

To: Department of Resources

Re: Proposed funding models to support reforms to Queensland's co-existence institutions

Date submitted: 29 February 2024

Introduction

The Association of Mining and Exploration Companies (AMEC) appreciates the opportunity to make a submission on the consultation paper, *Proposed funding models to support reforms to Queensland's co-existence institutions (2024)* (the Consultation 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.

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.

General Comments

While AMEC appreciates the opportunity to provide comment on this Consultation Paper, only limited information has been provided regarding the proposed services that are to be funded and the governance arrangements that will be established. Of particular interest is how the performance of these new arrangements will be monitored to determine their impact on improving the operation of Queensland's land access arrangements.

AMEC supports the establishment of these new institutional arrangements as a genuine attempt to improve land access processes for landowners, leaseholders and explorers. This is welcome and AMEC supports these initiatives.

However, it is challenging to provide useful comment on these proposals as there is little detail available to assess the potential effectiveness of the arrangements being proposed. This issue is discussed in relation to arrangements for both the Land Access Ombudsman (LAO) and Coexistence Queensland.

Land Access Ombudsman – New industry levy and fee for service

It is difficult for AMEC to support a new levy and fees for the Land Access Ombudsman (LAO) without being provided with information on:

- The amount of the “base costs” that the levy is intended to cover.
- The cost per resource authority of the new levy.
- The services the LAO will provide.
- The fees that will be charged for these services.

At the same time, while the new LAO responsibilities may assist tenure holders and landholders resolve their disputes without resorting to the Land Court, these arrangements – as presented – are unlikely to help prevent disputes from arising in the first place. For example, if a dispute goes before the LAO regarding whether an activity is a preliminary or advanced activity, will the LAO decision be kept confidential, or will there be a published decision that provides guidance for future negotiations?

As it stands, the same dispute could be repeatedly referred to Alternative Dispute Resolution (ADR) without a clear mechanism in place for ensuring that the decisions of the LAO influence future negotiations and behaviour.

AMEC therefore requests that the LAO and the Department of Resources (DoR) commence consultations with industry stakeholders on important features of the new arrangements, including:

- The operational costs of the LAO.
- The services that will be provided and the costs of these services.
- How the success of the LAO will be measured, including the impact of introducing the new ADR process on the time and costs of land access negotiations.
- Governance arrangements that ensure genuine engagement with industry stakeholders.

Coexistence Queensland

AMEC welcomes advice provided in the Consultation Paper that Coexistence Queensland will be funded by the Government. However, it is concerning that the organisation will be funded “*through an annual work program and budget submission*”. This is of particular concern where a change of Minister or Government could quickly see these new institutions abandoned.

For Coexistence Queensland to function successfully, there should be certainty around its funding so that it can undertake forward planning in relation to its work program, with budget submissions only required for supplementary work, for example if the Government requests advice on a particular issue and additional research is required. Budget certainty is of particular importance if Coexistence Queensland is to undertake a monitoring and evaluation program of its work so that the impact of its activities on land access negotiations can be measured and any necessary adjustments made.

AMEC therefore asks that the GasFields Commission Queensland and DoR commence consultations with industry stakeholders in relation to the following:

- The proposed work program of the agency, including priorities for its stakeholder engagement, education and research programs.

- How the impact of its activities on land access processes is to be measured and monitored.
- Governance arrangements that ensure genuine engagement with industry stakeholders.

The impact of the new arrangements

While AMEC supports the establishment of these new institutional arrangements, we want to ensure that they have a genuine impact on improving the clarity, fairness and reasonableness of land access processes and outcomes for our members.

In contrast to the petroleum and gas sector, mineral exploration is undertaken by small but agile and innovative companies that must compete fiercely for investment both nationally and internationally to fund their operations. At the same time, these companies are often working in areas of Queensland – such as the North West Minerals Province – where there are very large land holders who sometimes have the intent and the resources to endlessly frustrate and exploit companies seeking access.

Land access legislation and regulation needs to provide a level playing field that recognises that mineral exploration companies do not have the resources to engage successfully in negotiations with parties whose intent is not to reach a fair agreement but to sweat the exploration company until the company either agrees to unreasonable terms or walks away because it has been impossible to achieve a fair agreement at a reasonable cost.

While more education and a new ADR process may assist in improving relationships and land access negotiations between parties acting in good faith, Queensland's regulatory framework needs to go further and recognise that there is a small but significant number of landholders (and/or their representatives) who are entering into negotiations in bad faith and who are manipulating land access rules for personal gain beyond what is fair for the disturbance being caused or, even worse, with the aim of preventing exploration entirely.

In the time since AMEC received the Consultation Paper, we have received the following examples from our members of unreasonable demands by land holders at the Notice of Entry stage of the exploration process (i.e., before the explorer has even entered the property):

- Requiring that the tenure holder give first right of refusal to the land holder for providing “exploration services”.
- Requiring that, if water is found when drilling, the tenure holder undertakes the works necessary to convert the drill hole into a water bore.
- Requiring that the land holder be given first right of refusal for the exploration permit should the permit be sold.

While the new land access and coexistence arrangements may help, they do not go far enough in reforming regulatory arrangements to ensure that negotiation processes are clear, fair and reasonable for both parties. AMEC therefore reiterates that the following measures are needed to support minerals exploration in Queensland:

PROPOSAL	DESCRIPTION
<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>	<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>
<i>Define the rights of each party to minimise the risk of conflict escalation</i>	<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>
<i>Embed limitations on decision making timeframes</i>	<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>
<i>Cap negotiation and compensation costs</i>	<p>Similar to the New South Wales model, 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.</p>
<i>Share mediation costs</i>	<p>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.</p>

Conclusion

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

We also reiterate our view that these consultations on implementation should occur quickly so that the new arrangements are established with the proper foundations in place, including ongoing monitoring to ensure that the outcomes sought are being achieved.

For further information contact:

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