To: Western Australian Environmental Protection Authority (WA EPA)

Re: Environmental Factor Guideline changes

20/09/2022

Introduction

AMEC appreciates the opportunity to provide a submission to the Western Australian Environmental Protection Authority (EPA) regarding the proposed reforms to the *Environmental Factor Guideline: Greenhouse Gas Emissions* (Guideline). The engagement from the EPA and their staff with AMEC's members has been welcomed. We have appreciated the multiple briefings to discuss the details and the willingness to take questions from Industry.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry association representing over 500 member companies across Australia, with the majority having project interests in Western Australia. Our members are mineral explorers, emerging miners, producers, and a wide range of businesses working in and for the industry. Collectively, AMEC's member companies account for over $100 billion of the mineral exploration and mining sector's capital value.

Mineral exploration and mining make a critical contribution to Australia's economy, directly employing over 274,000 people. In 2020/21 Industry generated a record high $301 billion in mining exports, invested $3.2 billion in exploration expenditure to discover the mines of the future, and collectively paid over $43.2 billion in royalties and taxes.

In WA, a record 148,395 people were employed in mining and exploration in 2020/21, and $2.1 billion was spent on mineral exploration in 2020/21, representing a 21% increase from 2019/20, accounting for 65% of Australia's overall mineral exploration expenditure.

General Remarks

AMEC supports a national bipartisan response led by the Australian Commonwealth Government to emissions reduction and abatement through unified and consistent action including:

- Government policy that appropriately reflects Australia's dependence on the jobs and combined revenues generated by the various sectors of the resources industry;
- An integrated, orderly, phased transition to a low carbon Australian economy aligned to the national commitments made under the United Nations Framework Convention on Climate Change (UNFCCC) and that allows flexible solutions and continued and sustainable economic development in line with UNFCCC Article 3, Principle 4[1i];

[1] UNFCCC Article 3; Principle 4: The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for

- Government policy that does not significantly disadvantage new entrants in comparison with established companies;
- The equitable implementation of commitments across each sector of the economy and Government;
- A Government policy that does not disadvantage trade exposed industries and workers in trade exposed industries in comparison to international competitors or result in carbon leakage;
- Any amendment of policy:
    - Align with existing international obligations and commitments;
    - Are implemented transparently, gradually and in consultation with Industry;
    - The development and deployment of low emissions and abatement technologies with a focus on outcomes rather than fuel or technology type;
    - Prioritise the lowest cost abatement and avoid duplication of emission regulation and offsets between jurisdictions;
    - Companies should be accountable for Scope 1 emissions alone in line with the Federal Policy Framework;
    - Scope 2 and 3 emissions should not be included in the calculation of Greenhouse Gases that a regulator expects to be abated;
    - A policy that rewards innovation and Greenhouse Gas abatement that surpass regulated levels;
    - Reinvesting all revenues raised from emissions reduction regulation directly in reducing Australia's national Greenhouse Gas emissions profile.

It is appreciated that a number of these position points do not relate directly to the role of the WA EPA. However, in our view, emissions reduction and climate change policy and action needs to be considered holistically and not developed independently of each other.

The carbon emissions reduction regulatory and policy space has evolved since the WA EPA issued the first version of this guidance in 2020. AMEC's consideration that this remains a Commonwealth Government regulatory consideration has only been strengthened.

Amidst the consultation on the Guideline, coincidentally the Commonwealth Government has:

- Legislated Australia's greenhouse gas emissions reduction targets are lowered to a 43% reduction from 2005 levels by 2030 and net zero by 2050;

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the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.

- Begun a review on an update the National Safeguard Mechanism that seeks to remove headroom and reduce the emissions profile of Industry; and
- Launched an independent review into the integrity of Australian Carbon Credit Units (the Chubb Review).

The Commonwealth Government's regulatory intent is clear. What is not clear is why the EPA does not defer to the Commonwealth Government.

It is also unclear how the EPA's guidance fits within the State Government's announced interim targets and the yet to be detailed Climate Change Policy and Sectoral Emissions Reduction Strategies[2]?

AMEC and Industry respect and appreciate that the EPA is an independent authority with responsibilities and obligations that they consider under their legislation. However, the EPA should also in our view have a clear understanding of State Government policies, Commonwealth regulation, and the evolving context of these responsibilities.

AMEC concerns are listed below.

Uncertainty

The scope of the Guideline's application is unclear. On page 4, after detailing two thresholds that need to be crossed for the guideline to apply the following statement is made:

The consideration of GHG emissions from proposals will usually be subject to the approach as outlined in this guideline to ensure projects are considered in an effective, consistent and equitable manner. Notwithstanding this, the EPA will continue to consider proposals on a case-by-case basis and recognises that a flexible approach is important in driving innovation and improvement in best practice technologies.

This statement completely undercuts the certainty of the guideline. It reduces the clarity and certainty for business, investment and financier decision making when using this guideline. It is unclear when this prerogative will be exercised, and a project will be considered on a "case-by-case" basis? This statement needs more detail.

Decision Making Authorities: Commonwealth v State

The EPA are not the sole regulator of carbon emissions. The Commonwealth Government directly and entirely duplicates the EPA's regulation. An entire Agency, the Clean Energy Regulator manages the Commonwealth Government's response and regulates all Industry's response.

The National Greenhouse and Energy Reporting (NGER) scheme, established by the *National Greenhouse and Energy Reporting Act 2007* (NGER Act), is the single national framework for reporting and sharing company information about greenhouse gas emissions, energy production, energy consumption and other information specified under NGER legislation. An objective of this legislation is

[2] https://www.mediastatements.wa.gov.au/Pages/McGowan/2022/06/Ambitious-interim-target-set-for-State-Government-emissions.aspx

to “avoid duplication of similar reporting requirements in the states and territories”. This Guideline duplicates this robust legislative framework.

It must be noted that the current thresholds for NGER registration are more robust than the Guideline:

- Facility threshold: emission of 25,000 tonnes CO2 equivalent or more of greenhouse gases, energy production or more than 100TJ, or consumption of 100TJ or more of energy per financial year; and
- Corporate group threshold: emission of 50,000 tonnes CO2 equivalent or more of greenhouse gases, production of 200TJ or more of energy, or consumption of 200TJ or more of energy.

This ensures that all projects that are 75% lower than the baseline (i.e., 25,000 tonnes) are reporting their emissions. It would reduce duplication if the EPA were to accept the Commonwealth reporting.

The National Safeguard mechanism is the regulatory tool used to align large emitters with Australia’s commitment to the international community to reduce our carbon emissions. The mechanism provides a framework for Australia's largest emitters to measure, report and manage their emissions. It does this by requiring facilities whose net emissions exceed the safeguard threshold (currently 100,000), to keep their emissions at or below emissions baselines set by the Clean Energy Regulator.

Noting the WA EPA’s role as an advisory rather than policy making body it is disappointing that the Guidance makes no mention of the Commonwealth Government's policy and regulatory framework despite discussing the Australia’s international commitments. This omission provides a reader with the incorrect interpretation that the sole regulator of carbon emissions is the WA EPA. That is not the case, and this guidance would be improved if details were included that explained in the “Why does the EPA need an Environmental Factor Guideline for Greenhouse Gas Emissions?” how the regulatory frameworks overlap.

Clear definition of scope 1, 2 and 3 emissions

Industry considers there needs to be a clear understanding of what the precise definition is being used for the different scopes, to avoid confusion when reporting for an Environmental Impact Assessment (EIA). The Guideline text references the Commonwealth Government’s Clean Energy Regulator. If the EPA are following the Clean Energy Regulator’s definition of Scopes, that should be written in the body of the Guideline text. If the EPA are taking a different interpretation of the Scopes, that should also be clarified.

It would be beneficial to Industry if the WA EPA provided detailed guidance as to how their definitions align with the internationally recognised, and widely used, Greenhouse Gas Protocol[3]. Worked examples of how the scopes will be calculated be appreciated and provide certainty.

There has also been commentary surrounding the guidance that suggests that projects that fall under the 100,000-tonne threshold may be considered by the EPA. The EPA needs to clarify how and when they will consider whether a project needs to be drawn in and considered under this factor or not. The

[3] https://ghgprotocol.org/

expansiveness of the discretion means most companies will mitigate the risk when above 80,000 tonnes and refer to the EPA.

AMEC recommends the EPA should follow the Commonwealth Government regulator lead which has a firm 100,00 tonne threshold and clearer definitions on Scope 1 and 2.

Scope 2 reporting consistency & methodology.

There are concerns in Industry regarding the overall consistency of scope 2 emissions reporting. As has been raised in the briefing with the EPA, it remains unclear how the EPA will ensure that another companies Scope 1 will not be double counted as another's Scope 2.

Some proponents, such as Rio Tinto, own and operate their own electricity generation. Others do not and purchase electricity from another, separate legal entity. Abatement should be, and is, the responsibility of that separate legal entity.

A proponent may inadvertently "double count" their scope 2 emissions which may result in a number greater than 100,000 tonnes CO2-e of scope 2 emissions annually. Leading to an increase in regulatory process time that could have ultimately been avoided with the removal of scope 2 emissions from the guidelines.

Further guidance for companies on the EPA's preferred methodology for reporting Scope 2 emissions, whether that be through internal recommendations or taking examples from resources such as the GHG Protocol is needed.

Scope 3 emissions

It is unclear how the EPA will assess *whether reasonably practicable measures have been considered for Scope 3 emissions reductions, such as entering into arrangements with third parties to reduce emissions.* The fifth dot point (replicated above) in the Considerations for EIA, expands the EPA's consideration into Scope 3 emissions. In the mining and mineral exploration sector, most Scope 3 emissions beyond the EPA's jurisdiction.

The *Environment Protection Act 1986* is clear that the EPA's jurisdiction is Western Australia, the inclusion of consideration of Scope 3 is an overreach.

There are complications for long life projects where sales agreements or contracts are typically only for a specific period of time that is only a portion of the mine's potential life.

This dot point should be removed.

Furthermore, the clarity of the guideline would be improved if the word *generally* was removed from the sentence "Generally, the geographic scope of the EPA's obligations is the State of WA and its environment." On page 4, under the section, "*When this guideline may be considered".* It is, or it is not, the guidance needs to be tightened to provide decision makers with greater clarity.

Other Australian Jurisdictions approaches

In NSW, under the *State Environmental Planning Policy (Resources and Energy) 2021*, specific reference to scope 2 emissions is not present. *Section 2.21c* states, "that greenhouse gas emissions

are minimized to the greatest extent practicable." and *Section 2.22* states, "consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions."

Other Australian jurisdictions understand the importance of reporting GHG emissions to align their goals with the Paris agreement signed by the Australian Government. However, none have incorporated a specific figure for scope 2 emissions in the proposal stage for proponents, instead companies need to show that they are taking steps to mitigate their scope 2 emissions. The introduction of scope 2 emissions does not align with the goals of Streamline WA which seeks to reduce the cost of doing business and decision-making time.

Pathways, Benchmarks, "best practice" and Milestones

AMEC has concerns on the ability of the EPA to determine relevant sector pathways, benchmarks, 'best practice' and milestones for both existing and emerging minerals. There is concern within Industry of the regulator's capacity to assess any independently provided data or benchmarking.

It would be more transparent if the EPA were to report on what they considered the benchmark. Such a benchmark would need consideration of the production intensity and the distinction of baselines for new and existing facilities. The emissions profiles of existing infrastructure built in the 1970s will be substantially different from new build, greenfield sites. It would need to be a range rather than a single number.

The critical minerals opportunity in Western Australia is breaking new ground. Many of these new 'future facing' critical minerals projects will be the first of their kind in Western Australia. How will the EPA assess a benchmark and select milestones correctly? How can a company be expected to?

For example, Australian Vanadium Limited is currently seeking final approvals for its vanadium mine northeast of Geraldton after receiving $49 million grant from the Australian Government under the Modern Manufacturing Initiative Collaboration Stream. When becoming operational, this project would be the first of its kind in Western Australia.

How would the EPA be able to compare GHG emissions from this project which has a lack of local historical data to go off? The majority of current vanadium projects are located in China and Russia, both of which have a more lenient approach to GHG reductions and ESG expectations in comparison to Australia. Will they be the benchmark? How will the EPA assess the independent report a company will prepare?

The brief commentary on benchmarks needs to be expanded and greater detail provided as to what the EPA are seeking. It would be preferable if the EPA were willing to work with Industry on developing an independent benchmark.

Application

There has been a wider conversation in Industry as to how the Guidelines amendment to the consideration of scopes will apply. Will the new thresholds apply to all projects being assessed (or reassessed) or only those in the Part IV approvals? Will this guideline apply to agriculture and

forestry, as they are development that clears vegetation? How will it be considered for Native Vegetation Clearing Permits?

Periodic reporting

The current conditions in Ministerial Statements for GHG reporting are convoluted, difficult to understand and significantly duplicate with NGERS and National Pollutant Inventory reporting. As Part V consultation is underway, there is an emerging possibility of a further layer of duplication emission reporting.

Industry has noted that EPA already require annual audit reporting through their Compliance Assessment report. A possible solution would be that that EPA accept the NGERS reporting in that space as submitted rather than asking for reformatting.

Sub-2030 mine lives

The Guideline focuses on mine lives that reach beyond 2030, but many will not. This will mean that zero greenhouse gas emissions will be produced by 2030. Specific clarification as to how projects with lives less than 2030 will be considered is needed.

Narrative and guidance

The Guideline includes narrative regarding stating the EPA's interpretation of why we need a guideline. The guideline explains their views on Greenhouse gas emissions, climate science and frameworks agreements, and the National and Western Australian context.

While this text provides an explanation as to why the EPA perceives the guideline as necessary it does not provide any guidance to support proponents ensure they provide sufficient detail to the EPA for what is being assessed. AMEC suggests these sections be edited out.

This document is a regulatory tool, the document would be improved if these sections were cut and greater detail provided as to what specifically the EPA will need to make decisions, not as to why. The why is answered on the first page of the document under "purpose" and the "Why does the EPA need an Environmental Factor Guidelines for Greenhouse Gas Emissions?".

Memorandum of Understanding (MoU) between EPA and the Department of Mining, Industry Regulation and Safety (DMIRS)

The current formulation of the MOU between the EPA and DMIRS that specifies what needs to be referred to EPA does not include the GHG triggers. EPA has nowhere to go if a project triggers the scope 1 or 2 amounts, but has no other reason to formally assess the project as they cannot show the emissions would be able to be regulated by others. What happens if an existing project is putting in a Mining Proposal (MP) to amend some relatively small detail of the approved operations - is DMIRS required or able to ask for GHG emissions information to be included in the MP and a decision made to refer even if the amendment has nothing to do with a change in GHG emissions? The practical application of these guidelines needs to be considered.

Review

The guideline will again be reviewed in three years in 2025. Given the fast pace of reform, this is short time frame is supported by AMEC. Consideration must be given in that Review as to how this Guideline evolves and particularly how the WA EPA can step back from duplicating Commonwealth regulation.

Final Comments

AMEC appreciates the opportunity to comment on the Guideline, but consider that all Greenhouse gas matters should be regulated by the Commonwealth Government rather than explicitly duplicated. As has been noted, the EPA is legislated as an advisory body, not a policy making one. The EPA should look carefully at both the Commonwealth and Western Australian Government policy and ensure that its role aligns with both jurisdictions.

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AMEC