21st October 2011

BRCWG Secretariat
Deregulation Group
Department of Finance and Deregulation
John Gorton Building
King Edward Terrace
PARKES ACT 2600

Dear Sir / Madam

Future COAG Regulatory Reform Agenda Stakeholder Consultation Paper

Thank you for the opportunity to provide comment on the COAG Regulatory Reform Agenda Stakeholder Consultation Paper.

As the peak national industry representative body for the minerals exploration and mining industry, AMEC is vitally interested in any regulatory reform that either directly or indirectly affects our members and the economic and business environment is which they conduct their business.

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

If you have any queries please do not hesitate to contact me.

I would be pleased to meet with the Secretariat at any time to further discuss this important topic, and would appreciate being advised of any proposed changes before they are adopted and implemented.

Yours sincerely

[Signature]

Simon Bennison
Chief Executive Officer
Submission to the Department of Finance and Deregulation -
COAG Regulatory Reform Agenda

21st October 2011
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Introduction

1. Thank you for the opportunity to provide this submission on the Future COAG Regulatory Reform Agenda Stakeholder Consultation Paper.

2. The Association of Mining and Exploration Companies (AMEC) is the peak national industry representative body for mineral exploration and mining companies within Australia, with over 330 members spread throughout the nation.

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

4. It is in this context that AMEC provides the following comments in relation to the future regulatory reform agenda proposed by Council of Australian Governments’ (COAG).

5. Comments are based on the content of the Consultation Paper, the stakeholder consultation forum held in Perth on 11 October 2011, and input from AMEC members.

Executive Summary

6. AMEC supports a regulatory reform agenda that provides increased clarity and certainty; reduces the administrative and compliance burden on industry; and one that would streamline the development approvals process in order that investment and business decisions can be expedited and the subsequent social and economic dividends made available in the national interest.

7. Any such reform should ensure that the principles of fairness, equity and simplicity are protected; whilst also maintaining competitive neutrality and protection of Australia’s international competitiveness and sovereign risk.

8. AMEC would appreciate being further directly involved and consulted about any proposed major structural reforms before they are adopted and implemented.

Recommendations

9. That a national comprehensive environmental information system available for mapping, monitoring, forecasting and reporting on environmental conditions should be developed.

10. That clarity should be provided on the specific meaning of ‘strategic approaches’; and definition of “significant impact” under the EPBC Act.

11. That the Commonwealth Government should delegate its assessment and approval powers under the EPBC Act to the respective State or Territory Governments under the existing bilateral agreement process.
12. *That urgent consideration be given to regulatory reform which results in quicker resolution of outstanding native title claims.*

13. *That urgent consideration be given to regulatory reform which reduces the complexity, duplication and uncertainty that surrounds infrastructure approvals with the ultimate aim of streamlining the process.*

**Key challenges**

14. The Australian mining and minerals exploration sector has a number of key challenges to overcome in order to maintain its international competitiveness in the global market where there are an increasing number of other jurisdictions with similar mineral commodities, resulting in increased demand for investment capital.

15. These challenges are broad and include:

- Access to investment and equity finance,
- Land access (including native title, cultural heritage and environmental approvals),
- Approvals, funding and access to critical private transport infrastructure (such as road, rail and ports),
- Availability of a mobile and skilled workforce,
- Increasing administration, compliance and reporting requirements,
- Increasing business costs and overheads (such as Government taxes and levies, cost recovery, labour, fuel, energy),
- Increasing international competitiveness (from other jurisdictions such as Canada, Africa, South America),
- Increasing demand for research, development and innovation due to changing technology.

16. These self-explanatory challenges require the implementation of specific long term strategies, some of which are beyond the scope of COAG and the proposed Regulatory Reform Agenda.

**Proposed COAG themes for reform**

**Environmental Regulation Reform**

17. AMEC notes and supports the acknowledgement in the Discussion Paper that inconsistency between States and Territory and Commonwealth environmental assessment and approvals processes can result in delays to project approvals at significant cost to all stakeholders.

18. AMEC also welcomes the COAG decision on 19th August 2011 that major reform across all levels of government is necessary in order to reduce multiple and often duplicative environmental regulatory requirements.
19. It is noted that COAG considers that the key areas of reform include:

- Development of national environmental assessment and approval processes,
- Greater accreditation by the Commonwealth of State and Territory processes for matters of National Environmental Significance under the EPBC Act,
- Greater use of strategic approaches under the EPBC Act to streamline approvals,
- Establishment of a national threatened species list; and
- Development of national standards for environmental offsets and biodiversity banking.

20. In its submission to the EPBC Act Review in December 2008, AMEC indicated that “It would considerably assist the project development 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’.

21. AMEC also stated that ‘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 defendable decision making process’.

22. AMEC therefore generally supports the identified key reform areas, subject to further explanation, discussion and analysis. In the meantime, clarity is still required on the Government’s specific meaning and understanding of “strategic approaches”; and an unambiguous definition of “significant impact” under the EPBC Act.

23. AMEC has previously advocated for, and supports the concept of a national list of threatened species. In addition, AMEC considers that a national comprehensive environmental information system available for mapping, monitoring, forecasting and reporting on environmental conditions should also be developed.

24. AMEC is of the strong view that the Commonwealth Government should work closely with all States and Territory Governments to ensure that existing State and Territory based environmental and cultural heritage processes are not duplicated, government and industry resources wasted, or result in unnecessary and costly approval delays, all of which are contrary to the Government’s stated intention to streamline the development approvals process.

25. Furthermore, AMEC considers that the Commonwealth Government should delegate its assessment and approval powers under the EPBC Act to the respective State or Territory Governments under the existing bi-lateral agreement process. Such delegation could be appropriately implemented through an ‘accreditation process’, and would remove a significant amount of duplication and inefficiency for those projects that ‘trigger’ the EPBC Act approvals process.

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1 AMEC submission to the EPBC Act Review, December 2008 - page 3
2 Ibid
26. AMEC is extremely concerned about the Government’s proposal to move to cost recovery, and will be separately responding to the ‘Consultation Paper on cost recovery under the EPBC Act’. Any such concept must lead to more efficient approvals processes for industry and not just become an additional cost burden for industry.

27. AMEC notes the proposal to develop national standards for environmental offsets and biodiversity banking and will be making separate submissions to the Consultation Draft of the EPBC Act Offsets Policy and the Consultation Draft of the Australian Government Biodiversity Policy.

Recommendations:

That a national comprehensive environmental information system available for mapping, monitoring, forecasting and reporting on environmental conditions should be developed.

That clarity should be provided on the specific meaning of ‘strategic approaches’; and definition of “significant impact” under the EPBC Act.

That the Commonwealth Government should delegate its assessment and approval powers under the EPBC Act to the respective State or Territory Governments under the existing bi-lateral agreement process.

Enhanced workforce mobility and participation

28. The forecast significant mining investment in the near future is expected to result in a shortage of 36,000 tradespeople by 2015, and there will not be enough Australian workers to get the job done.¹

29. State and Territory and the Commonwealth Governments are already implementing strategies in an attempt to address this forecast shortage, such as increasing the number of training places; providing training facilities; providing apprenticeship and traineeship programs; implementing skilled migration programs.

30. Concurrently, the minerals exploration and mining sector is also developing and implementing various workforce planning strategies that seek to attract and retain a skilled and semi skilled workforce to meet these demands.

31. Subject to the maintenance of appropriate safety standards, AMEC supports any COAG regulatory reform program that enhances workforce mobility, noting the minerals exploration and mining sector operates in a number of remote regions and communities throughout Australia.

32. AMEC also supports reform that removes unnecessary impediments to labour mobility; and the proposed harmonization of conduct requirements for nationally licensed occupations (such as standards and behavior, disciplinary measures and standards, and management and supervision).

Improving sectoral competitiveness

33. Subject to a stable, fair and equitable domestic public policy framework; strong global economy and other effective monetary and fiscal settings; the Australian mining sector, and the

¹ Hon Chris Bowen, Minister for Immigration and Citizenship – Media Release 19 July 2011.
Australian economy is anticipated to experience a period of sustained growth over the medium term.

34. Due to the significant ‘multiplier’ effect that the mining industry creates it is reasonable to assume that many ‘service industries’ and Australian communities and regions will also be economic and social beneficiaries of this forecast growth.

35. AMEC does however note that not all industry sectors or regions of Australia are apparently growing as strongly as others and of the COAG proposal that regulatory reform should be targeted at those sectors (such as manufacturing, retail, primary production, fisheries, tourism and small business).

36. In accordance with the Discussion Paper, such COAG lead reform is intended on reducing compliance and administration costs; improving the competitiveness of the services sector; improving the competitiveness of businesses supplying goods and services to the mining and exploration sector; and improving the competitiveness of primary production.

37. In this regard, AMEC recognises the perception that the ‘resources boom’ is positive for all Australian mining companies, and that it has apparently created a ‘two speed Australian economy’.

38. Closer analysis of the minerals exploration and mining sector reveals that conceptually there is also a ‘two speed economy’ with the sector, primarily as ‘one size does not fit all’.

39. There are a small number of large multinational multi-commodity conglomerates representing a major proportion of the Australian minerals production capacity that have recently announced comparatively significant annual profits; whereas on the other hand there are a large number of small emerging miners that have not enjoyed the same success, or profit levels as their multinational counterparts.

40. There are also thousands of junior mineral exploration companies that rely on equity finance for their high risk exploration programs, and have no other income from which to finance their essential exploration activity which will ultimately create the mines of tomorrow.

41. Each of these small emerging mining and junior mineral exploration companies are also faced with varying and comparative scales of significant compliance and administrative costs, and should not be excluded, discriminated against or segregated from any relevant COAG reform strategies.

Ensuring the benefits of national reform are maintained

42. AMEC supports the general desire of COAG to ensure that the previous and current benefits of national reform are maintained.

43. AMEC notes the proposal that mechanisms such as model regulations, codes of practice and good practice guidance in order to facilitate more consistent and efficient implementation of regulation. In this respect, AMEC considers that care needs to be taken in attempting to provide increased clarity and certainty for industry that these codes of practice and guidance material do not become prescriptively used as ‘quasi legislation’, or as a replacement for specific legislation.
Other reform options for consideration

Streamlined native title claims process

44. AMEC members remain concerned about the high number of unresolved native title claims throughout Australia, which are subsequently delaying development decisions.

45. In 2010, AMEC made a number of recommendations to the Commonwealth and Western Australian Governments in relation to native title and cultural heritage issues.

46. One such recommendation was a renewed priority focus on resolving native title claims.

47. In this regard, AMEC notes the desire of the Commonwealth Government, the Federal Court and the National Native Title Tribunal to achieve this objective. However, some further policy or regulatory impetus is required to resolve some of the longer outstanding and potentially contentious claims, such as in the Goldfields area in Western Australia (referred to as the Wongatha claim).

48. Some of these delays are as a direct result of Native Title Representative Bodies being reluctant to enter the mediation process, instead preferring to escalate the matter to the formal justice system. This reluctance is borne from an apparent mistrust of all stakeholders in the system to deliver satisfactory outcomes.

49. COAG should therefore give urgent consideration to regulatory reform which results in quicker resolution of outstanding native title claims.

Recommendation:

That urgent consideration be given to regulatory reform which results in quicker resolution of outstanding native title claims.

Streamlined approvals for critical regional infrastructure

50. Due to the anticipated period of sustained growth within the mining sector there will be increased demand for critical regional infrastructure (such as ports, road and rail) throughout Australia, particularly in remote regions and communities.

51. It is therefore paramount that long term strategic planning is at the forefront of Government priorities, noting the long lead time in identifying, funding, constructing and commissioning the infrastructure.

52. Unfortunately, as a direct result of recent research undertaken by AMEC it has become apparent that there:

• are many stakeholders at the Commonwealth, State, Territory, Regional and Local levels;

• appears to be a general lack of leadership; and

• appears to be a lack of overall high level strategic planning.

53. AMEC has also determined that approvals relating to infrastructure are complex, extremely time consuming and directly involve a large number of separate approval processes.
54. COAG should therefore urgently consider relevant regulatory reform that reduces the complexity, duplication and uncertainty that surrounds infrastructure approvals with the ultimate aim of streamlining the process.

Recommendation:

That urgent consideration be given to regulatory reform which reduces the complexity, duplication and uncertainty that surrounds infrastructure approvals with the ultimate aim of streamlining the process.

Long term strategic tax reform program

55. AMEC notes that long term strategic tax reform has been excluded from the COAG regulatory reform agenda, on that basis that it is being dealt with separately (such as the Minerals Resource Rent Tax and the Carbon Tax).

56. In its submissions to Government, AMEC has indicated complete opposition to both.

57. AMEC considers that the Minerals Resource Rent Tax (MRRT) is poorly designed public policy, ill conceived, discriminatory, punitive and not a long term reform program. The MRRT is also extremely complex and will definitely create a significant administrative and compliance burden on industry and government. The proposed tax is also contrary to the Government’s general tax principles of making the economy stronger; and a fair and simple tax system.

58. AMEC is strongly opposed to the measures in the Government’s Clean Energy Future Package (CEFP) and associated legislative instruments as they will severely undermine the Australian economy at a time of considerable global economic uncertainty.

59. AMEC has also expressed concern that the CEFP will add significant costs to doing business, and in administration and compliance, for little or no environmental gain.

60. AMEC considers that a broad based policy and regulatory framework should therefore be adopted that seeks to grow the Australian mining and minerals exploration sector, and the future long term revenue stream, rather than penalize it at a time when it is entering a further period of sustained growth.