AMEC
Association of Mining and Exploration Companies

To: Department for Energy and Mining (DEM)

Re: Hydrogen and Renewable Energy Regulations – Pre-Consultation

10 January 2024

Introduction

AMEC appreciates the opportunity to provide a submission to the Department for Energy and Mining (DEM) following the release of the *Hydrogen and Renewable Energy Act 2023* (HRE) Regulations pre-consultation materials. We appreciate the engagement to date from DEM, and welcome continued consultation as the Regulations and policy are developed to support the implementation of, and transition to the HRE framework.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry association representing over 570 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 2021/22 Industry generated a record high $413 billion in resources exports, invested $3.86 billion in exploration expenditure to discover the mines of the future, and collectively paid over $63 billion in royalties and taxes.

In 2022-23 (FY), $229.3M was spent on mineral exploration in South Australia, an 84.47% increase in original terms, from the $124.3M[1] spent on mineral exploration in 2021-22 (FY). Mineral resources exports were recorded at $6.8B for the 2022 financial year, while $2.95B was spent on capital expenditure. In 2022-23, over $286.9 million was generated in royalties from mineral commodity sales, representing a record high.

Development of HRE Regulations

General Comments

AMEC welcomes the development of South Australia's renewables potential, to coexist with existing and emerging industries, namely the mineral exploration and mining sector. With a range of projects progressing through the development cycle, there is opportunity, in the right legislative and policy

[1] https://sarigbasis.pir.sa.gov.au/WebtopEw/ws/plans/sarig1/image/DDD/205102-001

settings, to enable the two complementary industries to co-exist with other industries, and support the State's strong reliance on its primary industries.

Through the development and passage of the Act, a large amount of detail has been left to be prescribed in Regulations or policy. It is imperative for all industries that consultation processes are robust, best-practice, and can mitigate unintended consequences prior to passage through parliament.

Resourcing to support business continuity

Whilst the resource-intensive parliamentary process occurs, and additional expertise is required to develop transitional materials and supporting policy, it is crucial that DEM is able to continue progressing business as usual duties including applications and approvals for the exploration and mining sector. Progressing these applications in a risk-based, efficient manner can ensure the maximum value is derived from the state's resources sector, for its communities. The State's mineral resources are owned by all South Australians, and when exploration projects develop into operating mines, the royalties derived flow back to the community to provide long-term, wide-ranging benefits.

Demand for access to regulators will undoubtedly be higher during the drafting, debate, consultation and education processes. It is recommended that a strategic resourcing plan is implemented, and continuity maintained post-passage of the Regulations, to ensure a smooth transition for not only renewables projects, but other areas also regulated by DEM. Additional resourcing can ensure that exploration and mining applications and necessary reforms can be progressed concurrent to drafting, whilst existing resources are allocated to progressing Government's commitment to pass this legislation.

Multi land use framework

To support multiple land use by multiple land users, a refresh of South Australia's multiple land use framework (MLUF) must be undertaken as a priority, immediately after the detail required to be finalised in Regulations is published. An updated MLUF, funded by Government, can effectively manage and facilitate fair, equitable, and sequential access to South Australian land and resources.

A consistent Government position via a refreshed MLUF can provide certainty to multiple user groups, of fair and reasonable access provisions and requirements, in line with contemporary land uses and practical considerations. Where agreement cannot be reached, and situations should be clearly identified in the MLUF, effective and appropriate dispute resolution pathways should be outlined in the MLUF. There is a strong need for due consideration of the size, scale, and capacity to engage in litigious processes, that should not prohibit mineral explorer rights, nor operations across regional South Australia. There is a strong desire to discover mineral resources and develop these resources into mines whilst working harmoniously with other land users.

There is limited appetite to enter into legal disputes, land banking as a result of disputes, and lengthy, costly delays that ultimately come at the expense of not only the land users, but the broader State. A refreshed MLUF, which duly considers the legislative requirements of the HRE, Mining, and other relevant legislative frameworks, can address consistent and increasing uncertainty.

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A refreshed MLUF funded by the South Australian Government, must be subject to extensive industry consultation, to mitigate these challenges which continue to emerge, and pre-empt challenges that may arise. With strong and continuously increasing competition for viable land, it is important Government can provide a single-source of truth that does not favour one user-group or industry over another. A refreshed MLUF can provide more transparency and consistent regulation, and a best-practice approach to land access across South Australia.

AMEC recommends appropriate funding and cross-agency resourcing to ensure a refreshed MLUF can be consulted on and delivered to the State in a timely manner, immediately after the passage of the Regulations. However, planning for consultation can commence concurrent to their finalisation to expedite timeframes.

Timeframes

As consistently raised by AMEC throughout this consultation process, the lack of realistic timeframes within the Act and draft Regulations is concerning. The minimum period of six weeks in which the Minister must invite submissions from relevant stakeholders from the date of publication of the notice is noted, but the absence of a maximum period can extend this process indefinitely.

The envisaged HRE Act Environmental Impact Report (EIR) / Statement of Environmental Objectives (SEO) assessment pathway has extremely ambitious timeframes. It is unclear how these timeframes will be met or resourced without pulling resources from other functions within the Department. The progression of one industry should not come at the expense of the minerals industry, and must be supported by sufficient and suitably capable resourcing.

AMEC is concerned the draft two-week assessment and approval by DEM for the consultation plan will not be met, given substantial time delays and backlogs detailed in the annual report, which continue to increase. The envisaged four weeks to engage other government agencies and receive a response is ambitious, and not the current experience. A more realistic, informed timeline based on existing processes is recommended. Consideration must also be given to the strong likelihood and potential for ‘stop-the-clock’ practices within this process. The envisaged licensee response to public comments at the 14 week period is contingent on receiving all public comments from DEM by week 14, at the immediate conclusion of the public comment period. AMEC questions if this is currently done, and feedback provided as it is received, or if it is first reviewed by DEM, and then collated and sent to the applicant, following a period to review. Regardless, the period for the licensee to consider and respond is unlikely to occur at this planned point, unless they receive feedback directly.

In order to track effectiveness and efficiency against target timeframes, these timeframes must be transparent and achievable. Statutory timeframes create accountability and increase the urgency to operate. Where there are delays, rationale and how these delays will be addressed moving forward can increase the performance of regulators and the state as an investment jurisdiction for industry.

Economic loss relating to Mining – requirement to demonstrate

AMEC appreciated the briefing provided by the Department for Energy and Mining (DEM) to our members on 25 October 2023, for a further update on the progress and current (at the time) status of the developing Hydrogen and Renewable Energy Bill 2023 (HRE Bill).

AMEC and our members have consistently expressed the importance of fair, equitable access to land for all users of land across South Australia, with provisions for compensation where multiple land use cannot be accommodated.

At the briefing, the details around the proposed coexistence of multiple land uses were further discussed, namely the proposed application and determination of the material diminishment of existing rights of a mineral tenement holder. We are disappointed and concerned with the proposed path forward, which as currently drafted, will adversely affect mineral explorers and miners, as well as other land users across the State.

Economic Loss:

- The description during the presentation, that the concept of 'economic loss' or 'material diminishment' is one that exists under South Australia's mining legislation and is used effectively, was challenged immediately. Economic loss provisions relate to compensation under s61 of the *Mining Act 1971* (Mining Act). It has been relayed through multiple rounds of consultation from DEM that compensation is not expected to be payable to mineral tenement holders, despite AMEC advocacy that compensation should be payable to resource tenement holders, unless a Special Enterprise Licence is used, so the direct comparison is challenged.
- S61 of the Mining Act outlines the following compensation provisions:

  (1) The owner of any land on which authorised operations are carried out under this Act is entitled to receive compensation for any economic loss, hardship or inconvenience suffered by the owner in consequence of authorised operations.

  (2) In determining the compensation payable under this section, the following matters shall be considered:

  (a) any damage caused to the land by the person carrying out the authorised operations; and

  (b) any loss of productivity or profits as a result of the authorised operations; and

  (c) any other relevant matters.

  (2a) The compensation may include an additional component to cover reasonable costs

  reasonably incurred by an owner of land in connection with any negotiation or dispute

  related to—

  (a) the tenement holder gaining access to the land; and

  (b) the activities to be carried out on the land; and

  (c) the compensation to be paid under subsection (1).

  (3) The amount of the compensation shall be an amount determined by agreement

  between the owner and the tenement holder or, in default of agreement, an amount

  determined, upon application by an interested party, by the appropriate court.

  (4) The appropriate court, in determining compensation under this section, shall take into

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consideration any work that the tenement holder has carried out, or undertakes to carry out, to rehabilitate the land.

Mineral Exploration and Tenure:

- The concept of mineral exploration, is searching for something, in the hopes of making a mineral discovery which can be developed into a producing mine, in optimal settings. The discovery of a mineral deposit is a high-risk, long-term investment, as explorers search beneath substantial cover of the earth's surface, to find geological anomalies. Despite the high-risk investment, an organisation has committed to upholding economic and social legislative commitments, whilst seeking to discover and develop a viable mineral resource.
- A company will traditionally apply for a large tenement package, and focus on specific targets for in-ground drilling and survey activity, following extensive desktop studies including the analysis of precompetitive data and previous core samples from the region. As the project scales up, and finances allow, the footprint of the in-ground exploration can increase. However, until this point, and an economic discovery has been made, proponents are not generating an economic turnover. This is typically a lengthy and costly process, requiring multiple rounds of operational permits and rehabilitation requirements under various State and Commonwealth legislative instruments. In fact, until a mine is operational and returning a profit, typically contingent on strong commodity prices and a robust flowsheet, the company will be operating with limited expendable finances.
- As a project scales up and progresses to a final investment decision (FID), it seeks to create the most optimal flowsheet and pathway to market. The potential limitation from accessing tenure as planned, could have a detrimental impact on the overall viability of a project's economics. The significant investment a company has made engaging with communities, undertaking heritage consultations and surveys, native vegetation and environmental studies and rehabilitation for example, would all be challenged should access to the tenure as planned be compromised. The potential limitations around access to tenure could arise from uncompetitive multiple land access across competing industries, unfavourable decisions being made by a court system, or mediation that does not give due recognition to the economics of minerals and mining.
- An uncompetitive land access model can be a barrier to mineral exploration and mining companies listing on the ASX due to complicated and unclear tenure conditions, limiting the ability of companies to raise capital. This will prevent the State from receiving royalties from mining projects.
- Should a resource company for example have to undertake further studies, clearances, community engagement, and heritage surveys, as the deposit boundary has shifted as a result of a renewables licence being granted and shifting access arrangements, this would constitute real and potential economic loss, current and future.
- Such a broad-scale diminishment of certainty must be avoided. It could create sterilisation of mineral resources, an unintended but likely consequence in the current settings, that must be avoided. A company makes substantial investment to progress works on tenure, and should be

entitled to compensation for those works, and a potential barrier to progressing development and the successful extraction of that resource.

Demonstrating economic loss:

- The burden of the onus of proof on the resource tenement holder, to potentially engage with a large-scale renewables proponents to demonstrate economic loss, is challenged. The ability to support a litigious case could more readily be financed by a large corporation than a junior to mid-cap minerals company. There is concern that mineral tenure holders could abandon projects which are of benefit to the state's minerals ambitions, due to limited demonstrated support for the minerals sector. This will also cause an unintended sterilisation or abandonment of mineral assets across the state, that must be avoided.
- When a Quarrying project seeks an Extractive Minerals Licence over similar land as an Exploration Licence (EL), as is currently being tested in South Australia's Warden's Court, the Warden has instructed the legal team of the Extractive Minerals Licence applicant to prove that the grant of the EML will not adversely affect the rights of the EL holder. The Warden has put onus on the applicant of the new licence, to prove this is the case.
- The burden should not be on the resources tenement holder as the potential objector, as proposed under the HRE Bill, but rather the applicant, to demonstrate no loss.
- There are provisions in existing legislation for compensation to be payable to parties, taking into consideration compensation provisions that can be extended to mineral / resources tenement holders under the HRE Bill, to support equitable land access, and genuine multiple land uses across the state
- S61(5b) states:

  It will be a condition of a mineral tenement that the Minister may, at any time, require the tenement holder to pay to any person an amount of compensation, specified by the Minister, to which the person is, in the opinion of the Minister, entitled on account of loss or damage suffered by the person as a result of operations carried out under the tenement.
- S61(4) states:

  any work that the tenement holder has carried out, or undertakes to carry out, to rehabilitate the land.
- These two provisions provide greater certainty than the 'economic loss' principle that has been proposed, for all resource licences interacting with all other licences under the HRE legislation, other than Special Enterprise Licences.

Recommendations:

- The burden of demonstration of economic loss is on the applicant for the new licence, not the objector or original licence holder;
- Compensation provisions extend beyond Special Enterprise Licence for resource tenement holders under the HREA

- S61(4) and S61(5b) of the Mining Act provisions be similarly applied with regards to compensation payable to resources tenement holders in the event a renewable licence materially impacts a resources tenement;

Final comment

AMEC welcomes ongoing consultation and engagement with and Government as the HRE Regulations and supporting policies are developed, and the framework is introduced. We welcome the development and growth of South Australia's renewables sector alongside a continuously growing and evolving mineral exploration and mining sector.

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