To: Commonwealth Department of Finance

Re: Submission to the Review of the *Lands Acquisition Act 1989*

23 October 2020

Introduction

AMEC appreciates the opportunity to provide a submission on the review of the *Lands Acquisition Act 1989* (the LAA) to the Commonwealth Department of Finance (the Department). The grant of an extension allowed us to consult with our members and provide detailed feedback.

AMEC welcomes opportunities to engage with the Department on this important legislation, and future regulatory reforms.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry body representing over 325 mining and mineral exploration companies across Australia.

The mining and exploration industry make a critical contribution to the Australian economy, employing over 255,000 people. In 2018/19, these companies collectively paid over $39 billion in royalties and taxation, invested $36.1 billion in new capital, and generated more than $283 billion in mineral exports. In 2019/20, $2.8 billion was spent on minerals exploration, representing an 18% increase from the previous year.

General Feedback

Each jurisdiction has its own mining legislation which interacts with the Commonwealth Lands Acquisition Act in a varying manner. As identified in the Discussion Paper, the legal framework for mining on Commonwealth land is complex. The need for effective co-existence frameworks to regulate the interaction between Commonwealth and State / Territory lands, and mining activity on Commonwealth land which is regulated by the LAA, is of critical importance to the mineral exploration and mining industry.

The Productivity Commission continues to raise concerns that the value of alternative land uses, including resources, may not be properly considered prior to Crown land being excluded from resources development[1]. The Council of Australian Governments (COAGs) Multiple Land Use Framework (MLUF)[2] provides a principled framework for the sequential and parallel use of land. The MLUF was developed to address challenges arising from competing land use, land access and land use change, much like what is faced on Commonwealth owned land.

[1] https://www.pc.gov.au/inquiries/current/resources/draft (Pg 132)
[2] http://www.coagenergycouncil.gov.au/publications/multiple-land-use-framework-december-2013

AMEC has longstanding objectives to reduce the amount of red tape mineral and mining companies are subject to, and to reduce the cost of doing business for these companies. Any amendments which are contrary to these objectives, or remove the certainty that these long-term and higher risk investments require, may delay the realisation of the widespread benefits that mineral exploration and mining projects offer to not only the communities in which they are located, but also to the Australian economy.

The reform of the LAA presents an opportunity to improve the implementation of co-existence frameworks and provide mineral explorers and miners with tenure certainty, without compromising the viability of industry through increased delays, administrative burden, unnecessary duplication and red tape. Any changes to the LAA that will create delays already experienced when trying to resolve uncertainty, will impede the development of mining projects; these projects pay the royalties that build schools, roads, hospitals, and provide many other public benefits to all Australians.

The Constitution

The Commonwealth of Australia Constitution Act (The Constitution) does not list minerals as an area over which the Commonwealth has jurisdiction. While the Commonwealth administers policy for Australia's offshore mineral and petroleum exploration, the responsibility for onshore legislation lies within Australia's States and Territories[3]; as such, royalties that may be generated from the sale of minerals are the property of the State.

The Governor-General can grant mining interests on Commonwealth land, but the proponents are then subject to the relevant legislation and Regulations of the State in which the mineral interest is located. Entities wishing to undertake mineral exploration, mining or related activities on Commonwealth land apply to the Department of Finance and try to negotiate a deed of access before presenting the proposal to the Governor General for approval.

Australia's enviable mining and mineral exploration industry is considered to have low sovereign risk, high natural resource potential, ideal geographical positioning, and a highly skilled and experienced workforce. Whilst considered a strict regulation jurisdiction, susceptible to delays which create a level of uncertainty, the current interaction of land access regulatory frameworks between Commonwealth and State / Territory are not a significant barrier to investment. This needs to be maintained, and where possible, improved.

AMEC broadly supports measures to increase streamlining and reduce uncertainty for industry. However, AMEC cautions against introducing any measures that will increase the complexity of interaction between mining and LAA legislation, so as not to reduce the level of certainty required to attract investment to develop mining projects; the results of such changes would be to the detriment of the wider Australian community. The continued viability of Australia's prosperous minerals sector is contingent on the current Commonwealth land access provisions not being further restricted.

AMEC recommends investigating opportunities through the reforms process, to devolve more regulatory responsibilities of the Commonwealth under the LAA to the States and Territories.

---

[3] http://www.australiaminerals.gov.au/legislation-regulations-and-guidelines

Western Australia

Western Australia's *Mining Act 1978* defines Commonwealth land as "land in respect of which the Commonwealth has a freehold or leasehold interest; or land that is otherwise vested in or held by an officer or person on behalf of the Commonwealth"[4]. Under this legislation, mining (which by definition includes prospecting and exploration) cannot be undertaken on reserved land or Commonwealth land without the written consent of the Minister responsible for the Mining Act.

Under Division 2 of Western Australia's Mining Act, a mining tenement may be applied for on Commonwealth land that is not already the subject of a mining tenement, and only with the consent of the Minister who is required to first consult and obtain the concurrence of the Minister of the Commonwealth responsible for the control and management of the land (Commonwealth Finance Minister), can mining be carried out on Commonwealth land[5].

To be considered Commonwealth land for the purposes of the Mining Act, the land must be:

1. Land in respect of which the Commonwealth holds a freehold interest; or

2. Land in respect of which the Commonwealth holds a leasehold interest; or

3. Land that is otherwise vested in or held by an officer or person on behalf of the Commonwealth.

The co-existence of the LAA and the Mining Act has on a number of occasions, including recently, lead to confusion and uncertainty as to the interpretation of the legislation. There was recent debate over the classification of Mertondale Pastoral Lease as land in which the Commonwealth potentially holds a leasehold or freehold interest. The primary issues in contention were who holds the regulatory authority, and the implications the lease's purchase by the Department of Defence would have on mining and exploration activity, which would now be subject to Regulations under an additional piece of legislation.

AMEC engaged with relevant Commonwealth Departments to ensure mineral exploration was still permitted on tenements which were granted prior to the purchase of the lease, on the definitions of freehold and leasehold identified above. It was agreed that mineral exploration was still permitted to continue as the pastoral lease did not fit within these definitions, and the intent of the land was to remain as a pastoral lease. Had this outcome not been reached, the implications for existing tenement holders would be dire, as they would no longer be able to search for mineralisation, and their geological studies to date would essentially be made redundant.

An initial point of friction was the distribution of a standardised Deed of Access by the Department of Defence to tenure holders at Mertondale. While the content was contentious, the process and intent are supported as it transparently detailed expectations, access, and a pathway to mine development.

However, how legally binding the Deed is remains an open question. The interaction and co-existence of the LAA with the Western Australian Mining Act continues to create confusion and uncertainty. Providing more transparency and certainty about regulator authority, and more clarity on

---

[4] https://www.dmp.wa.gov.au/Documents/Minerals/Mining_Notices_Basic_Provisions.pdf
[5] S.25A, Mining on Commonwealth Land, *Mining Act 1978*

the intent of the LAA reforms and their likely impact on mining and mineral exploration activity, will allow industry to better understand the implications and opportunities the reforms present.

South Australia

In South Australia there are lands that are owned or controlled by the Commonwealth Department of Defence, managed as training or test areas. The co-existence framework South Australia that has been implemented to manage potential conflicts between land use is welcomed by industry.

Under the *Mining Act 1971* (SA), the lands remain mineral land, accessible for mineral exploration and mining, subject to certain restrictions and conditions under the *Defence Act 1903* (Cth) and the Defence Regulation 2016 (Cth)[6].

The Woomera Prohibited Area (WPA) for instance, is used by the Royal Australian Air Force for testing war materiel, but due to the implementation of a robust co-existence framework, mineral activity is permitted to occur in line with the 'traffic light system' (access zones). This system divided the WPA into four access zones, to offer different levels of access to non-Defence land users. The zones contain separate exclusion periods when Defence may undertake testing activities and access is not permitted, but otherwise, land users such as mineral explorers are subject to the following permissions:

Red Zone: continuous use by Defence; no public access or resource tenements or activity permitted;

Amber Zones: Defence can exclude on-ground access to all non-Defence users for specified periods of time; Amber Zone 1 – up to 140 days per year, Amber Zone 2 – up to 70 days per year;

Green Zone: non-Defence users may be excluded for up to 56 days per year.

These exclusion zones are published in March each year for the following financial year, with Green Zone requirements notified to resource production permit holders at least six months in advance.

South Australia's system is a welcome framework to manage the complexities in conflicting legislation regarding land use. It provides mineral explorers and the Government with certainty and advanced notice, to allow for proper planning and alternate arrangements, recognising the many benefits that minerals projects deliver and the importance of providing the land access certainty they require.

A concern, however, that remains is what will occur when economically viable mineralisation is discovered? Is it possible to develop a mine on Commonwealth land? Woomera sits on the highly prospective Gawler craton, which hosts Olympic Dam, Prominent Hill and other mines.

Queensland

In Queensland generally all land except "Commonwealth land where an Act excludes mining" can be subject to a resource authority, noting that some land areas will have conditions and restrictions over them, restricting the range of allowed mining activities[7].

---

[6] https://energymining.sa.gov.au/minerals/land_access/defence_land
[7] https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/authorities-permits/applying/land-constraints

The recent placing of "Restricted Areas" over several existing minerals tenements by the Department of Defence is causing contention between minerals companies and the Commonwealth. As the areas are considered restricted, it is unlikely any mineral activity will be permitted for the duration of the restriction, despite some having access and have invested in their tenements since 1995.

The mineral exploration to mining cycle is a lengthy process, with recent reporting indicating that the average time between mineralisation being discovered to being turned into a producing mine is roughly 13 years. For mineral explorers and miners to have reduced certainty over their tenure due to the State legislation's co-existence with Commonwealth legislation, creates uncertainty that could discourage exploration activity in the State.

The Commonwealth could provide more certainty to Queensland's minerals sector, and that of all other Australian jurisdictions', by implementing a system similar to that in South Australia's Woomera area, with the use of a 'traffic light system'. This will acknowledge that significant mineral deposits can often occur on land that is required by the Department of Defence or other relevant Commonwealth Departments, but there are ways to still conduct further exploration activity to confirm the viability of deposits, without impeding Defence priorities.

Final comments

Access to land across Australia for mineral exploration and mining activity can be contentious, particularly given each jurisdiction's differing legislative requirements and their interaction with Commonwealth legislation. Providing certainty over tenure by developing a standardised co-existence frameworks between State / Territory and Commonwealth legislations will seek to alleviate the common issues mineral explorers, mining tenement holders and Government regularly face when trying to ascertain who the ultimate regulatory authority over certain parts of Commonwealth is.

The Department of Defence's approach of distributing, and then negotiating a deed of access, with mining and mineral exploration companies creates needed transparency and certainty. AMEC would welcome an opportunity to discuss drafting such documentation in the future.

AMEC appreciates the willingness of the Department of Finance to continue engaging with industry and would like to participate in future consultations. Ongoing engagement will ensure that industry's views are represented when undertaking regulatory reforms, to ensure that mineral exploration and mining activity can proceed with reduced red tape, delays and costs. Supporting the faster discovery of Australia's future mines will allow the widespread benefits of mining to be experienced across the nation sooner rather than later.

For further information contact:

[redacted]