

**To: Department of Resources**

**Re: Coexistence institutions and CSG-induced subsidence management framework**

**Date submitted: 8 January 2024**

## Introduction

The Association of Mining and Exploration Companies (AMEC) appreciates the opportunity to make a submission on the consultation paper, *Coexistence institutions and CSG-induced subsidence* (2023) (the Paper). AMEC is actively engaged in these matters and is in an excellent position to articulate the real and potential impacts of these proposals on the exploration and mining industry, particularly junior operators.

## About AMEC

AMEC is a national peak industry body representing over 560 mineral exploration and mining companies across Australia, with almost 80 having operations based primarily in Queensland. Our members are mineral explorers, emerging miners, producers, and a wide range of businesses working in and for the industry.

Mineral exploration and mining make a critical contribution to Australia's economy, directly employing over 274,000 people. In 2020/21 the 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. Australian Bureau of Statistics (ABS) figures from the June 2023 quarter were record breaking, with Queensland exploration rising by 20 per cent quarter on quarter to \$147.8 million.

AMEC's Queensland members explore for, develop, and produce minerals including antimony, bauxite, coal, cobalt, copper, gold, graphite, lead, lithium, manganese, mineral sands (such as silica), molybdenum, nickel, phosphate, rare earths, silver, tungsten, vanadium, and zinc.

## Part A: Proposed amendments related to risk-based management of CSG-induced subsidence

AMEC's comments on Part A will focus impacts on the proposed Land Access Risk Assessment Framework, as this is the element of Part A of the Paper that will impact on the minerals sector.

In the first instance, we note that the new framework will apply only to tenures that fall within the *Mineral and Energy Resources (Common Provisions) Act 2004* (MERCPC), and will therefore not apply to mining leases, mining claims or prospecting permits. AMEC would like to see a full list of the tenures to which the proposed amendments will apply, along with consideration of any transitional arrangements that may be required when introducing the new framework.

The Paper outlines a proposal to introduce a new requirement to the land access framework for a land access risk assessment for preliminary and advanced activities. Tenure holders will be required to provide the risk assessment to landholders that have resources activities on or under their properties, to assist them in understanding the impact on their business and land use activities. The tenure holder will also be required to outline whether it believes the proposed activities are preliminary or advanced activities. Disputes relating to whether an activity is preliminary or advanced will be able to be referred

to the independent Land Access Ombudsman to make a binding decision on the matter (this matter is discussed further in the next section of our submission).

AMEC appreciates that providing a risk assessment to the landholder could facilitate better understanding and management of risks by both parties. Our concern, however, is how this framework would be implemented in practice. For example, undertaking the proposed risk assessment requires information from a landholder regarding his or her property, operations, and businesses. The Paper indicates that the landholder will have to provide required information within a reasonable timeframe, however there are some details that need to be explored regarding how this might operate in practice. For example, to what extent will a landholder be obliged to ensure that the information provided is accurate and will a risk assessment be rendered invalid if the information provided by the landholder is found to be inaccurate? Can a landholder waive the right to a risk assessment if he or she does not believe one is required or would prefer not to supply the required the information for a risk assessment to be completed?

AMEC has previously identified a series of issues that explorers are facing in their efforts to meet land access requirements and we are concerned that, if these issues are not addressed, the introduction of a land access risk assessment could increase the frustrations of both landholders and tenure holders with respect to land access arrangements. This is because the obligation to provide a risk assessment to the landholder not only increases the obligations of explorers, it also increases the need for the cooperation of landholders when meeting land access regulatory requirements.

In this context, the following matters previously identified by AMEC need to be addressed in conjunction with the proposed new risk assessment framework:

PROPOSAL	DESCRIPTION
<p><b><i>Responsible person is at a minimum the landowner or the person who has day-to-day management of property, not the legal representative or land agent/advisor</i></b></p>	<p>The 'responsible person' for land access negotiations needs to be defined as the landowner or the person who has day-to-day management of the property, not the legal representative or land agent/advisor. AMEC is in no way opposed to having legal representatives or land agents/advisors providing advice and being involved in negotiations; however, an increasing number of explorers have not been permitted to engage directly with the landholder but are instead directed to a legal representative or land agent/advisor who acts in an obstructive and costly manner that is disproportionate to the disturbance being proposed. This results in a land access process that is prohibitive to access and costly in time and compensation.</p> <p>The role of the 'responsible person' under the Land Access Code is responsible for communication and is required to have knowledge of the property and its operations. This role cannot be performed by legal representatives or land agents/advisors, as they are not sufficiently knowledgeable regarding the day-to-day operations on the relevant land. This issue will become even more significant if a land access risk assessment is required, as detailed knowledge of the property will be necessary to complete the assessment.</p>

<p><b><i>Define the rights of each party to minimise the risk of conflict escalation</i></b></p>	<p>Clearly defining the rights of each party involved in the negotiation will help minimise the risk of conflict escalation. This could be done in a way that builds capability, for example by giving clear guidance regarding what “good” conduct looks like, what “bad” conduct looks like, and the possible consequences of different behaviours. This guidance will become even more important with the introduction of the requirement for a risk assessment notice.</p>
<p><b><i>Embed limitations on decision making timeframes</i></b></p>	<p>Setting clear guidance or embedding limitations on timeframes will help deliver clarity on when a decision will be made and consequently when equipment is required. Exploration, especially in Queensland, has seasonal limitations. As a result, having certainty on when access should be resolved also delivers certainty regarding equipment and other sub-contracting requirements. Certainty delivers efficiencies and drives down costs, thereby making Queensland a more attractive place for doing business.</p> <p>AMEC is pleased to see that the proposed Land Access Risk Assessment Framework proposes to include requirements for information to be provided by landholders within a reasonable timeframe; however, the requirement for the landholder to meet reasonable timeframes needs to be extended across all elements of the land access process.</p>

In addition to addressing the issues previously raised by AMEC, substantial and detailed work will also need to be undertaken to ensure that the sector understands what constitutes a valid risk assessment. For example, we believe that the Department of Resources (DoR) will need to support the implementation of the risk assessment framework by developing templates, model risk assessment(s) and/or guidelines relating to the risks associated with exploration activities for properties undertaking different activities and businesses, (e.g. livestock production, cropping, tourism, organic certification). If such work is not undertaken, explorers will need to develop their own templates and risk assessment approaches, with the result that the risk assessment process leads to increases in costs, substantial variation in risk assessment methodologies and a significant risk that tenure holder inadvertently supplies an invalid notice.

Given these considerations, AMEC believes that further work by DoR on this proposal is required, as well as more consultation with our members, before we can form a view on the relative benefits and costs of introducing a Land Access Risk Assessment for exploration. As indicated previously, while we can see the potential benefits that the proposal could have in increasing understanding and management of land access risks by both explorers and landholders, there is also a need for the Government to look more holistically at the land access regime if the intent behind introducing this measure is to be realised.

AMEC also noted the following detail in the Land Access Risk Assessment section of the Paper:

- **Responsible entity:** *tenure holder*
- **Timing:** *at least 20 business days prior to commencement of proposed activity*

Companies are currently only required to provide Entry Notices 10 business days prior to entry; it is unclear if the ‘20 day’ notice period is an error in the Paper, or it is the intent of DoR to change the entry

notice requirements. For the sake of clarity, it is AMEC’s position that the requirement should be 10 days for both.

## Part B: The review of coexistence institutions

### GasFields Commission Act 2013

AMEC supports the broadening of the remit of the GasFields Commission Queensland and its transition to Coexistence Queensland. However, to be effective the organisation will need to be properly resourced with people who have the knowledge and skills necessary to undertake the expanded role and meet the needs of land holders, the resources sector, and the growing renewable energy sector.

Consistent with AMEC’s submission in February 2023, AMEC recommends that consultation is required to understand the emerging needs of the minerals and the renewable energy sectors in relation to managing coexistence issues. These activities could include:

- Understanding/evaluating the performance of the current arrangements to identify what is working well and areas for improvement.
- Asking junior operators and tenement managers what services would deliver the most value.
- Analysing emerging issues between the resources sector, renewable energy projects and the agriculture sector, as well as their geographical location.
- Identifying services and administrative mechanisms in other jurisdictions that help successfully manage coexistence, for example diversification leases used in Western Australia.

More needs to be done to not only ensure better coexistence between landholders and renewable energy proponents, but also better coexistence between renewable energy project proponents and resources tenure holders. Current member experience demonstrates that policy is not keeping pace with what is happening on the ground, for example the current tensions being experienced because of the declaration of Restricted Area (RA) 451 to facilitate development of the MacIntyre Windfarm.

The MRA and MERCPC provide a structure for explorers and landholders regarding access for minerals projects and co-existence, while the Planning Act provides structure around land access for renewable energy projects and landholders; however, the legislation and associated processes do not work together to provide a pathway for resolving competing land use and access issues between minerals explorers and renewable energy project proponents. Without a legislative framework for managing coexistence between the renewable energy and resources sectors, an increasing number of conflicts will end up in the Land Court, with the undesirable outcome that judicial decisions will become quasi-legislation.

The Government needs to act urgently to address the issue of coexistence between the renewable energy, resources, and agricultural sectors by developing a future-proofed policy that is supported by pragmatic regulation and helpful tools. While this is a whole-of-government responsibility, this effort should be led by DoR, given its experience in managing land use conflicts, including overlapping tenure arrangements and the existing land access framework.

To this end, AMEC continues to advocate for the following measure:

<p><b>Overlapping tenure clarity</b></p>	<p>With the release of the new Queensland Energy and Jobs Plan, delivering certainty in the regulatory framework for overlapping tenure between explorers and renewable energy developers will be key to the plan’s success. Many of the minerals in the ground across Queensland are critical to the infrastructure and battery demands that the plan seeks to deliver. However, while land access considerations for minerals are regulated by the MRA and MERCPC, renewable projects are regulated under the Planning Act. Although the framework has an</p>
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	<p>overarching policy objective of “coexistence”, it nevertheless introduces significant project risk to all parties and potentially costs if these issues play out through the Land Court.</p> <p>The Government should address the issue of coexistence between renewable energy projects, resource tenures and agriculture and develop a future-proofed policy that is supported by pragmatic regulation and helpful tools, with this work led by DoR due to its experience in managing land use conflicts, including overlapping tenures and land access.</p>
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## Land Access Ombudsman Act 2017

AMEC is encouraged that the DoR has listened to industry feedback regarding the escalation pathway for land access issues and is proposing to expand the functions of the Land Access Ombudsman (LAO). Specifically, AMEC supports the involvement of the LAO in matters arising under the *Mineral Resources Act 1989*, a move that will help resolve disputes more amicably and avoid the situation where disputes end up in the Land Court.

At the same time, AMEC believes that the Government needs to take a more holistic view of current land access arrangements to help minimise the likelihood of disputes escalating to either the LAO and/or the Land Court. We have previously put forward several case studies and court actions that demonstrate that more could be done to facilitate timely and fair outcomes on land access issues, including in relation to compensation. These examples include the following judicial decisions:

- *Horizon Minerals & Anor V Stacy (2021)*, where the Land Court rejected the compensation assessment of the landowner assessed at \$723,699.50 and determined it to be \$56,825.50 payable by the resource holder, noting this was \$38,648 compensation pursuant to section 81 of the MERCPC and \$18,177.50 in costs.
- *Hail Creek Coal Holding Pty Limited & Ors v Michelmore (2021)*, where the Land Court rejected the compensation assessment of the landowner assessed at \$14,850,000 and determined it to be \$530,530 payable by the resource holder.

As previously advised, we believe that the following measures would provide for a speedier and less costly resolution of land access matters, while at the same time ensuring a fair outcome for landholders:

PROPOSAL	DESCRIPTION
<b>Cap negotiation and compensation costs</b>	Similar to the <a href="#">New South Wales model</a> , Queensland needs to introduce measures that cap the costs involved in the land access negotiations, as well as guidance on calculating compensation costs for material impacts and rehabilitation. AMEC has provided examples and cited judicial decisions that demonstrate that there are some entities that are exploiting explorers for personal gain. Capping compensation costs and providing guidance would facilitate negotiations that produce fair outcomes for both landholders and explorers, as well as increase certainty for both parties.
<b>Share mediation costs</b>	Embedding within the framework that mediation costs are shared would facilitate expedited resolution of land access. The current framework, where all costs sit with the explorer until the matter is referred to the Land Court, does not support resolution of land access matters, particularly in scenarios where the entity involved is being obstructive and seeking to gain personally. Such behaviour is inconsistent with the spirit of the land access framework.

## General comments

For further case studies and discussion regarding the experience of AMEC members with current land access arrangements, please refer to our [submission](#) on the discussion paper, *Land Access and Coexistence: A review of coexistence principles and coexistence institutions*.

## Conclusion

AMEC welcomes the opportunity to discuss this submission with the department, as well the opportunity to facilitate direct engagement with our membership on these proposals, as they are developed.

## For further information contact:

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