

To: Department for Environment and Water

Re: Amendments to the Native Vegetation Act 1991

11 June 2024

Introduction

AMEC appreciates the opportunity to provide a submission to the Department for Environment and Water (DEW) on the Amendments to the *Native Vegetation Act 1991*. We appreciate the engagement to date from DEW, including the opportunity to meet and discuss the proposed amendments.

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.

Amendments to the Native Vegetation Act 1991

General Comments

The consultation materials released by DEW indicate that there is no intention to reduce or weaken any protections for native vegetation and equally, it is not proposed that the amendments will impose any new or increased barriers to obtaining clearance approval. The YourSay website also states that the drafted Bill includes changes that clarify, streamline and improve assessment and compliance processes.

AMEC and industry seek to ensure that this includes mineral exploration and mining approvals, and that the mining industry will not be disadvantaged by the introduction of the proposed Amendments to the Native Vegetation Act (the Act).

Summary of AMEC's comments:

- AMEC and industry request the inclusion of a right of review and appeal of decisions to be included in the new Act, in line with standards of modern environmental legislation.
- The Department for Energy and Mining (DEM) has delegation from the Native Vegetation Council to administer SEB requirements for exploration and mining. AMEC and industry seek to ensure this will continue unchanged.
- Additional requirements for data may be required, these should not increase costs, or delay timeframes for mineral exploration or mining approvals, monitoring and compliance.
- It is not clear how moving the Mitigation Hierarchy into the Act will affect mining industry approvals, monitoring and compliance. Industry should not be adversely affected by this.
- The introduction of a Conservation Agreement is expected to provide flexibility that is beneficial for mining industry proponents as many operations have limited lifespans.
- AMEC and industry seek to ensure that proposed Amendments to the Act does not include any changes to the process of providing and calculating the required SEB.
- AMEC reserves endorsement of the expanded use of the Native Vegetation Fund but recommends ongoing independent review of governance arrangements and management.
- AMEC expects the '*Guide for a Significant Environmental Benefit for the clearance of native vegetation associated with the Minerals and Petroleum Industry*', to be updated accordingly.
- AMEC seeks to understand how Amendments to the Native Vegetation Act expect to align with the significant Commonwealth Nature Positive reforms, particularly the EPBC Act.

Proposed amendments to move regulations to legislation

AMEC questions the need to move Regulations to the Act and notes that this may have unintended consequences including a lack of flexibility in the future that may necessitate further time-consuming updates to the Act.

The proposal to move Regulations into the Act, will also require that the Regulations themselves must be updated. However, there is no mention of the need for, or a timeline for this required update of the Regulations to occur.

Proposed changes to significant environmental benefit (SEB) requirements

The Department for Energy and Mining (DEM) has delegation from the Native Vegetation Council to administer SEB requirements for exploration and mining. This includes through the mineral exploration and mining approvals assessment, including for the Program for Environmental Protection and Rehabilitation (PEPR). AMEC and industry seek to ensure that this process will continue unchanged.

The Native Vegetation Act requires that where native vegetation clearance cannot be avoided that proponents must provide an SEB through one of four options; Native Vegetation Management Plan for the proponent to provide on-ground SEB, SEB Credit from an existing SEB area, third-party SEB provider, or by payment to the Native Vegetation Fund.

The proposed Amendments include the addition of Section 3C which include changes and further options relating to SEB requirements. It is understood that these proposed changes relate only to proponents that intend to undertake provision of an SEB through a management plan, SEB Credit, or third-party provider to undertake an offset and not through payment into the Native Vegetation Fund.

New requirements may include the request for additional information to be included. However, there is no further clarification on what this data may be and how onerous the collection of this data may be. AMEC and industry would like to ensure these additional requirements will not increase costs or delay timeframes for mineral exploration or mining approvals, and ongoing monitoring and compliance.

Mitigation Hierarchy

The mitigation hierarchy is currently defined in the Regulations and only applies to applications for clearance under the Regulations and not the Act. The mining industry Native Vegetation referrals and potential clearance approvals, currently occur under the regulations. It is unclear how mining industry approvals, monitoring and compliance with Native Vegetation requirements may change if the mitigation hierarchy is moved into the Act. AMEC seeks to ensure that industry will not be adversely affected by this change.

Native Vegetation Fund and SEB calculator

Most mining proponents provide an SEB through payment into the Native Vegetation Fund as they are not usually landowners and/or in the business of providing offsets. AMEC and industry seek to ensure that the proposed Amendments to the Native Vegetation Act does not include any changes to the process of providing and calculating the required SEB. This includes ensuring there are no hidden changes to the SEB calculator as outlined in the [Guide for calculating a Significant Environmental Benefit](#). There is no further explanation in the Amendments as to how the SEB calculator will work in a practical sense in use with the guideline and clarification is sought on this matter.

The proposed Amendments include the expanded use of the Native Vegetation Fund to allow money to be used to support the general administration of the Act and for a greater range of conservation related activities. AMEC reserves endorsement of this expanded use of the Fund but recommends that the governance arrangements to manage this proposed change are independently reviewed at specified terms.

Introduction of Conservation Agreements

It is understood that section 18 of the draft Bill will repeal current section 25D of the Act - Management Agreements, as they will be replaced by conservation agreements. The introduction of conservation agreements is said to support the establishment, management, conservation, protection and enhancement of native vegetation on the land.

The current option for long-term protections and management of SEB areas is through Management agreements. This is achieved through Heritage Agreements which are in perpetuity and are a lesser preferred option for mining proponents who undertake mineral exploration or mining operations for a limited time.

The introduction of a Conservation Agreement is expected to afford greater flexibility, including the provision for a range of conservation activities and the option to be term limited and the Minister does not have to be a party to this agreement. It is anticipated that the option for a term limited Conservation Agreement will offer benefits for mining industry proponents with mining operations that have a limited lifespan.

Requirement to demonstrate how a SEB is delivering the offset

It is understood that Amendments will now require an SEB offsetting project to demonstrate that it is delivering the offset. No further explanation is provided as to how this SEB requirement works practically. AMEC seeks further clarification regarding how this will work in a practical sense and in use with the guidelines.

Compliance and enforcement Amendments must include a right of review and appeal

Amendments include new compliance and enforcement measures. AMEC understands that there are no appeal rights (other than against enforcement notices or compliance orders) under the current Native Vegetation Act. That is, there are no rights of review or appeal against decisions of the Native Vegetation Council on applications for consent or approval to clear native vegetation. The proposed Amendments omit to include appeal rights for decisions of the Council on consent applications.

AMEC notes that appeal rights for applicants are included in regulatory processes associated with other environmental legislation and it is fair to request a right of appeal. AMEC submits that this will merely bring the Act up to modern standards found in all other environmental legislation (at both State and Federal level). Rights of review and appeal provide greater transparency and accountability thereby ultimately leading to better administration of an Act. Despite the proposed Amendments goal to provide more clarity, there will remain uncertainty in the application of the Native Vegetation Act. This includes the conditions of native vegetation approvals and clearances, including refusal to grant clearances and a right of appeal would be beneficial in these circumstances.

AMEC and industry request the inclusion of a right of review and appeal of decisions to be included in the new Act.

Native Vegetation Council membership change

AMEC supports Amendments to introduce an expert-based membership approach to the Council, with seven members with a range of relevant skills. The move away from the current quota-based membership from the nominating bodies, will ensure the council has members nominated from a

broader pool of candidates that are recruited for their technical knowledge and practical experience. The inclusion of technical and commercial experts with engineering, geobotany, soil science, planning and development, and legal expertise would be appreciated. It is expected that this will ensure more informed decision making and better outcomes for mining industry proponents' Native Vegetation approvals, assessments and compliance.

Native Vegetation Council data

Information currently collected by the Native Vegetation Council (NVC) that relates to applications, offsets, heritage agreements is uploaded to Nature Maps. AMEC and industry understand that DEW is expecting to roll out a program that captures all the information collected by the Native Vegetation Council into a new BIODATA database. AMEC and industry would appreciate the streamlined provision of Native Vegetation data and information, including spatially located data.

Update the Guide for Significant Environmental Benefit associated with Minerals and Petroleum Industry

The [Guide for a Significant Environmental Benefit for the clearance of native vegetation associated with the Minerals and Petroleum Industry](#), published by the Native Vegetation Council, August 2017, should be updated to reflect the changes to the Native Vegetation Act should the Amendments pass through parliament. AMEC recommends that this Guide is updated and available when the Amendments are enacted, to ensure business continuity for the mining industry working on approvals, assessments and compliance that involve native vegetation matters. AMEC requests mineral explorers and miners impacted by the new legislation and regulations are duly notified and supported to understand any impact to current or future activities.

Mining Industry should not be disadvantaged

Industry expects that the Amendments to the Native Vegetation Act will not economically disadvantage current mining industry operators or leave the future industry worse off.

These proposed changes should not adversely affect:

- mineral explorers and partners who have invested in developing projects and are currently seeking approvals under the current Native Vegetation Act and regulatory frameworks.
- companies with current mineral exploration activities or mining operations who have gained approvals under the current or any previous legislative framework.
- or create barriers for the range of mineral explorers and potential miners that expect to gain mining approvals in the future but are yet to enter the assessment process

AMEC seeks to ensure that delivery of the Amendments to the Act does not delay mining industry approvals with additional red-tape, duplicative bureaucracy or lengthy submissions and approvals wait times. Any delays to projects will cripple Australia's supply of minerals as a source clean energy and decarbonisation infrastructure. This will impact Australia's regional and urban communities and delay the delivery of environmental, social and economic benefits that our clean minerals are providing to South Australians and globally.

EPBC Act offsets

It can be challenging for mining industry to come up with offsets that satisfy both the South Australian Native Vegetation Act and the Commonwealth EPBC Act. This includes the issue that the Commonwealth Government does not accept payment into a Native Vegetation Fund whereas this option is available in South Australia. Many mining companies will utilise the option to pay into the fund because they generally do not own land for appropriate offsets and mining companies are not in the business of providing offsets, so they rely on third party providers for offsets.

Where third party providers or onsite offsetting occurs, industry seeks to understand if an area of land can be used to meet the requirements under both the Native Vegetation Act and the EPBC Act for offsets. Clarifications in the Native Vegetation Act or related guidelines is sought around the potential issue of additionality. Mining projects are also often in remote areas and companies are unable to find an appropriate third-party provider of offsets in the same buyer region.

The question remains for Governments to consider how a better third-party market for offsets can be facilitated.

Commonwealth environmental legislative reform

AMEC notes that the proposed Amendments to the Native Vegetation Act are occurring at the same time as significant Commonwealth Government environmental reform and consultation. This includes the rebuilding of the Commonwealth EPBC Act and the introduction of Nature Positive legislation, Environmental Protection Australia Act and Environmental Information Australia.

AMEC seeks to understand how Amendments to the Native Vegetation Act expect to align with this significant Commonwealth reform.

Final comment

AMEC appreciates the opportunity to provide feedback on the draft Amendments to the Native Vegetation Act. AMEC welcomes ongoing consultation and engagement between Government and the mineral exploration and mining industry as the Amendments are progressed and introduced.

For further information contact

Peta Abbot

South Australia Manager, AMEC

0475 834 554