To: Department for Energy and Mining (DEM)

Re: Hydrogen and Renewable Energy Act

9 February 2023

Introduction

AMEC appreciates the opportunity to provide a submission to the consultation process guiding the development of South Australia's Hydrogen and Renewable Energy Act. We welcome continued engagement as this process continues, to ensure the views of South Australia's mineral exploration and mining industry have been appropriately considered.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry association representing over 540 member companies across Australia, with over 37 member companies with direct project interests in South 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 $39.3 billion in royalties and taxes.

In South Australia in 2021-2022(FY) mineral exploration expenditure was at an 8-year high at $122.3 million, a 34% increase from the previous year, and $2.5 billion was spent on capital expenditure. In 2020-21, over $237 million was generated in royalties from the $7.1 billion in mineral commodity sales, representing a record high.

Hydrogen and Renewable Energy Act

General Comments

AMEC acknowledges the need to develop a Hydrogen and Renewable Energy Act (HREA) in South Australia, to progress ambitious net zero and decarbonisation agendas at both the State and Federal Government level.

As a national industry association, we support land use for multi-purposes, without compromising the ability of mineral explorers and miners to access land in a timely and cost-effective manner.

Throughout the course of the development of a new legislative framework and supporting policy, it is important appropriate recognition is given to the crucial role mineral exploration and mining will play in decarbonisation and the transition to net zero. Without more mines, this ambition cannot be met in the target timeframe.

The decarbonisation of South Australia is contingent on land access to explore for and mine critical minerals. A forward-looking approach when developing this framework, will recognise the importance of mineral exploration and mining to South Australia's economy, and its renewable energy future.

Mineral explorers and miners across South Australia seek to work collaboratively with landholders, other land users and key stakeholders to ensure best practice relationship building principles are upheld, to support long-term, positive relationships across the State.

A balanced multi-land user framework, can strategically position the State to capture opportunities from minerals potential, as well as emerging renewable sources and other land uses. This will provide investors to South Australia, with the certainty and incentive needed to invest, to transform South Australia's economy.

State of South Australia's mineral exploration industry

Directly employing over 8,855 workers, South Australia's resources sector generated a record-high $323M in royalties in 2020-21 (FY). Mineral exploration reached an 8-year record high $122.3M, representing a 34% year-on-year increase. In CY 2022, to November 2022, 67 PEPRs were approved, representing 882,000m of approved drilling across South Australia; a 10% increase in PEPRs approved year-on-year, and a 17% increase in drilling metres approved.

These figures demonstrate there is a solid pipeline of demand for mineral exploration across South Australia. South Australia hosts many of the world's in-demand minerals, and has a range of projects progressing along the project development cycle, looking to transform the State into a minerals powerhouse. To do so, a fit-for-purpose regulatory system, complemented by effective administration of the system, is required. It must be supported by policy, regulation and legislative functions that facilitate timely, consistent and transparent approvals processes.

Independent research indicates it takes over 13 years to develop a mine from initial discovery in Australia, and that only 1 in 135 mineral exploration discoveries will develop into a producing mine. Nationally, 75% of these discoveries are now accounted for by smaller, equity-funded mineral exploration companies[1]. These junior explorers capture an estimated 64% of value created by the industry, at a value to cost ratio of $2.10 per dollar spent on exploration. Larger miners meanwhile, deliver an estimated $0.58 value per dollar spent on exploration. On average, from 1990 to 2017, $1.68 of value was created for every $1 spent on exploration[2].

South Australia's minerals sector is primarily comprised of private or ASX-listed mineral exploration companies, reliant on the ability to raise capital to fund their exploration activities. With only a small number of multinational enterprises, due consideration must be given to the operating practicalities and challenges facing junior-mid cap explorers and miners.

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[1] https://minexconsulting.com/recent-trends-in-the-the-australian-junior-sector/
[2] https://minexconsulting.com/wp-content/uploads/2019/04/Copper_to_the_World_Richard_Schodde_Keynote_address_27_June_2017.pdf

Explorers across the State recognise the importance of undertaking best-practice, early engagement with landholder, communities and other stakeholders. They consistently demonstrate innovation and ingenuity in discovering, extracting and processing the minerals hosted-naturally, which are the property of the State as per the principles of Crown Land in South Australia, to the benefit of local communities and the broader economy. It is the royalties generated by these projects that can help develop hospitals, roads, schools, and increase public service officers such as paramedics and police. The evolution and discovery of mineral exploration and mining projects across South Australia has a long history of increasing workforce participation, particularly in regional areas, and will continue to play an important role in progressing the importance of STEM to encourage under-represented groups to join the workforce.

With a cost-effective and transparent regulatory system that balances multi-access for varying land uses, South Australia's minerals sector can continue to deliver these wide-ranging, long-term opportunities to the State. However, there is risk that the large-scale nature of renewables projects, with the potential to outlay large investment and ambitions for the future, will sterilise land use required for other uses, including exploration and mining. This is an outcome that must be avoided.

The initial development of a HREA that acknowledges these nuances and the scale of mineral exploration projects across South Australia, reflected in suitable frameworks, can minimise concerns of increasing operating and approvals process costs, coupled with decreasing access to land. Costs, land access, and associated frameworks, must be balanced and scalable to the size and nature of the minerals industry in South Australia, if it is to continue to develop in line with Government's ambitions, to deliver a decarbonised future.

Multi-land user framework

AMEC supported the development of South Australia's multi-land user framework (MLUF) and sequential land use outcomes, to provide a framework to support the co-existence of multiple industries. In theory, this framework adopts the Commonwealth's COAG principles; in practice, there is room to streamline processes and develop an escalation pathway that is not a barrier to development for mineral explorers and miners.

These factors will be important when developing the HREA, as the Issues Paper has identified that renewable energy opportunities are recognised to exist in some of the State's most highly prospective mineral regions, as well as economically and culturally significant primary industry regions. Effectively balancing access to land for minerals purposes, and maintaining transparency to ensure an unintended preference for larger-scale and potentially higher-value projects does not develop, will be vital. If however there is a State preference for large-scale renewable projects over mineral projects, this must be communicated. AMEC will have strong concerns with such an outcome.

Stable, affordable and timely access to land underpins the viability of a jurisdiction's mineral exploration and mining sector. It is important the development and introduction of the HREA and associated framework do not result in unintended consequences for the minerals sector, making land access, which is already subject to extensive negotiation and agreement making, more challenging thus delaying the receipt of benefits to local communities.

Maintaining a framework that considers the geological endowment of the State should address potential challenges that could arise from competition for viable land, that may unintentionally sterilise a mineral resource.

Mineral exploration already coexists with agricultural and pastoral industries, and in a properly regulated environment, can also co-exist with hydrogen and renewable energy projects. For example, while certain land uses may not be compatible with other industry uses, such as hypersaline groundwater, mineral resources beneath the ground's surface can still be explored for and extracted, subject to robust regulatory approvals processes, to deliver benefits to the State.

Industry concerns are yet to be mitigated, that the preservation of land for renewables will not take precedence over land for mineral exploration, mining use, and / or other associated activities. This has for example, occurred in the Mt Lofty ranges of South Australia, with windfarm projects sterilising mineral companies' access to land. The size and scale of these renewable companies, means mineral explorers and emerging miners across the State will be unable to compete on cost, with large corporations.

AMEC welcomes clarity from Government that this scenario will not eventuate. It would deny the receipt of benefits to the State from minerals projects, and raise substantial questions of fairness and equity, in addition to investor concern, challenging the effectiveness of a multi-land user framework.

Stronger recognition of the importance of the minerals sector to South Australia is needed in the earlier stages of the HREA process, with input recommended from stakeholders via the establishment of a Statutory Advisory Committee including GSSA, AMEC, other minerals sector expertise, and the Executive Director of the Mineral Resources Division of DEM, to ensure while legislation may outline 'DEM representation', there is appropriate acknowledgement that the same Government Department will be regulating both minerals and renewables, and will likely face conflicting interests.

AMEC questions the overlap of HREA licences and existing Indigenous Land Use Agreements (ILUAs), Native Title Mining Agreements (NTMAs), Heritage approvals, clearance approvals, land access agreements, and cumulative impacts and emissions reductions obligations under State-based and Commonwealth environmental legislation? We recommend a clear map outlining the interaction of these various pieces of legislation, the presiding Government agency, current and planned future pathway forward, and associated timeframes and costs to navigate these processes. We also recommend the proposal to develop ILUAs for the renewables sector is extended to the mining sector. AMEC has consistently advocated for this, to streamline engagement and facilitate land access discussions.

The approvals processes and compliance functions mineral explorers and miners are subject to are robust, and much more stringently regulated than those of pastoral and agricultural sectors. The HREA must consider the potential ramifications of reducing certainty of access to land for the sector, as an unintended consequence. These concerns can continuously be addressed through best-practice, incremental reform processes and continued engagement.

Mineral tenure

Industry acknowledges the intent of Government that the grant of a Hydrogen or Renewable Energy license will not extinguish the future ability of explorers or miners to seek a tenement over that same land under the Mining Act or Petroleum Act. The extinguishment of land is an outcome that must be avoided. However, due to the complex nature of tenements and mining tenure law, uncertainty around overlapping tenements between various pieces of legislation, primacy between pieces of legislation and proposed land uses, extensions and/or renewals of tenures (including those in Retention status), miscellaneous purpose licences, and variations to existing tenure, has arisen.

Will the new provisions in the HREA requiring proponents to secure direct land access agreements with landholders on freehold land result in unintentional consequences for the broader minerals sector? There is concern this process could set a precedent, with terms of engagement and negotiation leaving explorers and miners at a compromised position to negotiate in good-faith with landholders. The recently introduced voluntary Mineral Exploration Land Access Code of Conduct AMEC was involved in co-developing with the South Australian Government underpins what effective, early engagement looks like, and supports the streamlining of project development by adopting early and effective engagement principles. These practices are upheld by our industry. Other industries engaging with landholders may unintentionally impact that good faith and reputation, and set unrealistic expectations based on potential capacity to pay, irrespective of the actual scale or nature of exploration and emerging mining projects. Similar policy provisions should be considered, to continue a best-practice South Australian approach to landholder engagement.

AMEC questions if the proposed new licensing arrangements for projects across all land tenure types will apply to those intersecting mining tenure under the ‘whole project life cycle framework’? Will mining and exploration tenements now be subject to this ‘whole project life cycle’ framework? This is a significant shift from current practice, and could have substantial impacts on our sector.

AMEC welcomes engagement with Government to ensure the proposed legislation will not detrimentally impact mineral explorer and miner’s access to tenements across South Australia.

Adjacent Land and Buffer Zones

AMEC recommends the definition of what will constitute ‘adjacent land’ for the purposes of the diversification lease, is clarified. This definition has arisen as a substantial concern in WA’s Diversification Lease framework consultation, and will likely present in other jurisdictions as well. It is currently unclear if adjacent land and buffer zones will be considered 100m, 250m, or more in all circumstances. There are multiple pieces of legislation in existence with the Mining Act that have varying interpretations.

Our concern is this could inadvertently and unnecessarily, create large buffer zones resulting in pockets of exclusivity. This phenomenon occurred in New South Wales around wind turbines, where the space required to be left between each wind turbine has resulted in large, unused viable pockets of land.

With an increasing focus on South Australian mining tenure being subject to ‘use it or lose it’ provisions where mining tenement holders are required to meet legislative and community

expectations regarding land use, the inadvertent creation of pockets of exclusive use should be an avoided outcome where possible. This can be addressed by defining ‘adjacent land’ to pre-empt challenges.

Further, to address ‘substantial improvements’, certain assets will have different buffer zones. AMEC recommends the buffer zones for substantial improvements on a HREA license are set to a default of zero, with the capacity to amend and expand the zone if agreed upon.

An additional question has arisen, as to how this introduction will co-exist with development pipelines? With a range of emerging minerals projects and precincts across the State to support developments, large infrastructure developments have been a State and Federal priority for some time. Will they still be permitted to proceed?

Industry has substantial concerns that HREA developments will lock mineral exploration out of substantial areas of the State. AMEC encourages early engagement with industry and a holistic Government approach to address this issue proactively.

Compensation

AMEC questions if consideration has been given to compensation provisions under the HREA, applicable to mineral tenement holders. In the event an area or project is deemed to be of ‘State significance’ or a similar, clearly defined alternative, will compensation be payable to mineral tenement holders and/or miners this may impact? Will mineral tenement holders have an ability to object to alternate land uses on their tenements or boundaries which will impact their projects?

The Issues Paper proposes damage that has been made good by the licensee will not be subject to compensation, but this creates ambiguity regarding the assessment of what constitutes ‘made good’, ‘damage’, investigation to ascertain who damaged the land beyond reasonable doubt (and liability), and satisfactory restoration. Ambiguous drafting of this section could unintentionally open any proponent or prospective proponent to damages, but it is unclear if explorers and miners will receive compensation. These are subjective decisions. To address ambiguity, they should be outcome and factor-based, for ready assessment.

In the likely event that mineral projects and hydrogen or renewable energy land use intersect, their co-existence must be managed practically and fairly, through this framework. Mineral resources cannot move as they need to be extracted where they exist, below the surface of the ground. For consistency across different land uses, it should be reasonable for a mineral project to claim ‘substantial loss of earnings’ from a HREA lease holder, resulting from the loss of the alternate use of land.

Mineral projects are typically subject to expansion as further studies are undertaken, and extraction methodologies are tested for feasibility and optimal recovery rates. The boundaries of these projects can expand, subject to approvals processes. There is potential conflict that may arise from shifting project boundaries overlapping. A clear, fair and equitable escalation pathway must be developed and head powers introduced in legislation, to outline a path to resolution that does not unintentionally favour larger operators.

Renewable Energy Priority Areas (REPA)

The interactive map and issues paper have demonstrated that the most viable areas for renewables overlap highly prospective areas of land for minerals. Balancing access must be the focus of the MLUF and associated decision-making authorities.

A proposed co-decision making process, which could encompass Native Title, must be properly defined, established and resourced, prior to commencement. AMEC recommends the consultation process is broad, to consider the wide range of industries and land users, both current and future, that may be impacted. While it is noted the Minister for the Pastoral Act and HREA will jointly determine areas suitable for REPAs, the Issues Paper has not included sufficient minerals representation. It is important to consider mineral prospectivity and viability in this process, formally.

Minerals representation in the proposed competitive acreage release process for REPAs for pastoral land and state waters must consider, acknowledge, and maintain minerals access without any changes to current or potential future uses.

Similarly, once a REPA has been declared, AMEC questions what protections have been considered to ensure that minerals that have not previously been explored for, but for which demand may emerge, can be accessed? This legislation should future-proof land access considerations for the minerals sector.

AMEC notes the need for consultative and informed decision-making processes. The ability to carry out these processes in a timely and effective manner will rely on sufficient capacity and resourcing. We recommend from the outset, to enable efficient processes and administration, specific funding is provided through forward-budget processes to sufficiently resource and develop these services.

Pre-competitive process

AMEC is concerned the proposed pre-competitive process to determine the location of hydrogen and renewable energy projects, focuses on pastoral land and state waters, but gives a disappointingly low level of acknowledgement to the minerals sector. It is also unclear how this pre-competitive process is sought to be introduced without amending other pieces of legislation, but connecting them, as there will undoubtedly be unintended consequences requiring legislative amendment to provide certainty.

By virtue of geology, pre-dating humans and manufactured renewable projects, minerals cannot be moved. Their deposits exist in the ground, where they are naturally hosted. Their extraction and recovery methodologies and pathways can be defined through studies, but unlike renewable projects that have not yet been developed, naturally-hosted resources cannot be moved. Acknowledgement should be given to this fact, and escalation pathways to address potential conflict when a mineral discovery is made in an area determined suitable for a renewable project.

Warden's Court

AMEC questions if the Warden's Court will be the preferred model to address competing claims for access to land, in line with order of primacy details to be developed through the HREA and Regulations?

Should the Warden's Court be the preferred point of escalation, adequate training and resourcing must be provided for the Wardens and their respective Departments. The unintended consequences of judgements and/or determinations arising from limited practical understanding of the nature of the minerals sector, could have long-term challenges for the future investment attractiveness and development potential of the State.

Similarly, appropriate resourcing will support efficient and timely processes to minimise the need for larger litigious processes, and unnecessary delays, which all come at an extreme cost, and delay the receipt of benefits to communities and the State.

With the Warden's Court and ERD Court already utilised under the existing legislation including the Mining Act, it is important that delays and unnecessary administrative burden is not introduced as an unintended consequence. There is potential for reforms to legislative processes to utilise the Warden in a mediation capacity, to address growing demand for Government support for unacceptable land access demands being delivered to mineral explorers. AMEC supports the pursual of this recommendation, however iterates the need for increased, appropriate resourcing and supporting frameworks to enable amendments to meet their intent.

Definitions

AMEC recommends robust consultation and engagement to provide clear, concise definitions through the HREA, in alignment with other existing and emerging pieces of legislation. Many of the terms will be used interchangeably due to similarities. To reduce ambiguity, clearly defined terminology specific to the HREA must be communicated, as well as any intent to change terminology relevant to the mining framework as a result of this process.

The definition of 'environment' as per the Issues Paper for example, includes natural, economic, social, cultural and visual amenities. The introduction of visual amenities extends beyond the scope of the accepted definition of environment under existing Commonwealth and South Australian legislation relevant to exploration and mining. Any intent to introduce new requirements, must be subject to consultation, and consider broad implications of expanding remits, through a cost-benefit methodology. Similarly, the definition of 'owner of land' must be carefully considered prior to Gazettal.

In another example, clarity is sought by the minerals sector, that the 'State strategic priorities' to deliver the 'greatest benefits for all South Australians and the environment' does not imply precedence will be given to renewables over minerals. The distinction between 'State significance' and 'strategic significance' will be another important factor, as the two will likely be used interchangeably, as currently occurs across existing legislation.

Industry questions what will constitute a 'fit for purpose financial assurance requirement at the licensing state'? This could vastly vary from a bank statement, to ASIC / ASX documents for listed companies, through to the equivalent of a PEPR. Clarity is sought.

The proposed introduction of 'hydrogen' into the definition of 'gas' is another definition requiring consideration. This does not appear to acknowledge that renewables extend beyond hydrogen.

Pastoral Act

It is noted that land access provisions in the current Pastoral Act do not provide the ability for Government to determine where projects should be developed. The ability to do so will require legislative change.

Should legislative change occur, there is a need to address land access provisions for other uses, including mineral exploration and mining, and the increasing, unacceptable fees being charged by some land users. While these agreements are typically subject to commercial-in-confidence terms, there is escalating concern that access agreements are becoming a barrier to development in prospective regions with a known potential for hosting minerals. There is welcome opportunity to clarify that pastoral lands are Crown Land, owned by the State, not freehold land, and terms of access must be fair and conducted in good-faith; a practice upheld by mineral explorers.

Industry questions how the proposed 'rent on the use of pastoral land for renewable energy projects' as raised in the Issues Paper will be considered, as this will undoubtedly have implications for rent on the use of pastoral land for minerals purposes.

Mediation

Similarly, mediation provisions applicable to both hydrogen and renewable energy uses should be considered holistically, to identify opportunities to enhance current mediation and escalation frameworks available to explorers and miners negotiating with other landholders. There is room to establish fair and transparent pathways to mediation, including via the Warden's Court, through the existence of two Warden's, as introduced in Western Australia, to permit mediation. If pursued, this system should be appropriately resourced to meet expected increased demand.

Mediation is typically favoured by explorers and miners as a less litigious settlement of challenges pertaining to land access and 'reasonable' fees and/or terms of access. Whilst much of the detail of these negotiations is subject to commercial confidentiality, there has been an increasing level of difficulty in negotiating in good faith. AMEC welcomes a strong Government position to ensure mineral explorers and emerging miners are not unfairly disadvantaged by larger companies, where landholders consider they may be entitled to larger compensation payments, thus inclined to prolong land access negotiations. We work in good faith with other stakeholders and welcome continued opportunities to do so.

Native Title

AMEC has long-advocated for South Australia's minerals sector to shift from Part 9B, the management of Native Title under the Mining Act, to 'Right to Negotiate', in alignment with all other jurisdictions, and the Commonwealth's *Native Title Act 1993*.

AMEC has a long-standing objective for increased clarity, certainty, effectiveness and efficiency of native title and cultural heritage to ensure fair, equitable and consistent negotiated outcomes and benefits for Indigenous people, Government and Industry. A Right to Negotiate process for the HREA will enable South Australia's hydrogen and renewables sector to reduce time and cost delays and uncertainty for all stakeholders, increase relations, engagement, integrity and confidence in decision-making processes, and ensure compliance. This process is supported in principle, and should be

applied to the minerals sector, to enable timely access to land to meet diligent exploration and negotiation expectations.

Notification

AMEC recommends a clear notification system is developed, to advise tenure holders their tenure is now subject to, or planned to be subject to, a HREA lease. It would be helpful to also be advised of who the leaseholder, to promote best practice engagement principles.

AMEC recommends guidance material is developed to provide clarity on timeframes and notification requirements for varying types of tenure.

Best practice regulation

AMEC appreciates the willingness of DEM to engage with our members via information sessions and specific briefings, to discuss the interaction of the HREA with mineral tenure. Throughout the development of the HREA, supporting Regulations and tools, we request ongoing engagement to ensure industry has a strong voice to this process.

We also welcome 'a mechanism to share the future benefit of the value associated with access to natural resources', but seek further clarity on these statements to understand the potential impact on the minerals sector, to support the effective coexistence of multiple land uses across the State.

The development of scales and thresholds for example, will determine whether or not a project is subject to the 'one Act', or will continue to be regulated under existing provisions. The interaction of these projects and developments with the Mining Act and other legislation, will underpin the State's accessibility to the minerals sector and its ability to grow to meet global demand.

Environmental impact

AMEC notes the strong ambitions of State and Federal Governments to address climate and environmental concerns through a robust legislative reform agenda. We question the interaction of State and Commonwealth environmental, Native Title and Cultural Heritage processes and procedures, under existing and proposed new frameworks. There is opportunity to address significant duplication, and progress the accreditation of the State under an EPBC bilateral for approvals, without compromising the value of meeting environmental outcomes.

We note it is proposed DEM will administer the HREA as a prescribed body for engagement under the Planning and Development Act. Will hydrogen and renewable energy projects be subject to a scoping process, similar to what is being developed for the exploration and mining sector? It is important through the drafting process, a clear and defined path to approvals is developed, adopting a holistic overview of all intersecting and overlapping legislative instruments and other land uses that may be encountered. This will enable a strategic oversight of realistic timeframes, and enable informed resourcing decisions.

Further detail on how these challenges and nuances seek to be addressed and mitigated is welcomed. For example, while net environmental benefit is broadly supported, how will this be addressed via approvals processes and compliance reporting against region-wide and/or cumulative impacts and requirements? Is there a scale or economic threshold proposed for projects to meet

before demonstration of a circular economy outlook is required? This could unintentionally impact junior and emerging proponents, which should be avoided.

Engagement

AMEC is concerned the drafting of the Issues Paper appears to only require demonstration of landowner engagement in stage three of the 'on-ground activity approvals' process. Early engagement occurs in the minerals sector, before exploration, let alone approvals. It is important for consistency and to maintain positive landholder relations, and support a viable MLUF, similar provisions and expectations are upheld of other industries who currently have less rigorous regulation and social licence expectations across many areas.

Resourcing

AMEC again recommends a substantial increase in Department for Energy and Mining (DEM) resourcing to meet increasing demand for approvals and regulation. The Mineral Resources Division will undoubtedly receive increasing requests for information, compliance and enforcement actions to support the development and when introduced, co-existence of these frameworks. With heightened demand and increasing timeframes for approval, it is important a stable regulatory and investment framework is prioritised, by increasing resourcing specific to this Division, to meet greater demand.

Tenure terms

Renewables projects are likely to be long-term investments the larger the scale of the project. The term of tenure should not by default, be in excess of existing tenure lengths and requirements. Use it or lose it provisions, demonstration of activity against minimum expenditure requirements, and transparency, must be introduced through the HREA and Regulations. This will provide an element of much needed consistency across the varying types of tenure in South Australia, without unintentionally favouring one land use over other, proven land uses.

Similarly, the maximum size (boundaries) of all types of tenure for renewables licences must be effectively balanced against existing tenement ranges. Due consideration should be given to boundaries, accessibility, viability of land for different uses, and likely potential to expand. Maximum tenement sizes should be outlined in legislation, consistent with existing tenure types, and aligned to planning and development frameworks. This is particularly important as buffer zones and substantial improvements from one tenure type could intersect minerals tenure. How this is balanced without sterilising land or resulting in litigious processes to the detriment of communities and the state, should be subject to consultation in the next phase of the HREA.

It is noted the Issues Paper outlines powers for the Minister to authorise an extension to a Renewable Energy Feasibility Licence (REFL) at the end of a licence term, premised on the licensee's performance against the approved programme of work or selection criteria. The terms of this extension should be subject to clearly defined terms and extenuating circumstances. This is similar to advocacy AMEC has engaged in to reinstate the Minister's discretion to extend 18-year maximum mineral tenement licences, due to an Act provision that removed this discretion. The current framework does not acknowledge commercial transactions or operating practicalities, so AMEC has engaged with the Minister and Government to outline a range of paths forward for reform.

Transparency and use it or lose it being effectively applied will underpin the effectiveness of this framework, and the competitiveness of South Australia's land access system.

Similarly, automatic renewal and extension proposed for hydrogen and renewables, are out of step with other industries, and should not be introduced. For consistency and transparency, these industries must be held to the same account as existing industries, and demonstrate performance against key metrics, to qualify for extension. This will prevent land-banking and ensure competition for land access is high, to stimulate activity to the benefit of regional communities and the state.

Any licences that are granted, be it inside a REPA or outside of, must be subject to a level of rigour and risk-based assessment, where the level of assessment is commensurate to the actual level of risk posed. The justification for the grant or refusal of tenure should be publicly released via a similar mechanism as the 'Mining Register', to allow proponents to clearly understand Government rationale for decision making, subject to commercially confident terms. This will ensure the intent of the HREA not to negatively impact the Mining Act and tenure under it is upheld, and measure performance against key criteria. Hydrogen and renewable energy proponents, as mining and exploration proponents already do, should be required to demonstrate early and ongoing stakeholder engagement to ensure best practice land access for the sector, is upheld. Guidelines, policy, and example templates can be developed in consultation with industry to support the Act and Regulations.

Mining Rehabilitation Fund (MRF)

The proposed introduction of financial assurance for rehabilitation requirements is another area of increasing cost burden concern for AMEC. The HREA should not introduce environmental performance bonds. The recently passed Mining Act introduced head powers for a Mining Rehabilitation Fund (MRF), a national best-practice framework to support a reduction in environmental performance bonds, whilst maintaining rehabilitation commitments. Industry is still awaiting its establishment.

The MRF is an effective alternative to relying on consolidated revenue for rehabilitation, when introduced with a corresponding staggered removal of environmental performance bonds held by the Government. It allows a company's capital that is otherwise quarantined under current arrangements, to flow back into the market, without diminishing environmental obligations. When correctly established, the MRF meets stakeholder expectations of early, proactive, environmental and rehabilitation consideration and planning. Interest earned from the MRF can be focused on the rehabilitation of legacy sites across the State, to utilise money that would otherwise not be available to the Government, mitigating the need for cost recovery. A similar head power and corresponding establishment of a MRF should be progressed under the HREA.

Co-regulatory agency roles

AMEC requests strong industry engagement on the devolvement of roles and responsibilities under the auspice of the HREA and associated reforms, to ensure there is a transparent, pragmatic path of progression through co-regulatory agency processes. Efficient timeframes, reasonable costs, and single-touch approvals should be sought wherever possible.

As co-regulatory agencies will have a voice to the allocation of renewable projects, licensing and regulation of proposed activities, a clear understanding of the remit of each agency, and the ultimate authority for approval, is recommended from the outset.

It is important the appropriate representatives are party to legislated co-regulatory working groups and committees, to hold timeframes to account, and represent disparate interests that are likely to occur from competing access to land and resources.

Renewables for energy creation and distribution

Industry questions the planned approach to regulate the planning and development of renewable energy uses for projects that seek to incorporate renewables for energy creation, usage and distribution, rather than solely for generation?

Many mining and associated projects must demonstrate against State and Commonwealth environmental legislation, a transition to net zero. This incorporates the use of renewables and emerging technologies. As such, they will need to consider additional frameworks to comply with, beyond those they would typically encounter. Do renewable projects for instance, interact with the EPBC nuclear trigger in a consistent manner as mining and exploration projects do, or will they require separate risk and radiation management plans?

Renewable Energy Infrastructure Licence (REIL)

Industry notes revocation may occur on the basis of 'project milestones' not being met. This appears inconsistent with not achieving defined 'project outcomes', 'defined terms' or 'objectives'. Definitions to address ambiguity and potential jurisdictional-leakage of terminology, is recommended.

Similarly, the maximum terms, size and boundaries of REILs should be outlined in legislation, consistent with REFLs and the various license types under the HREA, despite the size of the REIL to be determined by the Minister. It must be within boundaries for consistency. This will ensure land is not unnecessarily sterilised, and sufficient long-term planning can be undertaken.

Research & Demonstration Licence (pre-feasibility) of energy and hydrogen technologies

AMEC questions if critical minerals projects utilising renewable energy and/or hydrogen sources for R&D purposes will be able to apply for this licence type? The Issues Paper advises this type of licence can be granted anywhere in the State, which could imply this type of facility is permitted in State Forests and conservation areas.

Final comment

AMEC welcomes ongoing consultation as the development of the HREA and supporting policy progresses. It is important to ensure robust consultation considers the range of existing and emerging land users across South Australia, primarily mineral explorers and miners, who will undoubtedly face increasing competition for access to viable land with the emergence of renewables. Coexistence and sequential land use can occur, when effectively balanced through legislation, and administered through regulation, in the right public policy settings.

AMEC welcomes further engagement to ensure the development of the HREA will not impede land access and development potential for South Australia's minerals sector.

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