

To: Department of Mining, Industry Regulation and Safety

Re: Fee for Objections under the *Mining Act 1978*

6 November 2023

Introduction

AMEC welcomes the opportunity to provide comment on the drafted consultation document on the *Fee for Objections under the Mining Act 1978* (the Paper). We have appreciated the briefings provided by the Government throughout the consultation.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry association representing over 560 member companies across 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.

General Remarks

AMEC is supportive of the introduction of a fee for objection and a flat, undifferentiated, rate of \$859 per objection.

The introduction of a cost will, we hope, reduce vexatious and frivolous objections which are a cause of delays for accessing tenure. However, as stated below, the Consultation Paper needs to clarify further details around the rates calculation and should explore other sensible policy options to reduce objections.

The analysis of a single period of objections between April and May 2022 creates statistical issues with a small sample size, such as a potential for a larger deviation and bias from certain events. Industry noted that this period included an unusually large number of objections in the South West, where there is an interaction between private property holders and tenements.

Levying a fee for an objection

The raising of an objection is not without costs to government and industry. Currently the objector faces no financial burden to create an administrative burden for the Court, Government, and industry. This must change so that each objection is given due consideration.

The current Warden's court faces a substantial administrative burden from objections that ultimately have a low probability of success due to their drafting, intent, and lack of validity. The objection

process is weaponised strategically to forestall the rights of other parties to explore for minerals. Industry has noted that a sizeable percentage of objections are speculative and will never have consideration by the Warden.

AMEC considers that raising the cost of objecting will reduce the number of objections that are lodged simply due to a belief that the activity should not occur rather than the impingement on a right.

Flat rate

One rate should be charged for all objections lodged.

The current fee schedule issued by the Department of Mining, Industry Regulation and Safety does not include any form of tiers, consideration of capacity to pay or hardship. If the Government were to consider levying differing rates on a metric, Industry respectfully suggests the Government should consider several other fees in the schedule as well. It is unclear what would be a reasonable justification for such a structure of fees.

Methodology

It is unclear what methodology was used to calculate \$859, however, it is assumed the administrative burden was divided by the number of objections. Clarity on the costs and numbers used would be welcome.

Administrative burden of an objection

Greater clarity of what the administrative burden of an objection is needed. The consultation paper is silent, other than to state it such a burden exists. There is an assumption implicit that this administrative burden is a foregone conclusion and an unavoidable necessity. A necessity that cannot be overcome by work practice or procedural efficiencies. Seeking to improve process is AMEC's first preference. The opacity of what is the administrative task faced by the Department in the Consultation Paper renders it difficult to comment on the scale of the fee.

Role of True Fella decision

The graph "Objections Lodged" on page 5 (point 6) depicts a clear spike in the number of objections lodged. Curiously, the Consultation Paper makes no comment on this obvious anomaly. This is because this jump is an unintended consequence of the True Fella decision. The Warden's, when ruling on True Fella, caused a large portion of the industry to protectively over peg their own applications for as well as granted Exploration Licence's. That, of course, triggered duplicate objections. So, since True Fella, it is hardly surprising that the number of objections has jumped.

The Government must remedy the True Fella decision as a priority. The current approach which appears to be one of waiting for a market or court led solution is a source of frustration, as Government holds all of the legislative and regulatory tools necessary to resolve this issue.

Miscellaneous Licences

It has been noted by Industry that the Consultation paper does not analyse what type of tenure is objected to. It has been suggested that it is likely a large majority of objections are due to miscellaneous licences interacting with substantive tenure. Reducing this volume of objections would

be more effectively addressed through consideration of how the Mining Act operates rather than the increasing of fees. If the Mining Act were to protect substantive tenure parties' interests, everyone would not need to object to such overlapping tenure.

Industry has noted that a standard access deed may also be considered as a path to improve the accessibility of tenure. Similar to the intent of the Registered Standard Heritage Agreement, standardisation presents a path to reduce industry objections. However, a legislative fix is preferable.

Observation on Warden Court practice impacts on list length

When an application, subject to an objection, is withdrawn, it is current practice for the Warden Court to list the withdrawn application to obtain the objectors consent to the withdrawal. There is no justification for this. A tenement dies on the lodgement of the withdrawal, and at that point, there is nothing to object to. Historically, the objection did just fall away with the withdrawal and nobody had to stand before the court. Industry has observed that the current Warden Court practice increases the volume of matters before the Warden and it is respectfully suggested, in this instance, an unnecessary step. Clarity on why this practice is necessary would be welcome.

Concluding Remarks

We welcome the opportunity to further discuss this submission where appropriate, as the fee for objectors will ensure the cost of the service is reflected.

For further information please contact:

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Association of Mining and Exploration Companies

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