



14 March 2014

Committee Secretary
Joint Select Committee on Northern Australia
PO Box 6021
Parliament House
Canberra ACT 2600

Via email: jscna@aph.gov.au

Dear Secretary

Inquiry into the development of Northern Australia

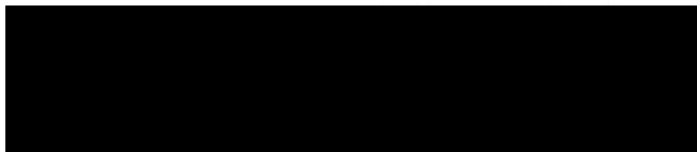
Thank you for the opportunity to provide input into the Joint Select Committee on Northern Australia's inquiry into "*The development of Northern Australia*"

The Association of Mining and Exploration Companies (AMEC) is the largest and most successful peak industry body for mineral exploration and mining companies within Australia. The membership of AMEC comprises hundreds of exploration, mining and service industry companies; many of which operate or have interests in Northern Australia.

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

Please find attached AMEC's submission. I would be pleased to appear before the Committee at a public hearing.

Yours sincerely



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Submission to:

Inquiry into the development of Northern Australia

Joint Select Committee on Northern Australia

ASSOCIATION OF MINING AND EXPLORATION COMPANIES

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Introduction

The Association of Mining and Exploration Companies (AMEC) is the largest peak industry body for mineral exploration and mining companies within Australia. AMEC's membership base comprises hundreds of exploration, mining and service industry companies.

AMEC appreciates the opportunity of providing input into the Joint Select Committee on Northern Australia "Inquiry into the development of Northern Australia".

Executive Summary

All three Northern Australian State Government's geological survey institutions and the mineral exploration industry agree - Northern Australia is highly prospective for a broad range of minerals. Furthermore Northern Australia remains significantly underexplored offering significant opportunities for mining development.

However, the development of Northern Australia is hampered by the complex nature of land access arrangements and the lack of key infrastructure. The unescapable truth at the heart of the complexity is that Northern Australia is under the jurisdiction of 4 different Governments – Western Australia, Northern Territory, Queensland and the Commonwealth. There is simply not enough consistency across the Government public policy framework to instil confidence in investors to invest substantially in Northern Australia.

In the main, future development across Northern Australia will be of a greenfield nature. AMEC is cognisant that funding these developments across Northern Australia presents multiple challenges to Governments with tight budgetary circumstances. It may be the case that traditional funding sources and methods are unable to cope with the complexities presented by Northern Australia. Therefore new and innovative ways of funding will need to be developed in order to unlock Northern Australia's significant economic potential. Notwithstanding this view, Governments should be prepared to invest considerable seed funding to mitigate some of the risk associated with greenfields development.

In AMEC's view the major goal of Governments across Northern Australia should be to develop a long term cross-border development strategy, which would flow into policy, legislation and regulation of economic development. From the development of the plan, AMEC considers that all Governments should provide a significant level of seed funding and bring the major stakeholders together to facilitate discussion to solve many of the problems facing the development of Northern Australia.

Recommendations

AMEC recommends Governments:

1. Initiate a high level forum to undertake strategic planning for Northern Australia where industry, community and Government work together in developing a shared vision that guides Government policy and investment.
2. Adopt and adhere to risk-based outcomes-focused regulation with the view to reducing uncertainty for investment decisions.
3. With respect to infrastructure:

- a) invest resources to develop and de-risk infrastructure to support economic development.
- b) remove barriers and impediments to superannuation funds from investing in infrastructure.
- c) remove policy barriers imposed by Governments preventing uranium transport from suitable ports
- d) work with mining industry to find innovative ways of utilising water resources created as a result of mining.

4. With respect to Native Title and Cultural Heritage:

- a) Increase the efficiency of the native title claims resolution process
- b) Develop consultation protocols and rules in circumstances where there are overlapping claims and multiple stakeholders
- c) Finalise the review of the role and functions of native title representative bodies and native title service providers to ensure that they continue to meet the evolving needs of the system
- d) Implement public policies that reduce the cost of compliance with native title and heritage requirements, such as those being considered by the Western Australian government
- e) A complete review of Aboriginal Land Rights Act with the view to create a level playing field for all parties that gives respect to the Traditional Owners and allows considered economic development
- f) Remove the power of veto in the Northern Territory and replace it with a 'right to negotiate'
- g) Reduce the standard ALRA negotiation period from 22 months to 6 months
- h) Introduce a two stage negotiation process in ALRA negotiations

Strategic Plan for Northern Australia

While there have been a number of inquiries and reports¹, both at a local and regional level into the development of Northern Australia, in AMEC's view no significant coordinated strategy has yet emerged. Government policies continue to vary across Northern Australia on issues relating to development including infrastructure development and environmental protection.

A forum for undertaking strategic planning for Northern Australia is required to ensure that industry, community and government work together in developing a shared strategy that guides government policy and investment.

Establishing meaningful and ongoing relationships at a community and regional level where dialogue can be freely exchanged offers a sound alternative to the recent conflict evidenced over issues such as gas extraction and Wild Rivers.

Role of Government

Northern Australia, it could be argued suffers from considerable market failure for the provision of goods and services. While AMEC appreciates the reasons for this situation, development will not occur until they are overcome. Therefore, if the Federal Government is serious about the development of Northern Australia, it will have to provide some significant level of resources to overcome the market failure.

While this funding maybe in the form of direct development funding, it may also include bringing the stakeholders together to facilitate discussion, under taking strategic environmental assessments for infrastructure corridors and the provision of seed funding.

Recommendation

AMEC recommends Governments should initiate a high level forum to undertake strategic planning for Northern Australia where industry, community and Government work together in developing a shared vision that guides Government policy and investment.

Risk-Based Outcomes-Focused Regulation

AMEC has long advocated for risk-based outcomes-focused regulation, particularly relating to environmental regulation. Most Governments are striving to deliver this, however they are still prone to lapse into populist decisions. A recent example has been the Cape York Regional Plan and the declaration of the Steve Irwin Conservation Park. The Northern Territory also declared the Limmen National Park over advanced projects that were not uniformly excised, creating poor perceptions of the process. A Western Australian example is the listing of the West Kimberley on the National Heritage List and the as yet unfulfilled State Government election promises to enlarge and/or create three more national parks over large tracts of mineral provinces. These decisions have brought about unwelcome uncertainty for the companies operating in these areas and throughout the states and territories concerned.

¹ Many of these are listed on the Department of Infrastructure and Regional Development website at www.regional.gov.au/regional/ona/reports-publications.aspx

Government decisions such as these sterilise land access and curtail development by creating uncertainty within the investment community about the security of the tenure in Northern Australia.

Recommendation

AMEC recommends Governments adopt and adhere to risk-Based outcomes-focused regulation with the view to reducing uncertainty for investment decisions.

Infrastructure

Roads and Railways

One of the major impediments to exploration and subsequently mining is the lack of infrastructure, both social and economic. In particular, lack of sealed roads and railways makes access to and export of minerals expensive and prohibitive in many cases. AMEC members have provided feedback on key pieces of road and rail infrastructure required to promote development. In no particular order of importance they include:

1. A railway link between Mt Isa and Tennant Creek.
2. Widening of the Carpentaria Highway to two lanes between Daly Waters and McArthur River.
3. Sealing of the Plenty and Donohue Highways between the end of the bitumen past Gemtree to Boulia.
4. Sealing of the road from Tobermorey through Urandangi to Mt Isa.
5. Sealing of the Sandover Highway from the Plenty Highway turnoff through to Camooweal.
6. Sealing of the Tanami Road from the end of the bitumen northwest of Alice Springs through to Halls Creek.
7. Sealing of the Roper Highway between Mataranka and Cape Crawford.
8. Sealing of the Savannah Way between Burketown and Borroloola.

Given the sometimes lengthy process for gaining approvals, Governments should begin the process of identifying future infrastructure corridors and clear the way for development with preapproval covering native title consents and the environment. Linear infrastructure corridors are notoriously difficult to achieve due to the changing stakeholder interests as the infrastructure transgresses across the landscape. If Governments have already achieved some level of environmental approval or native title consents then a significant amount of risk would have been removed from the development.

Strategically located roadhouses and therefore access to fuel and camping areas would be advantageous as well. A number of towns are transitioning to become regional centres for a number of mining and exploration operations, for example, Borroloola in the Northern Territory. As this occurs AMEC members have expressed a desire to have more regular transport/shipping/trucking services to these centres.

Ports

As mentioned previously significant parts of Northern Australia remain unexplored for minerals. One of these regions is the vast area of the Gulf country. There are several exploration companies active in this area of Northern Australia. However, in order to fully exploit these

potential resources, significant barriers exist in the lack of access to ports, both in the physical sense of new port infrastructure and access to existing port infrastructure. An example of the former is the need for expansion of the Karumba Port in support of Queensland's north-west minerals province, and an example of the latter, Bing Bong Port supporting the Roper and McArthur River areas in the Northern Territory.

Ports for the export of Uranium

Uranium is the only mineral mined in Australia that has its own regulatory framework governing its extraction and export. There is no logical reason for this. The inherent feature of uranium – its low radioactivity – is shared by other minerals which are regulated under standard mining legislation and regulation. Northern Australia is prospective for uranium and a number of companies are exploring for it.

The two current points of exit are Darwin and Adelaide. Uranium is transported by road from the Ranger mine (Northern Territory) and from the Olympic Dam, Beverley and Honeymoon mines in South Australia to those ports. The transport routes followed are the normal routes for commercial transport. Over 6,800 containers of uranium from Ranger, over 3,600 from Olympic Dam and nearly 600 from Beverley have been transported to ports at Adelaide or Darwin since the early 1980s.

Only two exit points poses a risk to supply continuity. Firstly, the potential unpredictability of relying on multiple transport options of transporting uranium enormous distances to access a port. These risks include road and rail disruptions due to weather or other unforeseen events.

Secondly if one of the two ports, or both, are closed for some reason, this will obviously impacts a company's (and Australia's) ability to supply the market. In a competitive marketplace, supply continuity is paramount.

Transport of uranium is regulated by Commonwealth and State laws in accordance with a transport code created by the Commonwealth's nuclear industry regulator, the Australian Radiation Protection and Nuclear Safety Agency. The safety standards for exporting uranium are now well established.

There are no legislative impediments to the export of uranium from any Australian port that is suitable for uranium export. There are, however, policy barriers imposed by State governments preventing uranium transport from suitable ports. The current options are available at the discretion of shipping companies and the current policy impediments need to be removed so that alternatives are available.

Water

While the discussion involving water has mostly revolved around the building of dams, there has been little regard on how the mining sector may be able to contribute to Northern Australia's fresh water security.

The legacy of the mining will be mining voids. Some of these voids will hold significant volumes of water that could support a range of industries or provide storage for urban development. There is a significant opportunity for the mining industry and water resource managers and development agencies to work together and find innovative ways of utilising these water resources.

Communications

The lack of adequate mobile communications infrastructure is becoming to be a significant barrier for development in northern Australia. For the mineral exploration and mining industry the necessity to carry or install expensive communications equipment is adding extra costs to exploration programs and mining projects.

Energy

In a number of areas access to energy is a severe limiting factor in promoting economic development. As discussed previously Northern Australia has significant mineral potential. In order to unlock this potential access to energy will be essential.

The mineral exploration and mining sector is heavily reliant on liquid fossil fuels, principally diesel for the transport component of the industry. Therefore a ready and reliable source of diesel fuel will be required for many years to come. The development of gas and electricity infrastructure should also take into account prospective mineral provinces and be built with consideration of future access by mining companies.

Public and Social Infrastructure

It is obvious that in order to support economic development there needs to be commensurate public and social infrastructure development, such as schools, hospitals and land releases for the construction of houses and amenities. Provision of public and social infrastructure is firmly the responsibility of government. Governments will be required to take a number of calculated risks across Northern Australia in order to support and stimulate development.

Recommendation

AMEC recommends Governments:

- invest resources to develop and de-risk infrastructure to support economic development.
- remove barriers and impediments to superannuation funds from investing in infrastructure.
- remove policy barriers imposed by Governments preventing uranium transport from suitable ports
- work with mining industry to find innovative ways of utilising water resources created as a result of mining.

Native Title and Aboriginal Heritage

Native Title Issues

Native Title is defined as the rights and interests that are possessed under the traditional laws and customs of Aboriginal people, and that are recognised by common law. In some areas, native title has been deemed to be extinguished, such as freehold land, but in other areas native title may continue to be active.

Industry proponents and government approval agencies therefore need to ascertain whether the proposed tenement area is the subject of native title.

Despite the fact that the Native Title Act 1993 (Cth) is over 20 years old, AMEC understands there are still approximately 450 native claims throughout Australia requiring resolution. While

various attempts have been made by Governments to make the process more efficient more work needs to be done to reduce the current timeframes and subsequent costly delays for industry.

The process becomes complicated where native title has still not been determined, a native title claim not yet submitted or registered, where there may be over lapping claims and where there may be several native title stakeholder groups with an interest in the license area.

In addition to promoting increased efficiency in the Native Title claims resolution process, AMEC has consistently called for the development of consultation protocols and rules where there may be overlapping claims and multiple stakeholders.

It is anticipated that these issues will be the subject of review by the current Australian Law Reform Commission Inquiry into Native Title issues.

Costly and time consuming cultural heritage processes

Given the major proportion of minerals exploration and mining activity occurs in Western Australia, it is relevant to note the existence of the WA Aboriginal Heritage Act 1972 and that it explicitly provides for sacred sites as well as for the preservation of Aboriginal historical and archaeological sites that will continue to be valued by future generations.

The Act is the State`s principal legislation enabling protection of Aboriginal cultural heritage. A breach of the Act will result in financial penalty and reputational damage. For company Directors this is a significant governance issue and over time the industry has fulfilled its heritage obligations by commissioning heritage surveys.

A heritage survey industry has grown from this requirement for company due diligence and is now a significant ‘industry’ in its own right. Issues of supply and demand of qualified persons plus unrealistic expectations on the exploration industry’s capacity to pay have meant the industry sustains a large number of anthropologists, archeologists and native title representative bodies. In combination they are costing the industry millions of dollars annually – money not being spent on the ground exploring.

AMEC members have consistently expressed deep concern with the time delays and increasing costs in undertaking a heritage survey, and in progressing Section 18 consents. Some good progress has been made in respect of the latter through the administrative processes of the Aboriginal Cultural Material Committee, however, the high costs that are incurred by industry in obtaining a heritage survey continue unabated.

Based on member feedback the average cost of a heritage survey has increased from \$11,000 per day in 2010 to the current approximate cost of \$20,000 per day. There have also been examples in the Pilbara and the Kimberley regions where the daily cost of undertaking the survey has exceeded \$30,000. There is limited opportunity for exploration companies to negotiate these costs. AMEC has reproduced an actual fee schedule (dated 2013) from a Standard Heritage Agreement for conducting a heritage survey in the Kimberley region of Australia.

Category	Qty	Description	Rate	Amount
Advisors				
1a.		Anthropologist, ethno-biographical, environmental,	TBA	

		archaeological consultants.		
Land Council Representatives				
2a.		Professional Fees		\$2,550
		Operational and Logistical Fees		\$7,500
Work Program Survey Team				
3a.	8	Filed Inspection Work Clearance Team Owners/Cultural Advisers/Senior Cultural Advisers	\$500-\$1000pp (number of senior cultural advisers is capped at 4 per survey)	\$4,000 - \$8,000
Camping and Supplies				
4a.		Accommodation		\$2,000
b.		Food		\$750
c.		Equipment/Out of Pocket expenses/incidentals		\$350
Vehicles				
5a.		Vehicle Costs		\$1,950
First Sub-Total				\$19,100 - \$23,100 + cat 1
Admin Fee				
6a		Administration fee 20% first sub-total		\$2,865 - \$4,620
Heritage Impact Assessment costs				
7a.		Cost of meeting with TO's varies according to context. Note Heritage Protection Agreement clause 41.1 cost included		\$5,000 - \$20,000
7b.		Airfares and air charter costs dependent on context		
Second Sub Total				Not more than \$22,865 - \$26,865 + air travel and expenses

The costs shown are in addition to those paid to anthropologists/archaeologists, consultants, lawyers; and a lesser percentage to native title representative bodies and Traditional Owners

themselves. It has been estimated that only 10-15% of all monies paid by companies for heritage purposes are received by the Traditional Owners. This is a significant issue that must be addressed as the finalisation and execution of heritage surveys is being used as a lever for excessive and an increasing number of financial demands on industry.

AMEC has continued to support proposals emanating from the Avery Review into the WA Aboriginal Heritage Act as they should provide increased clarity and certainty for all stakeholders, as well as improve compliance, efficiency and effectiveness.

AMEC is therefore awaiting with interest the imminent release of an Exposure Draft of the Bill to amend the AHA.

Northern Territory Aboriginal Land Rights Act

In the Northern Territory the operation of the Aboriginal Land Rights Act (ALRA) limits the discovery and development of new resources and the associated social and economic benefits that arise from mining.

It is understood that the ALRA was established with a view to insulating Aboriginal People from the modern economy and society with a belief that Aboriginal People needed to be protected.

Whilst this may have been relevant to circumstances of the 1960's and 1970's, it is more difficult to argue now, particularly in light of ongoing human rights issues in those communities. In addition, ethical and legal standards and community engagement has improved dramatically over recent years. It is now good business to undertake an inclusive approach to project development with shared benefits.

Aboriginal people need to be empowered to share in the development and economic benefits of Northern Australia and the operation of the ALRA should be reviewed to this end; to promote legitimate access and opportunity.

AMEC considers that the current ALRA system is not working as intended and stakeholders believe that there is too much power held by Land Councils to simply stop development. The power of veto for five years is considered to be too strong and absolute.

This has led to a situation where it is widely recognised that economic development and the welfare of Aboriginal people on Aboriginal land is in a very poor state.

The key concept behind Part IV of ALRA as presently drafted is the right of "veto" over the grant of exploration tenure on Aboriginal land. In AMEC's view this veto right reduces the potential for economic and social development for Aboriginal people by reducing the normal interaction with the minerals exploration and mining sector that other landowners regularly experience, deal with and benefit from.

The large extent of Aboriginal land in the Northern Territory (being approximately 46% of the Territory landmass and not confined to one particular area of the Territory) means that the veto right can be used as a bargaining tool to seek to obtain leverage over projects involving non-Aboriginal land. For example, where a mining project involves the use of both Aboriginal land and non-Aboriginal land then the use of the non-Aboriginal land can be severely restricted by the ability to veto the use of the Aboriginal land. This leverage can also be applied to mining projects which, although actual mining occurs on non-Aboriginal land, operations require key infrastructure to cross Aboriginal land.

Allowing Aboriginal people a “veto” over the grant of mineral tenure is uncompetitive and promotes uncompetitive behaviour.

Furthermore, the veto right provided for in Part IV of ALRA potentially promotes “land banking” by companies who seek to rely on a veto occurring and the consequential 5 year moratorium to keep their footprint on an area (and prevent other companies from applying for that area) where they are not ready to commence any exploration activity there.

In AMEC`s view, the provisions of Part IV of ALRA which allow for a “veto” with respect to the grant of exploration licences over Aboriginal land should be removed from the Act and replaced with a regime equivalent to the “right to negotiate” provided for in Subdivision P, Division 3, Part 2 of the *Native Title Act 1994 (Cth)* (“NTA”), including the expedited procedure. This is a similar process that operates in Western Australia, and has generally proven to be successful for all parties.

The right to negotiate created under the NTA is a modern and more effective regime for allowing Aboriginal people (being native title holders and certain native title claimants) to participate in and obtain benefits from the granting of mineral tenure over land with subsisting native title rights.

It is further noted that the current ‘right to negotiate’ timeframe under the NTA is six months, whereas under Section 42 of the ALRA the standard negotiation period is 22 months. AMEC considers that this latter timeframe is excessive and provides no incentive for negotiations to be completed in a timely manner. As such, AMEC considers that the timeframe contained in both the NTA and the ALRA should at least be aligned.

AMEC also considers that there could be justification to have a two stage negotiation process, where access via ALRA may be granted for exploration or low impact activities in the first instance. In the event of successful exploration activity, a further application could be made at a later date for a mining development lease (or similar).

Resourcing of Native Title Representative Bodies

The mineral mining and exploration industry is willing and keen to develop relationships and negotiate with the Traditional Owners of the land, but are experiencing constant frustration with the level and quality of support provided by the Native Title Representative Bodies (NTRBs). There is a couple differing points of view. One suggests the poor service is directly a result of the NTRBs being under resourced. The other suggests that the NTRBs are using resources to operate outside of their remit thus dragging resources away from their core functions. AMEC notes that Deloitte Access Economics was commissioned in mid-2013 by the then Department of Families, Community Services and Indigenous Affairs (now Department of Social Services) to conduct a “*review of the role and functions of native title representative bodies and native title service providers to ensure that they continue to meet the evolving needs of the system, and particularly the needs of native title holders after claims have been resolved*”. The outcomes of this review may shed light on the matter and the issues to be addressed.

Recommendations

AMEC Recommends that Government/s:

- Increase the efficiency of the native title claims resolution process
- Develop consultation protocols and rules in circumstances where there are overlapping claims and multiple stakeholders

- Finalise the review of the role and functions of native title representative bodies and native title service providers to ensure that they continue to meet the evolving needs of the system
- Implement public policies that reduce the cost of compliance with native title and heritage requirements, such as those being considered by the Western Australian government
- A complete review of Aboriginal Land Rights Act with the view to create a level playing field for all parties that gives respect to the Traditional Owners and allows considered economic development
- Remove the power of veto in the Northern Territory and replace it with a 'right to negotiate'
- Reduce the standard ALRA negotiation period from 22 months to 6 months
- Introduce a two stage negotiation process in ALRA negotiations