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17 December 2008

Secretariat  
Independent Review of the EPBC Act  
GPO Box 787  
Canberra ACT 2601

Dear Sir,

**Re: Independent Review of the Environment Protection and Biodiversity Conservation Act (EPBC Act) 1999**

Thank you for the opportunity of commenting on the operation of the EPBC Act.

The Association of Mining and Exploration Companies (AMEC) is the peak industry body for junior and mid sized mineral exploration and mining companies within Australia.

AMEC's strategic objective is to secure an environment that fosters mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

It is in this context that the attached submission is made.

Should you have any specific queries in relation to the content of the submission please do not hesitate to contact me or Graham Short, National Manager - Advocacy and Public Affairs.

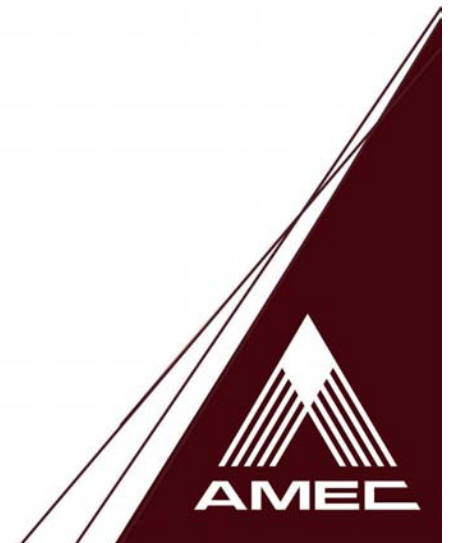
We would like to be provided a copy of the outcomes of the Review and any issues that may impact on our industry.

Yours sincerely,



Simon Bennison  
Chief Executive

Enc.



# THE ASSOCIATION OF MINING AND EXPLORATION COMPANIES

## **SUBMISSION TO:**

THE SECRETARIAT OF THE INDEPENDENT REVIEW OF THE  
***ENVIRONMENT PROTECTION AND BIODIVERSITY  
CONSERVATION ACT 1999***

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December 2008



## **ABOUT AMEC**

The Association of Mining and Exploration Companies (AMEC) is the peak industry body for junior and mid sized mineral exploration and mining companies within Australia. Its membership is almost three times larger than its nearest national counterpart. Formed in 1981, AMEC is considered to be the 'voice' and most successful advocate for mineral exploration in Australia.

AMEC's strategic objective is to secure an environment that fosters mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

## **STRUCTURE AND ECONOMIC CONTRIBUTION OF THE RESOURCES SECTOR**

The general structure of the resources industry in Australia and around the globe is similar. There are major mining and petroleum conglomerates that dominate the landscape at one end of the spectrum, a relatively small number of mid tier producers in the middle, and a large number of very small 'junior' explorers at the other end.

The minerals sector is a substantial contributor to the Australian economy. The long term health of the Australian economy is therefore highly dependent on the sector's strength, performance and future growth.

In 2007/08 it accounted for 7% (or approximately \$80 billion) of gross domestic product (GDP), exports of mineral commodities of \$72 billion (representing 67% of merchandise exports), 142,000 direct employment (approximately 2%). Total national mining investment in 2007/08 also amounted to \$27.3 billion, an increase of 26% compared to the previous financial year.<sup>1</sup>

In addition, the sector provides employment and significant infrastructure development and broader net economic benefits in remote and regional areas.

In 2005/06 total government revenue from the minerals sector accounted for 3% of total taxation revenue for all levels of government.<sup>2</sup>

Mining and exploration activity is occurring in an environmentally responsible manner, and is currently affecting less than .01% of Australia's land mass.<sup>3</sup>

Moreover, the probability of finding an economic deposit on any piece of ground is 1/100, whereas finding one that is 'world class' is 1/1000.<sup>4</sup>

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<sup>1</sup> ABS, Dept of Resources Energy & Tourism, and WA Dept of Industry and Resources.

<sup>2</sup> ABARE Research report December 2007, Pages 73 and 75.

<sup>3</sup> Western Australian Department of Industry and Resources.

<sup>4</sup> Gold and Minerals Gazette – August 2008 edition – Editorial Page 4.

## **GENERAL COMMENTS ON THE REVIEW**

AMEC notes that the:

- Independent Review has been commissioned by virtue of the requirements of Section 522A of the Environment Protection and Biodiversity Conservation Act (EPBC Act), that the Act be reviewed every 10 years, from its commencement in July 2000,
- EPBC Act is the Australian Government's central piece of environmental legislation, and is intended to join with the states and territories in providing a truly national scheme of environmental and heritage protection, and biodiversity conservation,
- Review will assess the operation of the Act and the extent to which its objects have been achieved.

The comments in this submission are intended to be at a broad strategic level and not at a technical level.

In addition, these comments mainly relate to the following two objects of the EPBC Act:

1. Provide a streamlined national environmental assessment and approvals process,
2. Promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources.

## **SPECIFIC POLICY RELATED COMMENTS**

### **1. Environment protection and biodiversity conservation; and the minerals sector**

Mineral exploration and mining activities currently occur in harmony with environment protection and biodiversity conservation; whilst also recognising the significant economic and social benefits that are achievable as a result of a successful mineral exploration and mining sector.

AMEC therefore supports the overall concept of Ecologically Sustainable Development that effectively integrates economic, social and equitable considerations in the decision making process.

Although AMEC understands the rationale in exercising the "precautionary principle", where sound scientific principles and factual data is unavailable, the significant economic and social benefits from successful mineral exploration and mining activities should still be afforded high priority and appropriate recognition provided in the decision making process.

In addition, clarity should be provided on how the "precautionary principle" is actually applied in the decision making framework in order to provide consistency and certainty for the mineral exploration and mining sector.

Rather than complex and inflexible guidelines; unambiguous, user friendly and simple information and referral guidelines should be readily accessible to allow an initial decision to be made by a proponent on whether an action has the potential to have a 'significant impact' on a matter of national environmental significance.

## **2. The approvals process; decision making and certainty**

Unfortunately, anecdotal evidence from the mineral exploration and mining sector indicates that it is still faced with considerable apprehension and uncertainty in project development, and in the decision making process.

The resources sector already faces extreme difficulty in raising risk capital for project development, and therefore delays and uncertainties caused by complex and lengthy regulatory and environmental approvals processes can place project viability in jeopardy.

AMEC stresses that there is a continuing need for a streamlined approvals system that promotes efficiency, effectiveness, certainty and least cost outcomes whilst ensuring that the objects of the Act are met.

## **3. Strategic approach**

It would considerably assist the project development application and decision making processes if a more strategic approach was taken to environment protection and biodiversity conservation issues.

The merits, or otherwise of a 'bioregional planning approach' should be further researched, and consideration given to determining and making public announcements on the specific nature of "what needs to be protected" before project mineral exploration and mining applications are submitted. The availability and accessibility of environmental protection and biodiversity conservation data and relevant information is fundamental in achieving this objective.

Unfortunately, based on the Australia State of the Environment 2006 Report,<sup>5</sup> *"There is still not enough good quality accessible data and information on the condition of Australia's environment to prepare unambiguous environmental reports."* This is considered to be a major short coming and should be more fully addressed through normal government processes and funding arrangements, rather than an apparent reliance on such environmental data being received from, and funded by, industry as a component, and requirement of the environmental approval process.

Adoption of a risk based approach in the environmental impact assessment process should also be afforded priority consideration as it would provide an informed, transparent, consistent, systematic, accountable and defensible decision making process. It is understood that the Western Australian Environmental Protection Authority is currently considering such an approach as it would provide several efficiency advantages; cost saving benefits; prioritise the environmental impacts of concern; application of management and controls; and the focus of audit, compliance and enforcement controls.

Adoption of a risk based approach would also assist in the application of the 'test of significance', in the context of actions having a 'significant' impact on a matter of National Environmental Significance.

The 2006 Australian State of the Environment Committee noted that *"an adaptive approach to environmental issues where we learn by doing, and modifying approaches as needed, should be the*

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<sup>5</sup> Australia State of the Environment 2006 – At A Glance – Page 14

*underlying basis of actions and policies*".<sup>6</sup> AMEC considers that adoption of such a short sighted approach will foster uncertainty in project development, and should be replaced with a longer term visionary statement that promotes a strategic assessment of environment protection and biodiversity conservation; in conjunction with the significant economic and social benefits from a successful minerals sector.

The Australia State of the Environment 2006 Report <sup>7</sup> also stated "*Governments should continue to encourage environmental stewardship through appropriate investment, governance and regulation at the right scale of intervention*". Further uncertainty is created for the minerals sector as the "right scale of intervention" is not defined, and seems to promote the principle of continuous improvement (increases) in the environmental parameter criteria for development approvals.

#### **4. Bilateral Agreements, consistency and removal of duplication**

AMEC notes that the Commonwealth Government has entered into environmental impact assessment bilateral agreements with several states and territories (including Western Australia, South Australia, Northern Territory, New South Wales, Queensland and Tasmania) in order to ensure that proponents are required to submit only one set of assessment documentation.<sup>8</sup>

Anecdotal advice from AMEC members indicates that some duplication and overlap does occur between the requirements of the Commonwealth and State and Territory jurisdictions which in turn necessitate a different set of documents in the required 'format', although the substance of the data and information being provided is identical. This duplication creates systemic inefficiencies, delays and subsequent costs to proponents, which in turn places project viability at stake.

It would appear that many of these bilateral agreements have been progressively entered into since 2002, with a requirement that 'the individual agreement is reviewed within 5 years from the commencement date'.

AMEC considers that the EPBC Act policies and administrative process requirements should always be uniform and consistently applied between the various States and Territories. It is therefore recommended that each bilateral agreement should be reviewed immediately, and thereafter at a common review date.

In undertaking this review consideration should be given to ensuring alignment with other existing State / Territory environmental approval processes, such as native vegetation clearing approvals.

It is further noted that the bilateral agreement with Western Australia may need review, and alignment as a result of the outcomes of a current Review of the Environmental Impact Assessment process by the Environmental Protection Authority; and the recently formed expert Working Group to streamline the Western Australian development approvals system.

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Operation of the EPBC Act - Annual Report 2006/07.

## 5. Continuing improvements to the EPBC Act

AMEC notes that the Commonwealth Government put in place significant changes to improve the operation of the EPBC Act in 2006/07, including

- streamlining some of the provisions of the Act;
- elimination of unproductive 'red tape';
- providing greater certainty for industry; and
- enabling quicker and more strategic action to be taken on emerging environmental issues.

As the bulk of these amendments commenced in early 2007 the extent of the intended efficiency benefits are still to be fully experienced by the mineral exploration and mining sector.

Furthermore, AMEC notes that the Australian Government Department of the Environment and Water Resources received \$70.6 million over 4 years in new funding in the 2007/08 Budget to strengthen protection for the environment, including improved administration of the EPBC Act.<sup>9</sup>

It is indeed disappointing to note that a proportion of this funding is only now being allocated to address the long standing findings of the previous performance audit, conducted by the Australian National Audit Office in 2002/03, on the administration of the EPBC Act.<sup>10</sup>

AMEC notes that the increased funding is intended to deliver substantial benefits in EPBC Act administration by, *inter alia*:

- Improving timeliness and quality of assessments and approvals,
- Improving strategic planning and assessment tools such as bilateral agreements with states and territories, strategic assessments, accredited plans and policy advice,
- Improving environmental data and information for proponents and assessors, particularly targeting key growth regions.

AMEC looks forward to the anticipated operational improvements and efficiency benefits being realized in the short term.

AMEC also notes the current Inquiry into the operation of the Environment Protection and Biodiversity Conservation Act by the Senate Environment, Communications and the Arts Committee, and that referral of the "*findings of the National Audit Office 38 Referrals, Assessments and Approvals under the EPBC Act*" is included in its Terms of Reference.

## 6. Summary comments

The operation of the EPBC Act should be focused around a sound, factually and scientifically based model that is simple, efficient, effective and user friendly that minimises administrative and compliance costs to proponents; the Commonwealth, State and Territory Governments whilst ensuring that the objects of the Act are being met.

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<sup>9</sup> Ibid.

<sup>10</sup> Ibid.