

**To: Department of Planning, Lands and Heritage (DPLH)**

**Re: Consultation Draft - Land and Public Works Legislation  
Amendment Bill 2022**

24 October 2022

## Introduction

AMEC appreciates the opportunity to provide a submission to the Department of Planning Lands and Heritage (DPLH) on the Consultation Draft of the Land and Public Works Legislation Amendment Bill 2022 (LPW Bill), seeking to introduce a new non-exclusive form of tenure to Western Australia, the 'Diversification Lease'.

We welcome Diversification Leases as unlocking greater potential use of Western Australia's rangelands than has been possible through the pastoral estate. However, ensuring the co-existence of this proposed new form of tenure with existing and future mineral exploration and mining tenures across the State is our priority.

## About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry association representing over 530 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.

## Land and Public Works Legislation Amendment Bill 2022

### General Comments

AMEC appreciates the willingness of the WA Government to engage with our members in multiple briefing sessions. The amendments propose a substantial shift from traditional management of land uses and tenure across WA. This shift represents increasing competition for viable land, and trends in the market to support emerging sustainable and renewable energy practices.

The briefing from Hon John Carey MLA, Minister for Lands, to AMEC and our members on Wednesday 19 October highlighted that our concern can be distilled to future land access. We welcome the Government's commitment to resolve issue of objections through the Warden's Court.

However, as we discussed during the meeting, and is detailed in the appended submission, our concerns with the four page policy framework have not been addressed.

We remain dissatisfied with the rushed process and lack of detail surrounding this broad suite of reforms. The continued reliance on an opaque existing internal process for the grant of tenure under the *Land Administration Act* does not meet the expectations of StreamlineWA.

The two weeks provided to comment on the Consultation Draft allowed limited time for meaningful comment or consideration of the legally complex interaction of the proposed diversification lease amendments with existing forms of tenure.

We are pleased to note that the amendments made by the Government align with what we anticipated and was foreshadowed in earlier briefings. The short timeframes for consultation mean we remain concerned with unintended consequences.

The continuation of the opaque “option” process will favour larger, more well-resourced, companies who have previous experience in engaging with the LAA, and disadvantages new entrants to the market. As has been discussed repetitively, if the Government were to provide greater guidance this barrier to entry could be lowered.

The below points have been highlighted by AMEC and our members as requiring further clarification.

### **Buffer zones**

No scientific rationale has been provided as to why a diversification lease demands the same buffer zones around a substantial improvement as a pastoral lease. The 400m from water infrastructure, historically, exists because of a fear that activity may prevent animals from accessing water. The 100 metre buffer around a house is due that being a place of domestic purpose. Both have been in place on clearly articulated rationale.

The infrastructure that is likely to use a diversification lease does not have these purposes. Furthermore, some infrastructure, such as wind turbines are likely to be dotted across the entire diversification lease.

This will create areas of exclusion for mineral exploration. DPLH has consistently argued there is a global trend toward bigger wind turbines, and the exclusion areas are not a concern, however there is no guarantee that every wind turbine installed will follow this trend. The claim that these turbines will be 3-5km apart lacks credibility, and is not consistent with wind farm set ups around the world. A wind turbine is spaced so they do not create turbulence for each other, for “*a 500 kW wind turbine this means 250 metres apart, and for a 2.5 MW wind turbine it is 410 metres*”<sup>1</sup>. The Scottish Government recommends<sup>2</sup>, “a separation distance of around three to four rotor diameters between turbines”.

While wind turbines have been a focus for responses from Industry, there may be other future uses that are similar.

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<sup>1</sup> <https://www.renewablesfirst.co.uk/windpower/community-windpower/location-size-no-of-wind-turbines/>

<sup>2</sup> <https://www.gov.scot/publications/onshore-wind-turbines-planning-advice/>

We suggest a discretion in the consequential amendments to allow the Minister for Mines to determine the buffer zone applied via Section 20 of the Mining Act for a diversification lease would resolve Industry's concerns. We consider such a discretion is not out of step with the legislative amendments which have been designed to create maximum flexibility.

### **S92(F) – Diversification lessee's duties as to leased land**

In light of the 2017 Auditor General's report into the *Management of the Pastoral Estate*<sup>3</sup>, and to be consistent with other non-pastoral tenure, the amendments should draw the Diversification Lease under the Environmental Protection Act. The Pastoral Lands Board do not have the regulatory expertise to ensure that the wide range of activities proposed for a Diversification Lease meet best practice. It is unclear why the Government considers that a diversification lease should not adhere to the environmental regulatory framework that they apply to all other industries other than the pastoral estate. This clause creates the situation where an industry under on free title will be held to one standard, and the same industry, on a diversification lease will be held to a different one.

### **S100A – Protection from personal liability for members**

AMEC is concerned with the proposed 'land condition standards'. Further detail and guidance on the proposed standards is required as a matter of priority in order to provide further meaningful feedback. However, initial details including what the land condition standards themselves will be; the benchmarks and objectives they will outline; what the standards, benchmarks and objectives will be based on; the proposed interaction between land condition standards and environmental legislation including EPBC matters of national environmental significance; and interaction with existing and/or near-term environmental and approval processes.

In an increasingly regulated landscape, the introduction of new standards and benchmarks is commented on with a sense of caution. Increasing complexity, time and costs in obtaining additional surveys and studies, and implementing measures, should be tangible, outcome-focussed, and result in genuine, demonstrable improvements, in consideration across the broad WA and Commonwealth frameworks.

### **S100A(3) – Land Management Guidelines**

The proposed 'land management guidelines' providing guidance on best practice for the management of land held under pastoral leases, is notably less rigorous than the standards the exploration and mining sector is held to. Similar to above comments about the complex and rigorous environmental standards, impacts and disclosures industry complies with, this is disappointing.

With the shift to cumulative environmental impacts at a State and Federal level, it is imperative that other, less regulated land uses, don't detrimentally impact the positive strides our industry is making to prioritise environmental, social and governance responsibilities, by quasi-legislative statements and aspirations.

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<sup>3</sup> Page 7, "The ecological sustainability of pastoral lands is not adequately protected by the State's current system of land monitoring and administration."  
[https://audit.wa.gov.au/wp-content/uploads/2017/10/repor2017\\_17-Pastoral.pdf](https://audit.wa.gov.au/wp-content/uploads/2017/10/repor2017_17-Pastoral.pdf)

### **S110 – Non-indigenous pasture not to be sown etc. on leased land without permit**

AMEC has been strongly engaged in Western Australia’s reforms to the Aboriginal Cultural Heritage (ACH) legislative framework. AMEC has a long-standing objective for increased clarity, certainty, efficiency and effectiveness of native title and cultural heritage processes 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.

The current draft legislation is silent on Aboriginal Cultural Heritage.

### **Final Comment**

AMEC appreciates the briefing from Minister Carey to our members on 19 October, in addition to briefings arranged by DPLH to engage our members in the proposed changes to the LAA.

We are pleased to note that the amendments made by the Government align with what we anticipated and was foreshadowed in earlier briefings. The short timeframes for consultation mean we remain concerned with unintended consequences. However, our greatest concerns remain with the lack of detail offered in the four-page policy framework and the impact of buffer zones around improvements.

### **For further information please contact:**

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