

**To: Department for Energy and Mining**

**Re: Hydrogen and Renewable Energy Act – Draft Regulations**

15 April 2024

## Introduction

AMEC appreciates the opportunity to provide a submission to the Department for Energy and Mining (DEM) on the *Hydrogen and Renewable Energy Act 2023* (HRE) Draft Regulations. We appreciate the engagement to date from DEM, including the previous round of consultation and opportunity to provide feedback on the HRE Regulations Pre-Consultation materials.

## 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.

## State of the industry

Mineral exploration and mining make a critical contribution to Australia's economy, directly employing over 274,000 people. In 2022-23 Industry generated a record high \$413 billion in resources exports, invested \$4.1 billion in exploration expenditure to discover the mines of the future, and collectively paid over \$63 billion in royalties and taxes.

South Australia's minerals sector has long been a key economic sector, directly employing 16,000 people (November 2023) and hosting significant investment of explorers and miners working to advance minerals projects across the state. The commodities explored and mined for, represent a wide range of minerals critical to the energy transition and a decarbonised future.

In 2023, \$293.1M was spent on mineral exploration in South Australia, an 84.47% increase in original terms, from the \$128.3M spent on mineral exploration in 2022. Mineral resources exports were recorded at \$6.8B for 2022-23, while a record \$3.2B was spent on capital expenditure in 2023. In 2022-23, a record high of \$286.9M was generated in royalties from \$8.2B in mineral commodity sales, royalties are an important income stream for South Australia's ongoing prosperity, contributing to hospitals, schools and other key government services.

The range of projects across the state that transition from mineral exploration to production, will ultimately deliver high-value jobs and royalties of the future and long-term, ongoing social, environmental and economic benefits for the State and its communities.

# Hydrogen and Renewable Energy Regulations

## General Comments

AMEC welcomes the development of South Australia's renewables potential, to coexist with mineral exploration and mining. With a range of projects progressing through the development cycle, the right legislative and policy settings will 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 HRE 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 to develop these, are robust, best-practice, and can mitigate unintended consequences prior to commencement.

[AMEC's submission to DEM on the pre-consultation Draft Regulations](#) comprised extensive feedback that has not been addressed or incorporated in the Draft Regulations. AMEC refers DEM to consider again AMEC's previous feedback and is disappointed that the publication of the final HRE Draft Regulations, does not provide the clarifying detail that was expected.

There remains a requirement to address issues around how mineral exploration and mining activities will co-exist with renewable energy projects, including adequate dispute resolution and provision for economic loss. There remains a concerning lack of realistic timeframes within the Act and Draft Regulations for, consultation, submissions, assessment, notification periods and public comment. It is also noted that, detail relating to how multiple land users and industries will effectively co-exist and interact with landowners is missing in the Regulations.

## Multiple land use framework

Refreshing the 2016 Multiple Land Use Framework (MLUF) is a critical step to support all industries and landowners. AMEC notes that a contemporary MLUF will not be in place when the HRE Act becomes operational upon establishment of the Regulations. AMEC calls for the Government to commence work immediately on the MLUF to ensure mining industry activities are not disrupted and investment continues in the mining industry with the benefits of jobs, royalties and regional growth that flow to South Australians.

A refresh of South Australia's Multiple Land Use Framework (MLUF) must be undertaken as an immediate priority. There is a strong desire to discover mineral resources and develop these resources into mines whilst working harmoniously with other land users. An updated MLUF funded by Government, can effectively facilitate fair, equitable, and sequential access to South Australian land and resources for multiple land users.

Industry is concerned about privately owned land where renewable energy projects are proposed to overlap with existing mineral exploration licence areas. A private landowner is not required to reveal private contractual agreements with other land users, including renewable energy proponents. Mineral explorers may or may not be aware of a renewable energy proponent's interest in the land. This could potentially lead to a scenario where a mineral explorer with a pre-existing tenement only discovers a renewable energy proponents' interest in the land when served a Notice of Commencement with a 42-day notice period. This presents the mineral explorer with a situation that may significantly

interrupt exploration activities underway and create a costly interruption as resources are diverted, at a potentially critical stage of exploration, to resolve land access issues.

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 or mining operations across regional South Australia. Legal disputes are a last resort, resulting in land banking 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 Act, Mining, and other relevant legislative frameworks, can address consistent and increasing uncertainty providing a framework for fewer legal disputes.

A consistent Government position through 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.

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 reduce risks for industry and the State, providing 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 as an urgent priority.

### **Supporting policy and guidance**

The HRE Act will become operational once the associated regulations are established. There is significant Industry concern that the HRE Act and regulations are being rolled out without sufficient supporting policy and clarifying details to ensure business continuity. The MLUF is expected to provide much needed clarification and DEM should prioritise consultation and delivery to ensure that mineral explorers and miners are not exposed to operational risk by operating in a policy vacuum for an extended period of time after operationalising the Act.

AMEC calls for additional commitments to deliver additional supporting policy and guidance for mineral explorers and miners and all other industries impacted by the new legislation and regulations.

### **Land Access support – commencement of regulations**

With regulations soon to be gazetted and the Act to commence imminently, AMEC anticipates increasing demand for consultation with stakeholders and landowners. This includes government and multiple industry consultation with traditional owners, pastoralists and farmers in relation to renewable energy release areas on crown lands and agreement making on privately owned land. This additional consultation is anticipated to test the capacity of some stakeholders and landowners who may be stretched beyond limits. This is likely to impact their availability to be involved in timely consultation and agreement making with mineral explorers or miners that is required under the Mining Act.

The anticipated growth of hydrogen and renewable energy projects in the states regions also creates increasingly complex consultation between multiple land users and landowners. The introduction of the *HRE Act* adds another layer of legislation, regulations, policies and administrative arrangements for land access. Landowners will need to become familiar with these and develop capability in interpreting and applying these in the context of their own legislative rights.

It is anticipated that landowners will require additional support to navigate through these complexities. AMEC expects DEM to adequately resource the development of appropriate education programs and accessible materials for landowners and other stakeholders, to ensure co-existence of multiple industries, and fair and equitable access to lands for mineral exploration and mining activities.

AMEC also recommends the Government commence or expand existing programs that provide advisory support to landowners and stakeholders including; native title holders, pastoralists, farmers, resource tenement holders, community and other Government agencies.

### **Landowner Information Service**

By way of example, the Landowner Information Service (LIS) provides an excellent service to landowners and enhances their interactions with mineral explorers and miners undertaking activities under the *Mining Act 1972*. The LIS is a free, factual and impartial information service for landowners, farmers and community members who have queries on resources exploration, mining and quarrying. It is all about helping people navigate the often complex technical and legal processes involved in exploration and mining on privately-held land.

AMEC supports an expanded LIS that goes beyond the current mining industry remit to also include services to landowners, farmers and community members who have queries on hydrogen and renewable energy projects. The LIS is funded by the South Australian Government and AMEC asks that the Government provides appropriate additional resourcing and funding for an expanded LIS.

### **Release areas – consultation**

The potential size of proposed Release areas for hydrogen and renewable energy projects, are expected to be substantial with multiple stakeholders and significant accompanying consultation. The consultation process for release areas comprises 2 stages; identification of Release areas and Prescribed consultation. The Regulations indicate that Resource tenement holders (this includes mineral tenement holders within the meaning of the *Mining Act 1971*) will be consulted in the Prescribed consultation stage and must be given a copy of the proposed release area notice.

It is not clear in the Regulations if there is a requirement to consult resource tenement holders in the first round of consultation to identify Release areas. AMEC recommends that consultation with mineral explorers and miners should occur in this first round of consultation. Mineral resources and orebodies have an obviously fixed surface and sub-surface extent. Identifying and mapping their spatial location and potential location, in the case of undiscovered resources, is a key element of the multi-criteria analysis for identifying appropriate Release areas. In some instances, there would be difficulty with the co-existence of both renewable energy and mining projects.

Early consultation will help DEM to understand the nature of the in-ground mineral resources and any future work programs planned in areas under consideration as a Release Area. Early decisions to

include or preclude certain areas will reduce risks of competing industry for multiple parties at the earliest stages where it is apparent that multiple land use cannot be accommodated.

Further to this, AMEC recommends the Geological Survey is consulted as early as possible in the area identification consultation, so that they may provide pre-competitive geological information that as a key data source for consideration in the multi-criteria analysis. This includes identifying the location of mineral resources, occurrences and spatially related zones of high mineral prospectivity. These areas may not be suitable and their exclusion from Release areas should be foremost in decision making for the location of Release areas.

AMEC asks that the Government seeks to ensure the first Release areas are deliberately chosen so they do not overlap with known areas of high geological prospectivity. This includes areas with extensive mineral exploration, resource definition, development studies, known ore bodies and mining underway, including the mineral rich areas of the Gawler Craton. This will ensure areas are not sterilised by renewable energy infrastructure and there is continued access to the mineral resources that are critical for building this infrastructure and powering nuclear reactors, to achieve global decarbonisation goals.

### **Economic loss relating to mineral exploration and mining**

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.

The details around the proposed coexistence of multiple land uses, namely the proposed application and determination of the material diminishment of existing rights of a mineral tenement holder is not adequately addressed in the Draft Regulations. [AMEC's submission to DEM on the pre-consultation Draft Regulations](#) highlighted this issue in more detail and we are disappointed that no changes related to this issue have been made to the final Draft Regulations. AMEC is concerned that the proposed path forward, will adversely affect mineral explorers and miners, as well as other land users across the State.

### **Demonstrating economic loss**

The burden of the onus of proof on the resource tenement holder, to potentially engage with a large-scale renewable proponent 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 Act, 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 Act, 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 (SELs).

AMEC recommends that the burden of demonstration of economic loss is on the applicant for the new licence, not the objector or original licence holder and that compensation provisions should extend beyond SELs for resource tenement holders under the HRE Act. S61(4) and S61(5b) of the Mining Act provisions should be similarly applied, with compensation payable to resources tenement holders in the event a renewable licence materially impacts a resources tenement.

### **Resourcing DEM to support business continuity for the mining industry**

Whilst the parliamentary process concludes with the commencement of the HRE Regulations, it is understood that additional expertise will be required to develop supporting policy, transitional materials. Ongoing resources will also be required to administer and support the release area process, licencing, scoping and approvals processes, and compliance.

It is crucial that DEM is adequately resourced to continue progressing other industry business-as-usual duties, including applications and approvals for the mineral 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 the progression of exploration projects to operating mines ensures royalties flow back to the community to provide long-term, wide-ranging benefits.

Demand for access to regulators will undoubtedly be higher with the HRE Act bringing in functions previously administered by the Planning and Land Use Services, Department for Trade and Investment. 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.

### **Final comment**

AMEC welcomes ongoing consultation and engagement with Government as the HRE supporting policies and guidelines 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.

### **For further information contact**

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