

Despite the existence of a Fact Sheet and guidance material on submitting a referral under the *EPBC Act* proponents are still uncertain on whether they should or should not refer a proposed action for consideration. Central to this uncertainty is the requirement that a person must not take an action that has, will have or is likely to have a significant impact on any of the matters of national environmental significance without approval from the Australian Government Minister for the Environment.

Members continue to call for an improved definition and guidance material for assessing 'significant impact'. This will also address what appears to be a clear trend towards lower thresholds.

Transparent and accountable performance reporting

An analysis of the website of the Department of the Environment and Energy (DoEE) indicates a complete lack of publicly available information on workload and performance against target timeframes.

We note that at 13 February 2020, the Department listed eight key assessments under review. We were unable to identify any specific performance reports showing workload and trends. AMEC considers this to be a shortcoming which should be rectified as improved reporting will assist in locating problem areas and bottlenecks.

Addressing an inconsistency in relation to Minor and Preliminary Works

There is an inconsistency in relation to Minor and Preliminary Works (MPWs) under Section 41A (3) of the WA *Environment Protection Act* (*EP Act*) which allows for such works and the Commonwealth *EPBC Act* which has no such provisions. MPWs are an important mechanism under Part IV *EP Act*

as they allow for early works prior to finalising an assessment. In many cases this can be important infrastructure for a project such as access roads, airstrips, resource drilling, camps etc. Given that bilateral assessment agreements are already in place, and there may be bilateral approvals in due course, there needs to be a similar provision under the *EPBC Act*. If the MPWs are in any way part of the original *EPBC Act* referral proponents have issues with implementing a referral before a decision is made.

Currently, the only way to mitigate any potential non-compliance against S74AA of the *EPBC Act* (Offence of taking action before decision is made in relation to referral, etc.) is to request a variation to remove the MPW activities from the original *EPBC Act* referral, via Section 156A of the *EPBC Act*. This is unnecessary red tape given the WA EPA assesses the MPW application and the threshold for the assessment must not significantly impact any environmental factors and be reversable (e.g. through rehabilitation).

The *EPBC Act* review is an important opportunity to fix this inconsistency. As an example, a company was ready to commence MPWs on a site only to be informed by the Commonwealth Government they were potentially in breach on S74AA. The proponent was required to apply for a variation request which took approximately two months to resolve with the Commonwealth Government.

Reduced unnecessary delays and duplication

This can be achieved by:

Implementing risk-based outcome focussed assessment and compliance processes

There has been considerable rhetoric between Government and Industry stakeholders about risk-based outcome focussed regulation. However, there does not appear to a common understanding or application of risk-based outcome focussed regulation. This confusion has therefore been translated into the assessment, decision making and compliance processes.

This has resulted in the 'likelihood / consequence risk matrix', the ALARP (as low as reasonably practicable') model, and 'hybrid' models being used by regulators, which in some cases might not be fit for purpose or are disproportionate to the actual residual risk or benefit gained. Not only does this create confusion in the application and assessment stages it also impacts on condition setting and compliance.

AMEC members have therefore stated that there needs to be a clear definition and guidance on what 'risk-based outcome focussed' regulation means to ensure that a developing culture of risk aversion does not favour a practice of disproportionate over-regulation.

Implementing risk-based outcome focussed conditions

Members consider that conditions should be risk-based, practical, achievable, measurable, reportable and outcome focussed. Not only is this critical for proponents to meet compliance and reporting requirements it is also fundamentally important for government in relation to auditing condition compliance.

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We note the Condition-setting Policy[1] of the Department of the Environment and Energy has a stated intent to streamline the regulatory process by avoiding duplicative and unnecessary approval conditions between jurisdictions. This is a commendable aim. The Policy further provides guidance on whether a single condition, customized conditions, or no conditions are attached to an approval.

Members consider that the condition/s should be fit for purpose, rather than a standard set of conditions that may not directly relate to the specific circumstances of the development application.

Creating a single assessment and decision-making authority through the bi-lateral agreement process

AMEC continues to be a long-term advocate for the implementation of an accredited 'single assessment and decision-making authority' model for environmental approvals. This involves delegation of the Commonwealth Government`s assessment and approval powers under the *Environment Protection and Biodiversity Conservation Act* to accredited State and Territory Governments.

Implementation of the 'single assessment and decision-making' authority model through the bi-lateral agreement process will significantly increase efficiency and reduce duplication between Governments. It will also result in cost savings to Government and address some of the resourcing and workload demand pressure currently being experienced within the Department of the Environment and Energy.

Removing 'mining or milling uranium ore' from the nuclear action provisions

Australian uranium projects are one of the most heavily regulated areas of the mining sector. This is primarily undertaken through the robust guidance provided by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). Industry fully adheres to the ARPANSA National Standards for radiation protection in mining and minerals processing and accordingly has a track record of meeting the highest standards of environmental approval under mainstream project assessment and approval processes.

We understand that as the Department of Environment and Energy does not have the skills sets or experience to deal with radiation assessment and management, specialist advice is sought from ARPANSA and jurisdictional regulatory agencies. This creates additional delays and unnecessary costs to industry and government alike.

Limited Commonwealth Government resources would be better utilised by relying on the expert advice of ARPANSA and respective State and Territory Governments to ensure that the assessment process continues to meet world best practice and that a consistent approach is taken across the nation.

AMEC also understands that radiation exposure to workers and the public are consistently well below required management levels.

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[1] https://www.environment.gov.au/system/files/resources/bb7eaf1b-29d5-463b-8fa9-f08560534b7f/files/epbc-condition-setting-policy-2016.pdf

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There is no justification for uranium mining to be treated in the *EPBC Act* in a different manner to other mining activities, unless the project is likely to have significant impact on one of the other Matters of National Environmental Significance. The current situation is discriminatory and inequitable.

Previous analysis by the then Western Australian Department of Mines and Petroleum (DMP) showed the extensive range and large number of assessment steps that are undertaken for uranium related projects (including *EPBC Act* assessment). The analysis indicated:

- The accumulated timeframe to complete mineral exploration assessment and processes alone can be around 800 days, provided there are no objections or unforeseen delays in overcoming each of the approval related hurdles (This timeframe can be reduced if parallel processing is used), and
- If the project is deemed a 'controlled action' under section 67 of the *EPBC Act* add an extra 600 days for related assessment processes to be undertaken, provided there are no unforeseen objections or delays.

These time-consuming processes create significant 'holding' costs to companies that undertake extensive research and provide volumes of supporting data through the whole assessment process at significant expense.

In order to overcome this, a redefinition of the 'nuclear action' provisions contained in Section 22(1)(d) of the *EPBC Act* is required. This should remove reference to "*mining or milling uranium ore*" from the requirement for assessment, unless the project itself impacts on '*Matters of National Environmental Significance'*.

There is no scientific justification for the argument that uranium '*mining or milling of uranium ore'* poses an inherent danger or increased risk to the environment, and therefore there is no need for the provisions of the *EPBC Act* to be 'triggered'. The regulatory framework for the uranium industry is 'best practice' without duplicative and, arguably, discriminatory treatment under the *EPBC Act.*

The Senate Red Tape Committee Inquiry into Environmental Assessment and Approvals completed in October 2017 recommended that uranium mining not be included as part of the 'nuclear actions' of the *EPBC Act*.

The Government simply 'noted' the recommendation on the basis that the regulatory framework is based on internationally recognised standards and fulfils obligations under treaties and conventions that Australia has ratified.

This, and other reform strategies detailed below, should be adopted in the current review of the *EPBC Act.*

Removing duplicative processes within the 'water trigger' legislation

The independent review of the *EPBC Act* 'water trigger' tabled in Parliament in June 2017 found that the 'water trigger' is an appropriate measure to address the regulatory gap that was identified at the time of its enactment in 2013.

In its submission to that review AMEC expressed strong opposition to the 'water trigger', as management of water resources has almost always been a matter for the States and Territories and not the Commonwealth Government, or an independent expert Scientific Committee.

AMEC is extremely concerned that retention of the current provisions for large coal and coal seam gas projects being caught under the 'water trigger' has the potential for broader application through the resources sector and should be removed.

The Senate Red Tape Committee Inquiry into Environmental Assessment and Approvals completed in October 2017 recommended that the 'water trigger' be removed from the *EPBC Act*.

The Government did not support the recommendation as the trigger provided additional protection of water resources from coal seam and large coal mining developments.

In the event that the 'water trigger' is not removed from the EPBC legislation, duplicative processes should be addressed through bi-lateral agreements with complying and accredited State / Territory Governments.

Creating a national harmonised approach to environmental offsets

Noting that there are differing environmental offset policy arrangements throughout Australia consideration should be given to creating a national harmonised approach which will create increased certainty, remove the potential of duplication between Commonwealth and State / Territory governments, and reduce costs to proponents.

It will also provide improved opportunities for jurisdictions to be accredited for bi-lateral approval purposes.

Preventing anti-development appeals

There have been an increasing number of appeals by sophisticated groups looking to 'game' the *EPBC Act*.

Australia already has a robust and extensive approvals framework in place to protect the environment for future generations.

Section 487 of the *EPBC Act* should be amended to prevent vexatious and frivolous appeals by third parties seeking to delay and block mining development. Such appeals should only be available for those with a 'direct' interest in the project.

This recommendation was supported by the Senate Red Tape Committee Inquiry into Environmental Assessment and Approvals completed in October 2017. The Government has noted the recommendation.

Cost effective regulation without reducing environmental values or standards

Cost effective regulation should be a shared objective for industry and governments alike. However, insufficient progress has been made in achieving that objective across Australia.

Our members consider that significant cost efficiency improvements can be made in relation to environmental approvals processes as follows:

Improving administrative and system processes

It is evident from workshops that AMEC members have had with government agencies, and from practical experiences, that many issues and current blockages can be addressed with enhancements to administrative and system processes rather than specific legislative reforms. These include:

- Increased use of information and communications technology (including auto-approval / decision making capability, minimum standards for data collection, storage, interpretation and distribution),
- Clear and user-friendly guidance material and checklists describing the regulator's expectations to avoid irrelevant questions and uninformed feedback from government staff. This is exacerbated by the lack of experienced and suitably qualified staff to deal with some of the complexities, idiosyncrasies and specialised nature of some projects,
- Provide clear process flow charts / maps for the assessment and decision-making processes,
- Encourage early engagement between the regulator and proponent for scoping purposes,
- Reduction in requests for duplicated information by multiple parties, including within the same agency. It is conceivable that each recipient of the data might view it in different ways and in different contexts, which often require re-submission of the same data (often simply in a different format),
- Increased use of accredited environmental consultants, such as certifying that documents meet agreed standards and are able to be triaged by the regulator.

  This will reduce the number of applications being returned to the applicant for further information, and reduce workload pressures in agencies,
- Full implementation of parallel processing where possible, including with the *EPBC Act* assessment process,
- Delegation of responsibility and escalation protocols,
- Full implementation of Assessment and Approvals Bilateral Agreements, Memorandum of Understandings, and Administrative Agreements.

  This should also include a clear understanding and rationale on why a referral to another agency might be required. A reduction in the number of unnecessary

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referrals will result in significant savings in time and costs for industry and governments,

- Clear definition of roles and responsibilities between agencies to avoid duplication and confusion,
- Regular training for government and industry staff,
- Measurable and achievable project conditions that are fit for purpose,
- Improved sharing of data between all government agencies,
- Access to usable and fit for purpose government held data.

No additional cost recovery on industry

AMEC continues to be strongly opposed to any cost recovery regime to fund 'core' Government statutory based activities or generate additional income to support a budget shortfall. This has occurred with environmental approvals under the *Environment Protection and Biodiversity and Conservation Act* through the Department of Environment and Energy; and with the regulatory functions of the Australian Securities and Investment Commission (ASIC).

The mining and mineral exploration industry has limited discretionary expenditure or capacity to bear any further increases in business input costs without unintended economic and social consequences.

The mineral exploration sector should specifically be exempt from any form of cost recovery funding by adopting the current ATO 'Small Business Entity' aggregated annual turnover threshold of $10 million[2].

Cost recovery should only be considered as a last resort after all other alternatives have been fully assessed (such as through administrative improvements, increased agency efficiency, removal of duplication, organisational restructure, delegation of responsibilities and improved industry guidance material).

AMEC members have however noted that the DoEE appears to be under-resourced to deal with the current workload of environmental referrals and assessments in a timely and cost-effective manner. Consideration should be given to re-allocating resources from lower priority areas within the Department, without seeking additional funding from the Consolidated Account or from industry proponents. This will have an additional and material benefit to development proponents and the national economy with projects commencing earlier than is currently the case.

2https://www.ato.gov.au/General/New-legislation/In-detail/Direct-taxes/Income-tax-for-businesses/Increase-the-small-business-entity-turnover-threshold/

Response to specific questions in Paper

QUESTION 1: Some have argued that past changes to the EPBC Act to add new matters of national environmental significance did not go far enough. Others have argued it has extended the regulatory reach of the Commonwealth too far. What do you think?

Industry does not support expanding the remit of the EPBC Act. To do so would reduce its focus, effectiveness, efficiency as well as the accountability between Government agencies for decision making. Industry considers that the Review is an opportunity to increase the efficiency of the operation of the existing Act. The current Act overlaps and duplicates existing rigorous State and Territory processes for substantial time and cost to the proponent, for unclear regulatory gain.

Improving the effectiveness and efficiency of the existing regulatory activities could mean in some instances pruning duplication of other Commonwealth and State/Territory processes. For example, removing the 'mining or milling uranium ore' from the nuclear action provisions would increase efficiency. Regardless of the EPBC Act, these activities are regulated by each individual State and Territory as well as the Commonwealth Government's APRANSA. Reallocating the resources demanded by this provision would allow the Department to be more effective.

The 'mining or milling of uranium ore' current definition is an example of overreach, with it being applied to Mineral Sands and Rare Earth projects with low level radiation issues. This is despite previous long-standing advice and case history of it being considered only relevant for Uranium projects.

QUESTION 2: How could the principle of ecologically sustainable development (ESD) be better reflected in the EPBC Act? For example, could the consideration of environmental, social and economic factors, which are core components of ESD, be achieved through greater inclusion of cost benefit analysis in decision making?

The relative weighting of the environmental, social and economic factors in the ESD principles is a consistent question raised by Industry. There is a lack of clarity for Industry as to what scale of economic benefit is considered enough in the EPBC proposal, and whether the Department has the understanding to capture that respective value.

QUESTION 3: Should the objects of the EPBC Act be more specific?

The wording of the objects should be narrowed to purely focus on the environment rather than touch on social and economic factors.

The guidelines and supporting material that guide the interpretation of these objects need to be more specific to provide greater certainty to proponents seeking to apply them.

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QUESTION 4: Should the matters of national environmental significance within the EPBC Act be changed? How?

Approximately 70% of the mining and mineral exploration approvals hinge on what is considered nationally environmentally significant. The current definition is not working, with over half of matters referred to the EPBC Act in Western Australia because of 'national environmental significance' not requiring a controlled action. The statistics suggest that the definition is too broad. The poor definition of significance is leading to two negative outcomes: too many projects are referred unnecessarily, clogging the system; and disproportionate attention is paid to minor activities.

Industry has highlighted two questions around national significance: is there sufficient data and science to determine 'national' environmental significance?

QUESTION 5: Which elements of the EPBC Act should be priorities for reform? For example, should future reforms focus on assessment and approval processes or on biodiversity conservation? Should the Act have proactive mechanisms to enable landholders to protect matters of national environmental significance and biodiversity, removing the need for regulation in the right circumstances?

The focus for reform of the Act should be on improving the efficiency of the operation of the existing powers allowed under the Act.

As per Appendix 4A of the Department of Environment and Energy 2018-19 Annual report, since 2000 only 1,856 of the 6,403 referrals made required a controlled action[3]. A third of the total referrals needed the consideration under the EPBC.

When combined with reality that in the last year, 40% of projects decisions did not meet statutory timeframes[4]. The economic benefit of tightening the operation of the Act, rather than broadening its scope which is the main thrust of the questions in the review, must be considered.

Approximately 70% of EPBC referrals for the mining and mineral exploration sector are caused by the threatened species and communities trigger. The role of the Commonwealth and the State's need to be clearly delineated, with a single regulator for species and communities.

The State's and Territories are already protecting biodiversity, for example, Western Australia looking to add a further five million hectares to the conservation estate. As well as the introduction of carbon farming and other native vegetation initiatives across many States.

There is no market failure that requires the Commonwealth to step in.

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[3] P251, Department of Environment and Energy Report: https://www.awe.gov.au/sites/default/files/2020-01/annual-report-2018-19-environment-and-energy.pdf

[4] Ibid, P50.

QUESTION 6: What high level concerns should the review focus on? For example, should there be greater focus on better guidance on the EPBC Act, including clear environmental standards? How effective has the EPBC Act been in achieving its statutory objectives to protect the environment and promote ecologically sustainable development and biodiversity conservation? What have been the economic costs associated with the operation and administration of the EPBC Act?

AMEC would commend the *Independent Legal and Governance Review into Policies and Guidelines for Environmental Impact Assessments under the Environmental Protection Act 1986 (WA[5])* (the Quinlan Review) be applied to the administration of the EPBC Act.

The Quinlan Review caused a seismic shift in the application of environmental legislation and the associated guidance material in Western Australia. Rather than expanding the scope of the Act the review focussed on improving the processes within the existing byzantine legislation, and reducing the "Kafkaesque experience"[6] of navigating the policies and guidelines.

The cost of the EPBC process for companies depends on how far they are touched by the Act, the consultants they engage, the area they are in and the mineral they mine. AMEC calculated from Appendix 5B reports submitted to the Australian Securities Exchange that administrative costs and overheads total over $1.5million per annum for the average mineral exploration company, before they undertake mineral exploration, or an EPBC assessment. These costs have to be paid regardless and accumulate with each delay.

The cost benefit to the Government of each environmental decision needs to be more fully costed.

QUESTION 7: What additional future trends or supporting evidence should be drawn on to inform the review?

Other than the above stated Quinlan Review, the Review should consider the impact of COVID19 on the Australian economy.

The BDO *Explorer Quarterly Cash Update: December 2019* reported on the quarterly cash position of 651 ASX listed mineral exploration companies[7]. The amount of cash a mineral exploration company has available allows it to keep the lights on, pay staff, pay the bills and with the remainder, explore, hopefully make a discovery and proceed to develop the project.

The BDO report reinforces the recent lack of listings of mineral exploration companies on the Australian Securities Exchange (ASX). So far in 2020, there has been a single mineral exploration

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5 http://www.epa.wa.gov.au/sites/default/files/EPA%20Legal%20and%20Governance%20Review%20-%20Final%20Report%20-%20Quinlan%20et%20al-170516.pdf

6 Pg. ix, Ibid.

7 https://www.bdo.com.au/en-au/insights/natural-resources/publications/explorer-quarterly-cash-update-december-2019

company listed on the ASX[8]. Last year there were 5, and in 2018, 35 listed. While 2018 now sounds comparatively large, in 2011, 71 listed and in the halcyon days of 2006, 126 companies listed.

Small Australian mineral exploration companies are increasingly faced by difficult financial markets, and now with COVID-19 the investment environment is essentially dead, with it anticipated that there will be no ability for these companies to raise funds in the next 6 months.

As COVID19 weighs on the market, AMEC is growing increasingly alarmed for the future of companies that need to raise funds to survive. The BDO report stated that 40% of ASX listed mineral exploration companies reported less than $1 million cash at bank in the December 2019 Appendix 5B reports, 15% had less than $500,000[9]. These companies are faced by very difficult circumstances in the coming months.

The EPBC Act does not operate in a vacuum, the broader economic context must be considered. The impact of COVID19 on the financial future of Australian companies, and their ability to survive approval process uncertainty must be a consideration.

QUESTION 9: Should the EPBC Act position the Commonwealth to take a stronger role in delivering environmental and heritage outcomes in our federated system? Who should articulate outcomes? Who should provide oversight of the outcomes? How do we know if outcomes are being achieved?

As outlined in answer to Question 1, the Commonwealth should not take a stronger role in delivering environmental and heritage outcomes.

QUESTION 10: Should there be a greater role for national environmental standards in achieving the outcomes the EPBC Act seeks to achieve? In our federated system should they be prescribed through:

- Non-binding policy and strategies?

- Expansion of targeted standards, similar to the approach to site contamination under the National Environment Protection Council, or water quality in the Great Barrier Reef catchments?

- The development of broad environmental standards with the Commonwealth taking a monitoring and assurance role? Does the information exist to do this?

The Australian environment is unique, with each bioregion having differing characteristics. There has been considerable delay, frustration and waste created by regulations and standards shaped for one environment being applied to another.

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[8] Castile Resources listed on 12 February 2020: https://www.asx.com.au/asxpdf/20200212/pdf/44f12cs3p45bk5.pdf

[9] https://www.bdo.com.au/en-au/insights/natural-resources/publications/explorer-quarterly-cash-update-december-2019

For example, water standards formulated on the conditions in the Swan Coastal plain in Western Australia being applied to the Pilbara, over 1,500km to the north. The Northern Territory has adopted a target-based approach for offsets, rather than the "no net loss" approach. There are three reasons underpinning this approach: a lack of metrics and granular data, unique land tenure, and (most importantly) relatively intact landscapes that mean simply 'locking up' areas would be ineffective[10].

It is unclear how such national environmental standards could be drafted to provide any further guidance than already exists in individual State and Territory approaches.

QUESTION 12: Are heritage management plans and associated incentives sensible mechanisms to improve? How can the EPBC Act adequately represent Indigenous culturally important places? Should protection and management be place-based instead of values based?

AMEC continues to have a long-standing objective for increased clarity, certainty, efficiency and effectiveness of native title and cultural heritage processes in order to:

- ensure fair, equitable and quality negotiated outcomes and benefits for Aboriginal people, governments and industry;
- reduce delays and costs for all stakeholders;
- provide increased trust, integrity and confidence in decision making; and
- ensure compliance.

These objectives are intended to enhance, and not diminish native title or cultural heritage values.

Every Australian State and Territory has comprehensive cultural heritage legislation. The Commonwealth's Native Title Act as well as the Aboriginal Land Rights Act 1974 also interface with this important issue. Each address indigenous culturally important places in their own specific context.

It is unclear how the EPBC Act is considered to add value or lead to improved outcomes.

The Western Australian Aboriginal Heritage Act amendments are currently being drafted. A part of that process is removing aboriginal cultural heritage from the definition of 'social surrounds' in the Western Australian environmental legislation.

It is strongly recommended the EPBC review strongly consider the Western Australian example and reduce the overlap and duplication of how this sensitive area is regulated.

QUESTION 13: Should the EPBC Act require the use of strategic assessments to replace case-by-case assessments? Who should lead or participate in strategic assessments?

The current Act provides for both strategic assessments and case by case assessments. The cost of undertaking a broader strategic assessment may be prohibitive for certain smaller developments.

[10] https://haveyoursay.nt.gov.au/51859/widgets/271765/documents/125788

The benefits of a strategic assessment are enjoyed by the "second movers" who enter a region once it has been strategically assessed and the cost has been borne by the first mover.

There are obvious benefits to the Government undertaking strategic assessments over certain areas of high development to lower the cost of doing business. However, for greenfield projects, mandating strategic assessment would increase costs further.

Strategic assessment is supported for:

- Early identification and transparency of matters of national environmental significance;
- Improved certainty for industry;
- A reduced administrative burden; and
- A reduced cost of doing business.

QUESTION 14: Should the matters of national significance be refined to remove duplication of responsibilities between different levels of government? Should states be delegated to deliver EPBC Act outcomes subject to national standards?

The refinement of matters of national significance so that there is no duplication would be supported AMEC. Greater clarity of the trigger for assessment, as already discussed, is needed. "National significance" should be just that, national, with the current threshold of significance too low.

QUESTION 15: Should low-risk projects receive automatic approval or be exempt in some way?

- How could data help support this approach?

- Should a national environmental database be developed?

- Should all data from environmental impact assessments be made publicly available?

The EPBC Act is not the only environmental regulation in Australia. Providing an automatic approval under the EPBC does not mean activities go unassessed, it simply reduces a level of duplication.

Industry would support automatic approval under the EPBC. Data would support this approach by assisting with setting an appropriate threshold for such a threshold. A national database already exists in fragments, with each fragment held by the various Australian jurisdictions.

A project to collate and digitalises the data that exists would be supported. Industry supports the publication of environmental impact assessment data, however noting that issues of commercial confidentiality and intellectual property have hindered similar projects at a State level.

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QUESTION 16: Should the Commonwealth's regulatory role under the EPBC Act focus on habitat management at a landscape-scale rather than species-specific protections?

The EPBC Act and its implementation should retain a national rather than local focus. The local focus is the remit of the State and Territory jurisdictions. Habitat management would demand broader strategic assessments to ensure sufficient data is captured and considered.

QUESTION 17: Should the EPBC Act be amended to enable broader accreditation of state and territory, local and other processes?

Facilitating more bilateral agreements would be welcomed and supported by industry. Bilateral agreements could reduce duplication, cut red tape, reduce the cost to proponent, and increase accountability, certainty and transparency.

QUESTION 19: How should the EPBC Act support the engagement of Indigenous Australians in environment and heritage management?

- How can we best engage with Indigenous Australians to best understand their needs and potential contributions?

- What mechanisms should be added to the Act to support the role of Indigenous Australians?

The current EPBC Act already recognises the engagement and application of Indigenous peoples' knowledge in environment and heritage management by expressly including them in the Objects. The current drafting of the objects of the current Act also reflect the multifaceted engagement which includes governments, the community, landholders as well as Indigenous peoples.

No further mechanisms should be added to the Act, which may unintentionally overlap with existing obligations and rights under Native Title, as well as each jurisdiction's cultural heritage legislation.

QUESTION 20: How should community involvement in decision making under the EPBC Act be improved? For example, should community representation in environmental advisory and decision-making bodies be increased?

Section 487 of the EPBC Act should be amended to prevent vexatious and frivolous appeals by third parties seeking to delay and block mining development. Such appeals should only be available for those with a 'direct' interest in the project.

This recommendation was supported by the Senate Red Tape Committee Inquiry into Environmental Assessment and Approvals completed in October 2017. The Government has noted the recommendation.

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QUESTION 21: What is the priority for reform to governance arrangements? The decision-making structures or the transparency of decisions? Should the decision makers under the EPBC Act be supported by different governance arrangements?

Improving the efficiency of decision-making structures should take priority as outlined in response to question five.

Section 13 of the Administrative Decisions (Judicial Review) Act 1977 provides that a person may request a statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

Additionally, sections 77(4)(b) and 78C(4)(b) of the EPBC Act allow people to request a statement of reasons about controlled action decisions and the reconsideration of controlled action decisions

As defined in the Department of Environment and Energy Annual Report[11],in 2018–19, 52 statements of reasons were provided. Seven were for decisions under Part 13A of the EPBC Act, 22 were for referral decisions under section 75, one was for a reconsideration of a referral decision under section 78, nine were for assessment approach decisions under section 87, 10 were for approval decisions under sections 130 and 133, one was for a variation to conditions decision under section 143, and two were for decisions to approve a management plan.

Australia already has a robust and extensive approvals framework in place to protect the environment for future generations.

QUESTION 22: What innovative approaches could the review consider that could efficiently and effectively deliver the intended outcomes of the EPBC Act? What safeguards would be needed?

Industry would caution in the current economic and social environment against excessive innovation in environmental regulation, which may lead to unintended consequences and increased cost of doing business.

QUESTION 23: Should the Commonwealth establish new environmental markets? Should the Commonwealth implement a trust fund for environmental outcomes?

QUESTION 24: What do you see are the key opportunities to improve the current system of environmental offsetting under the EPBC Act?

The Hawke review recommended national 'biobanking' (Recommendation 7), at the time the Government agreed in principle[12], and a decade on, each jurisdiction in Australia still has a different

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[11] Pg. 258, https://www.awe.gov.au/sites/default/files/2020-01/annual-report-2018-19-environment-and-energy.pdf

[12] Pg. 27, Australian Government Response to the report of the independent review of the *Environment Protection and Biodiversity Conservation ACT 1999*

interpretation of environmental offset policy. For example, the Northern Territory is engaging a Target based approach while most other jurisdictions have a 'no net loss' approach.

Consideration should be given to national harmonisation of offset policy and development of an associated national market of offsets. To do so will create increased certainty, remove the potential of duplication between Commonwealth and State / Territory governments, and reduce costs to proponents.

However, there needs to be upfront agreement of how areas offset under the State condition (such as vegetation condition), overlap areas to be offset under the Commonwealth condition (such as habitat) will be treated. This clarity is needed to ensure these areas are only counted once.

A further complexity of implementing a national approach to offsets is that each State and Territory has different forms of tenure overlapping and temporally constrained. Furthermore, some regions, such as the Pilbara and most of the Northern Territory are predominantly Crown Land. This makes it difficult for private proponents to implement on-ground actions and give the regulator confidence that those actions will be enduring.

Current policies and calculators in operation fail to work for pastoral leasehold land in WA and are difficult to implement in western NSW and the Northern Territory as they focus on freehold land acquisition and long-term rehabilitation security. This is not possible in areas without freehold land. The Pilbara Environmental Offset Fund was developed due to this policy failure.

These are critically important issues for proponents with Commonwealth and State offset conditions and must be addressed prior to any harmonisation process.

QUESTION 25: How could private sector and philanthropic investment in the environment be best supported by the EPBC Act?

Could public sector financing be used to increase these investments?

- What are the benefits, costs or risks with the Commonwealth developing a public investment vehicle to coordinate EPBC Act offset funds?

The broader literature around the formulation of governance of the Pilbara Environmental Offset Fund provides an assessment of the complexities with establishing a fund for State and Commonwealth Government obligations. Since 2012, projects within the Pilbara region have been required to contribute to the Pilbara Environmental Offset Fund, however in the intervening period the necessary governance framework has not been finalized.

To be clear, Industry supports the PEOF as without it the artificial constraints of tenure and Crown land would mean a suboptimal outcome for the region. However, the eight-year process to define appropriate mechanisms for oversight, governance, project prioritization and implementation need to be considered before such an approach was adopted.

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https://www.environment.gov.au/system/files/resources/605a54df-7b33-4426-a5a8-51de24b29c71/files/epbc-review-govt-response.pdf

CASE STUDIES

The following case studies are provided for the information of the Review Panel and are indicative of the frustrations and delays encountered by mining and mineral exploration companies across Australia in relation to the EPBC Act processes.

AMEC is consistently calling for examples / case studies from members. However, the major proportion of member companies are reluctant to make details or a chronology publicly available as the implied criticism may be taken out of context. Nevertheless, the following examples are provided:

Company A – Queensland coal miner involving an EPBC Act referral

Company A referred the matter (nominated as a controlled action) on 12 July 2019. Following considerable high-level enquiries, including through the Minister's office, a decision was finally reached on a controlled action on 30 September 2019. Further progress is now being made.

During the intervening period the Company did not receive any advice on when a decision would be made despite being considerably over the 10 days statutory timeframe for a decision to be made (which would have been 29 July). The Company was also not advised if there were any potential issues, or likely requests for further information.

Company A had submitted an EPBC referral for a train loadout facility (TLO) on the 5th July 2019. The TLO is planned to be constructed and operate adjacent to the Coal Mine that is owned and operated as a Joint Venture. The TLO is necessary to expand production at the operations from currently 500 ktpa to 1.5 mtpa.

The referral submitted nominated the proposed action as a controlled action due to the impact on a TEC (native grassland) and endangered species (Dicanthium Queenslandicum – Blue Grass).

There are two main approvals within the EPBC Act, the first is a decision as to whether it's a controlled action or not which has a 10 days statutory approval (after ten days public advertising) - this is the referral. This was significantly overdue.

The second decision is final approval and conditioning if the Department assess it as a 'controlled action' they can then request further information to assess it on preliminary documentation if it's not an EIS. This is a 40 business days statutory timeframe plus public advertising.

Company A was awaiting decision on the first approval. The issue was they could not lodge the preliminary documentation until they got a decision on the first approval. With a 40 business days statutory approval period the company would have been looking at 2020 for any approval on the second decision.

This project needed to be commenced in November this year, in order for the rail loop to be completed by in Q2 2020. If this was not able to be achieved, it would have unintended operational and workforce consequences.

This can be avoided, as long as an approval is received to enable construction to begin in November 2019, which still leaves time for the matter to be positively resolved.

AMEC was requested to intervene and approached the Minister for the Environment for assistance. This has now resulted in the controlled action, with preliminary documentation being submitted on 7

October. The Company received a direction to publish on 18 October 2019 and is going through the 10 days publication period. It is understood that the Department is experiencing difficulties in meeting workload demands.

Company B – Gold exploration company in WA

Company B was awaiting a decision relating to a Section 10 Aboriginal and Torres Strait Islander Heritage Protection Act application over an area of land. As this application includes their Gold project, they are keen to have this issue resolved. They have received no indication that there any problems with the process.

In June 2018, the Department of the Environment and Energy (Department) advised Company B about the Heritage Protection Application under ATSIHP for the project. The company provided a submission the following month (July 2018), and the procedural fairness process commenced with closing in September 2018.

The company has now been awaiting a decision for over 1 year, and regular follow-ups with the Department has still not led to a decision or outcome. The company has not been asked for additional information or given any indication that there might be a problem.

Over a year later, this approval is now become time critical for the company, and is holding up the development of their project, incurring significant costs for the company and delaying the employment and economic opportunities that will flow from the project.

AMEC comment

After a long delay it appears that the company received approval only after AMEC had unnecessarily intervened.

Company C – Nolan's Bore EIS approval

Arafura's Nolans Bore Rare Earth project is a world class critical mineral project in near term development. Located 135km north of Alice Springs, it will be the first in 20 years for the region and has a mine life estimate of +23 years with significant opportunity to extend this LOM to provide neodymium and praseodymium.

The Government's interaction with Arafura to receive the Environmental Impact Statement approval is a case study of the common challenges experienced in the current system but rarely commented upon.

Timeline

2008	Notice of Intent lodged with NT EPA
2010	Extension sought due to market conditions.
2012	Extension sought due to market conditions
2014	Final variation to Notice of Intent, lodged in December 2014

2015	29 May	Terms of Reference issued by the NT EPA.
2016	March	Environmental Impact Statement lodged (3,000 pages)
July		EIS variation lodged with NT EPA July 2016 changing the processing method form sulfuric acid to phosphoric acid.
	August	NT EPA issues directive for supplemental document.
2017	February	Supplemental EIS document lodged (1,000 pages).
	October	Supplemental document accepted as correct.
	December	Final report and approval received.
2019	June	Variation document lodged reflecting project layout changes but with no identified increase in project impact or risk.
2019	September	NT EPA assessed variation and determined increased risk, approved variation with additional controls.

In total there were 608 comments received during the consultation period on the EIS. The most were from within the NT Government, whose own agency set the Terms of Reference: 332 from NT regulators, 182 from Commonwealth agencies and 94 for NGO's.

As Arafura's General Manager of Northern Territory, Brian Fowler explained,

"NT DPIR (Department of Primary Industry and Resources) made 191 comments across most areas of the EIS, many outside their regulatory responsibility and many were about the same issues but there was no co-ordination of responses by this agency. Also, there were conflicts in their responses on the same issues from person to person. We did raise this issue with the CEO DPIR and after consultation and about 4-6 weeks they withdrew their initial comments and reissued a much-reduced version but by that stages all comments had been made public, so we were required to respond to all. Also, there is no provisions for respondents to withdraw comments once lodged."

Arafura were legally obliged to respond to every single comment received, despite some being later withdrawn.

The Terms of Reference did not address the risk-based approach that underpinned the legislation.

As outlined by Mr Fowler, "*the Government did a comprehensive risk assessment in the NOI and then before the EIS to check that we were covering the key areas. The ToRs in my view take little or no notice of the risk profile presented by the project. We are required to study everything irrespective of the risk rating. Many of the studies arguably didn't need to be done to the level they were as most rely on straight forward management processes during operation to manage and mitigate impacts. I think there needs to be a fundament change in the approach to the risk assessment process and getting the NT EPA to understand what is important and what is simple well understood management. There is a real need for greater interaction between proponents and regulators involved in the process. The NT EPA did display a willingness to help us when we were being frustrated by DPIR over AMD and DENR over groundwater. They did agree to coordinate the workshop which finally*

resolved aspects of these matters but if this hadn't happened who knows when our approval would have happened.

The supplementary document was deemed to have adequately addressed all matters raised in comments on 31 Oct 2017.Final report and approval received on 21 Dec 2017. This timeframe included an extra 16 calendar day extension to provide the report. Timing of the approval was terrible from an ASX market perspective (Friday afternoon just before Christmas)."

In total the documentation ran to +4,000 pages and the Environmental Impact Statement cost over $2.2 million in documentation alone not including the other operating costs for the company in the intervening three years.

Company D - Roper Valley Iron Ore Project

Background

The Roper Valley Iron Ore Project (the Project) is being developed by Northern Territory Iron Ore Pty Ltd (NTIO).

Located in the Roper Gulf Region of the Northern Territory, the Project involves the mining, processing and export of saleable iron ore through the upgrade and use of existing public roads to the mouth of the Roper River and development of new Barge Loading Facility (BLF) about 14km upstream from the mouth of the river on the site of an abandoned trawler base. Ore would be barged 40km offshore to a Transhipment Mooring Point in the Gulf of Carpentaria around 7 km north-west of Maria Island.

The previous owners received approval from the NT DMP in early 2013 to extract a large bulk sample and mining commenced soon after at Area C. Subsequently, approval was received from the NT EPA in May 2014 to mine 2 Mtpa of ore from the Area C deposit and transport it 580km by road for export from Darwin, which proved to be uneconomic.

After acquiring the Project in September 2016, NTIO developed concept plans for the Project covering additional mining areas, processing of low-grade ore, water supply, associated infrastructure, and its revised ore transport configuration. NTIO's intention is to substantially lower Project operating costs by transporting ore 160km by truck to the BLF, on existing public roads, upgraded with bitumen seal. From there, ore will be stockpiled and loaded onto barges for transhipment.

A Notice of Intent outlining these plans was submitted to the NTEPA in March 2017.

Chronology

Date	Action	Comments
24 Dec 2015	NTIO executes purchase agreement	Allowed 6 months to finalise
6 Feb 2016	NLC briefed	NLC commenced DD
16 Jun 2016	NLC sets date for meeting at 23 August	Cost to arrange circa $130,000

Date	Action	Comments
24 Jun 2016	Completion deadline extended.	Due to NLC meeting delay
25 Aug 2016	Traditional Owner approval	NLC meetings completed
20 Sep 2016	NLC agreements signed	Agreements executed
22 Sep 2016	DMP unable to accept Security Deposit	NTIO not the operator
29 Sep 2016	Settlement occurs	Sherwin receivers resigned as operator
4 Oct 2016	MMP lodged	NTIO applied to be operator
25 Oct 2016	DMP rejects MMP	DMP rejects Sherwin MMP update
3 Nov 2016	Revised MMP lodged	Follows DMP template – no new info
15 Nov 2016	DMP requested amendments to MMP	Either pedantic or irrelevant comments
16 Nov 2016	Amended MMP lodged	DMP said titles not issued!
24 Nov 2016	MMP accepted by DMP	Security Deposit paid. NTIO operator.
23 Mar 2017	NOI lodged with NTEPA	
24 Apr 2017	EPBC referral lodged	Publicised on 2 May 2017
25 May 2017	Exploration MMP lodged with DMP	
31 May 2017	EPBC advise delay in assessment	Told to expect delay up to 10 days
23 Jun 2017	EPBC advise further delay in assessment	Told to expect further delay up to 10 days
30 Jun 2017	EPBC notify decision to assess	
6 Jul 2017	Exploration MMP accepted	Lodged additional Security Deposit
20 Jul 2017	NTEPA notify EIS level of assessment	
4 Aug 2017	EPBC advise bilateral assessment applies	
4 Aug 2017	NTEPA provide draft ToR	Followed repeated requests
7 Sep 2017	Draft ToR comments provided	Included requests to avoid overlaps with MMP

Date	Action	Comments
26 Sep 2017	NTEPA advise intent to publish Statement of Reasons	Arbitrary decision – overturned after questioning
21 Oct 2017	NTEPA publish draft ToR for comment	Comments close 3 Nov 2017
17 Nov 2017	NTEPA issue final ToR	Include 12 weeks public review period – longest ever in the NT!!!

Key points in the chronology are:

1. NLC took 6 months to convene a TO meeting and a further month to act on wishes of TO's.
    a. NLC briefed February 2016;
    b. NTIO prepared novation agreements in May 2016;
    c. NLC set date of meeting in June 2016;
    d. NTIO agreed to pay $130k to NLC to arrange meeting;
    e. Required asset sale agreement to be extended
    f. Meetings took place 23 and 25 August;
    g. Agreements signed 20 September.
2. NTDMP took 7 weeks to appoint NTIO as operator despite NTIO agreeing to adopt previous operator's MMP.
    a. Unable to accept Security deposit;
    b. 3 weeks for DMP to advise that it was unwilling to NTIO to update previous owners MMP;
    c. NTIO lodged DMP "pro-forma" MMP within 5 working days;
    d. 2 weeks for DMP to review and comment on "pro-forma" MMP, including that granted tenements had not been granted;
    e. 1 day for NTIO to address comments;
    f. 8 days for DMP to review and accept MMP.
3. NTEPA took 4 months to decide on level of assessment and a further 4 months to set Terms of Reference.
    a. NOI covered entire project scope, including existing mining operations (already approved under 2012 EIS), accommodation, expanded mine, ore beneficiation (non-chemical process), water extraction, upgrade and use of existing public roads, barge

loading facility (located at derelict trawler base on land owned by NTIO) and barging to offshore vessels with shallow draft barges requiring no dredging;

b. EPA briefed March 2017;

c. NTIO requested progress update on 5 May, to be told by NTEPA that they were busy and would not be able to determine level of assessment till mid-June;

d. NTIO requested progress update on 20 June, to be told that NTEPA was still very busy;

e. NTEPA advised on 20 July that the level of assessment will be EIS;

f. On 21 July, NTIO requested a review of the draft ToR as soon as possible;

g. NTEPA issued draft ToR to NTIO for review of 4 August with request to finalise comments by 11 August;

h. NTIO met with NTEPA officers on 9 August and presented mark up of draft ToR with over 60 comments and clarifications identified;

i. NTEPA responded that due to the extent of issues, it would need extra time to consider them;

j. On 6 September, NTIO provides a further, detailed critique of the draft ToR, including a fully marked up document and a six-page cover letter explaining the rationale behind the comments made.

k. NTEPA published its version of the draft ToR on 21 October;

    i. Comments provided by NTIO on the draft ToR relating to issues of materiality and risk were generally not accepted;

l. ToR finalised and issued to NTIO on 17 November.

4. NTEPA terms of reference are unclear;

    a. Eg Vague and inconsistent language is used with requirements for “design concepts” in some areas then “detailed schedules” in others;

5. NTEPA has not demonstrated risk assessment in its ToR.

    a. Eg AMD Guidelines are invoked, regardless of risk of AMD generation;

        i. NOTE: This includes reference to 12-24 months of kinetic testing PRIOR TO the proponent submitting the proposal to NTEPA for environmental assessment;

6. NTEPA has imposed the longest ever public consultation period of 12 weeks.

    a. No rationale given

    b. Published guidelines state “Not more than 28 days”

7. Project holding costs run at around $115k per month.

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a. NLC delay cost say $345k (6 months instead of 3 months)

b. NTDMP delay cost say $115k (6 weeks instead of 2 weeks)

c. NTEPA delay cost say $460k (4 months instead of 8 months)

d. NTEPA public consultation period excess cost say $230k (1 month instead of 3 months)

e. Total cost of delays $1,150k (10 months delay).

f. This excludes the actual cost of preparing the EIS

8. NTIO missed the dry season window, so actual time lost was significantly more due to wet season access restrictions.

Company E – Iron Road Limited

Introduction –

Iron Road Limited (Iron Road) is the developer of the Central Eyre Iron Project (CEIP) on the Eyre Peninsula in South Australia. The CEIP received Major Project Facilitation status on 31 March 2014 and has since been renewed, with the current expiry being December 2019.

The CEIP comprises a magnetite mining and minerals processing operation together with significant infrastructure (CEIP Infrastructure) to support those operations including:

- An infrastructure corridor comprising a railway line, access track, powerline and water pipeline;
- A borefield to supply water for the mining operations;
- A power transmission line to provide power to the minesite;
- A deep seaport to export the product to market; and
- A long-term employee village to provide accommodation for the mine's operations workforce.

On 3 May 2017, Iron Road received the two major South Australian Government approvals for the CEIP, being a Mineral Lease for the mine and Major Development authorisation for the infrastructure components.

One major Commonwealth approval was required, that being under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The assessment was undertaken by the South Australian Department of Planning, Transport and Infrastructure (DPTI) under the terms of the Bilateral Agreement between the State and Commonwealth Governments.

EPBC approval was given on 9 March 2018, ten months after the major State approvals were awarded. Despite years of consultation with the Department of Environment and Energy (DoE) and no indication that the agency had any concerns with the CEIP or its proposed action, DoE's assessment differed from DPTI's – the outcome being that the action (shipping movements in the Spencer Gulf)

was deemed to be a ‘significant risk’ to the population of the Southern Right Whale (SRW), therefore an offset would be required at a cost of between $150k to $250k.

Relevant dates and information

- DPTI staff had been in direct contact with DoE since 2014 and provided that agency with a copy of Iron Road’s draft Environmental Impact Statement (EIS) for comment in early 2015. DPTI were also in regular contact during the 18 months EIS assessment process.
- Iron Road had also been in contact with DoE over a period of several years, commencing in 2013.
- DoE staff did not raise the issue of an offset being required for the EPBC approval at any time during those discussions with either SA Government or Iron Road direct.
- In January 2017, DoE commented on DPTI’s draft Assessment Report for the EIS. Those comments were taken into consideration by DPTI and formed both Development Authorisation (DA) conditions and Advisory Notes. There was no mention that an offset would be required due to ‘significant risk’
- Iron Road was told throughout the Bilateral assessment process that there would be coordination between the State and Federal agencies so that both approvals (DA and EPBC respectively) would be received on the same day.
- In April 2017 Iron Road was advised, for the first time, that the EPBC approval would come at a later date than the State approval and that DoE would not start its assessment until after State approval had been given to the CEIP and it had received the final Assessment Report from DPTI.
- DoE commenced its assessment on or around the 3rd May 2017.
- Iron Road rang its Case Manager at the Major Project Facilitation (MPF) Agency in Canberra and requested that he make contact with DoE to ensure that they would immediately advise both the MPF Agency and Iron Road if they expected any problems or delays.
- Throughout May and June 2017 there were calls and emails between Iron Road and DoE in which DoE insisted that there would be a need for a marine offset due to the potential risk to the SRW population as a result of increased shipping movements in the Spencer Gulf. The population in the area was not showing good signs of recovery, and as there would be an increase in shipping due to the CEIP, DoE considered that there would be a residual significant impact which would need to be mitigated. As it is impossible to come up with a direct offset, DoE advised that it would impose an indirect offset which would involve the payment of money by Iron Road for research works and to improve knowledge on the SRW.
- Iron Road advised that this had not been raised previously and questioned the point of having a Bilateral Agreement if DoE were not going to abide by the State’s assessment process and recommendations.
- Iron Road had no choice but to seek advice on this matter from other parties, including legal advice. Advice received was that DoE could not impose a financial commitment via a condition to the EPBC approval without Iron Road’s consent.

- After that was refuted by DoE upon advice from the Minister's delegate, DoE later conceded that in fact Iron Road was correct and a financial commitment could not be imposed without the Company's consent.
- Iron Road advised that consent would not be forthcoming and explained that while the Company has no problem with financially contributing to research, it needed to be on our terms e.g. Iron Road would determine when and who would receive that money, with our focus being on local groups. Iron Road committed this position to DoE in writing on 30 May 2017.
- The 30 business days period was due to end on or before Friday 16th June 2017. No communication had been received from DoE, so the matter was followed up by Iron Road. The Company was advised that the delegate was 'swamped', and that the decision would likely be 'late' (but that it would still be a 'valid decision').
- It was then explained that the 30 days is not the end of the process – once the delegate makes a Proposed Decision, it is circulated to various parties for comment (including Iron Road and DPTI). All parties have 10 business days in which to make comment. Iron Road was advised that a Final Decision would be made approx. 3 weeks after the delegate makes the Proposed Decision.
- In mid-June 2017 Iron Road was advised that the delegate had been asked when a Proposed Decision would be made but no timeframe was given. In addition, the Minister's delegate had determined that a financial commitment was warranted because Iron Road 'could not guarantee that none of its ships would strike a southern right whale'.
- When questioned why DPTI had not been provided with DoE comments in this regard during the lead up to the assessment process, and during the formal consultation period, Iron Road was told that DoE had consistently expressed their concerns to the State (e.g. DPTI) about the SRW and the possibility of an Iron Road ship striking one. DPTI staff have denied this to be the case.
- When DPTI were questioned by Iron Road regarding any contact made by DoE, we were advised (end June) that there had been no contact since the Assessment Report was provided to that agency in early May 2017.
- The MPF confirmed on 16th June 2017 that it had not heard anything from DoE at all, despite their commitment that there were any problems or delays they would be informed immediately.
- After Iron Road questioned the proposal put forward to DoE, a second proposal was provided for consideration. Iron Road consulted a local South Australian group about whether they could undertake the work on our behalf and responded to DoE.
- Delays continued during the remainder of 2017 and in January 2018 Iron Road formally advised DoE in writing that the delays were damaging to the Company's reputation with both its shareholders and stakeholders.
- A phone call from the CEO of AMEC (Association of Mining and Exploration Companies) following up on the unacceptable delays experienced by Iron Road was apparently dismissed/stonewalled.

- The Proposed Decision was received on 29 January 2018 and the Final Decision received on 14 March 2018 (and dated 9 March 2018). This was more than 10 months since the State approvals were given.

AMEC comments:

1. Continued, extended, unexplained and unacceptable delays during the assessment process
    a. Despite the timeframes outlined under the EPBC Act, DoE took 10 months to assess and finalise the approval, with that 10 months period commencing only after DPTI had already undertaken an assessment in accordance with the Bilateral Agreement.
    b. No adequate explanation was given for the continued delays beyond 'the delegate is swamped'.
    c. There was no official apology or other communication from DoE about its failure to adhere to its legislated timeframe.
2. Poor communication
    a. there was no communication with Iron Road about the assessment process that DoE would undertake after the State had already undertaken a rigorous, 18 months assessment, nor what to expect with respect to timing.
    b. there appeared to be no communication between DoE and DPTI about DoE's position – DPTI staff that Iron Road met with advised that they were surprised that the Commonwealth had a differing opinion on the assessment outcomes than the State, as DoE did not, at any time, raise its position regarding a financial offset.
    c. DoE did not communicate with DPTI at any time during its 10 months assessment, beyond providing the agency with a copy of the Proposed Decision and seeking comment.
3. Inconsistent advice has been communicated to Iron Road (e.g. timeframes, conditions, financial offsets) leaving Iron Road no option but to spend money on obtaining legal advice to protect its position.
4. Consequences - it is clear to Iron Road that the Bilateral Agreement between the Commonwealth and State governments is not working and that the parties are not communicating. This leads to a gaping hole in the assessment process which led to extended and unacceptable delays to Iron Road's US$4 billion CEIP and caused reputational damage. In addition, every week of delay in receiving the EPBC approval had a financial implication for the Company as it could not secure finance or make a final investment decision while that major Commonwealth approval was outstanding.

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