To: Department of Environment and Water

Re: South Australia's new Biodiversity Act – Discussion paper

1 March 2024

Introduction

AMEC appreciates the opportunity to provide a submission on the *Developing a Biodiversity Act for South Australia: Discussion paper*. We welcome continued engagement throughout the next stages of the process to ensure mineral explorers and miners can contribute to the State's new Biodiversity Act.

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 2022-23, $229.3M was spent on mineral exploration in South Australia, an 84.47% increase in original terms, from the $124.3M spent on mineral exploration in 2021-22. Mineral resources exports were recorded at $6.8B for 2022-23, while $2.95B was spent on capital expenditure. In 2022-23, a record high of $286.9 million 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.

South Australia is highly regarded internationally for its mineral potential and investment, with the 2022 Fraser Institute Survey ranking the State third globally for Policy Perception and ninth for overall Mineral Investment Attractiveness.

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.

Discussion paper Biodiversity Act

General Comments

AMEC appreciates the opportunity to engage through this consultation process on developing a Biodiversity Act for South Australia. The Biodiversity Act discussion paper proposes a new legislative framework that could be seen as the state's key piece of environmental legislation with strong influence over actions taken within the state that are likely to have impact on matters involving biodiversity. It will undoubtedly require substantial consultation, meaningful discussion, and transition phases, to ensure unintended consequences can be mitigated prior to passage and commencement.

Mineral explorers and miners across Australia comply with robust environmental legislation, to ensure risks to the environment and community, have been appropriately managed. We are committed to ensuring these risks have been duly considered and addressed in a risk-based manner, minimising duplication, the need for red-tape, administrative burden, and increasing cost. A modernised framework that is well deliberated on and transitioned to is anticipated to deliver these outcomes.

AMEC welcomes recognition in the discussion paper, of the importance of the economic opportunity for the state to capitalise on the green transition occurring across the world and that this can be achieved by leveraging the State's renewable energy and green iron and critical minerals. AMEC supports the view that ESG credentials are increasingly important to being seen as a trusted, reliable partner by international investors, industry and the Commonwealth, and that a Biodiversity Act (the Act) may contribute toward verifying these credentials.

Definition of Biodiversity

AMEC notes that the discussion paper states *"Biodiversity refers to the variety of life on Earth, encompassing all plants, animals, ecosystems and the genetic variety in them. It includes the variety within species, between species and among ecosystems*." AMEC would like to understand if this is the definition that will be applied in the context of this Act and recommends that the term 'biodiversity' is clearly defined in the draft Bill.

Purpose of legislative framework

AMEC and Industry would welcome further clarification as to the purpose of this legislation. Specifically, if the Government could identify what outcomes it will achieve that differ to the current environmental regulatory and compliance framework?

The Discussion Paper lists a variety of objectives that the current regulator already applies such as the mitigation hierarchy, transparency, reporting and the collection and curation of biological data and information. The current definition of environment is extremely broad and the regulator works across the State's several existing environmental legislations to achieve the best possible outcomes. AMEC seeks further detail on what is considered to be missing from existing environmental legislation in relation to biodiversity and why this reform is necessary.

Interaction with other Acts

The discussion paper states: *"It is likely a new Biodiversity Act will also need to provide guidance and influence over other legislation and may require consequential amendments to be made. Where changes to other South Australian legislation may be necessary, corresponding changes to*

administrative arrangements may also be required to ensure alignment with a new Biodiversity Act. The full extent of any necessary changes to other legislation would be determined as part the development of the draft Bill.

Whilst South Australia does not have dedicated legislation for biodiversity protection and enhancement, there are various provisions in a range of different Acts, including:

- National Parks and Wildlife Act 1972
- Native Vegetation Act 1991
- Landscape South Australia Act 2019
- Wilderness Protection Act 1992
- River Murray Act 2003
- Pastoral Land Management and Conservation Act 1989
- Marine Parks Act 2007

These key South Australian Acts, together with the Commonwealth's Environment Protection and Biodiversity Conservation Act 1999, protect South Australia's biodiversity."

AMEC considers that any future biodiversity legislation should not have primacy over other fit for purpose legislation within the Statute. As stated in the discussion paper, South Australia has developed several pieces of environmental legislation such as the *Environmental Protection Act 1993* and those Acts mentioned above. AMEC seeks further clarification on the apparent benefit of placing a further layer of duplication over existing regulation.

AMEC recommends that in developing the new Act, that DEW consider and share information relating to how it will integrate existing legislative, regulatory and approvals processes that already include provisions to consider biodiversity at a State and Commonwealth level, with a view to minimise duplication and any additional red tape wherever possible.

AMEC is concerned that there would be significant work in consequential amendments to not only the above Acts, but to the *Environment Protection Act 1993* and the *Mining Act 1972,* and that resourcing these amendments and subsequent regulations would be burdensome on government policy makers and regulators that are already under-resourced. Budget must be considered for additional resources to undertake these amendments in a timely manner, to not interfere with current 'business as usual' mineral exploration and mining assessment and approvals processes, and to ensure that economic benefits from mining projects continue to flow for State prosperity.

Commonwealth legislative overlap

AMEC notes that the timing of the development of the new Biodiversity Act is concurrent with significant reform and consultation on the rebuilding of the Commonwealth EPBC Act and the introduction of; Nature Positive legislation, Environmental Protection Australia Act and Environmental Information Australia. AMEC would appreciate an update of how South Australia's Biodiversity Act is planned to align with this significant Commonwealth reform.

AMEC notes that the Commonwealth Government's *Nature Positive* reforms are currently in consultation phase and are anticipated to be introduced to Parliament in 2024.

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AMEC therefore recommends that development of the drafting of the Biodiversity Bill should utilise the full advantage of insights from the extensive Commonwealth consultation, drafted materials and subsequent enacted legislation. This is to ensure that the Biodiversity Act and regulations are carefully crafted to ensure that there is no duplication with these Commonwealth Acts and that red-tape for mineral exploration and mining approvals and regulated activities is reduced.

AMEC understands the proposed South Australian Biodiversity Act may align with other states, however, the different environmental conditions, land uses and legislative frameworks within each jurisdiction must be a key consideration, rather than like-for-like adoption.

Discussion paper topics

The Biodiversity Act Discussion Paper covers ten topics. In this submission, AMEC has addressed only those considered to be of greatest impact to mineral exploration and mining activity but will review all elements of the draft Bill when it is released.

AMEC provides the following comments relating to Topics 2,3,5,7,8 and 10 in the discussion paper.

TOPIC 2 – Avoiding impacts

- AMEC notes that; "*The Act could seek to prioritise avoidance and minimisation of impacts to biodiversity and make it clear that any negative impacts to biodiversity are the last resort*". The mitigation hierarchy in the discussion paper is already utilised in the mineral exploration and mining industry environmental approvals processes. However, there may be instances where avoidance and minimisation are not able to occur due to the nature of mineral resources being fixed in location. In these cases, AMEC recommends that offsetting remains a valid mitigation to gain access to critical minerals.
- AMEC acknowledges avoidance is the most desired step by Government in the hierarchy. Noting that in cases where rehabilitation, restoration and offset are conceded as options, to meet the goal that biodiversity is left in a measurable better state than it was before, is likely to come at a cost that is higher than in current practice where like-for-like offsetting may occur. This has not been factored into current or projected budgeting for mineral projects and may impact the economic viability of mineral exploration and mining projects.
- AMEC sees the potential benefit of a proposed framework under the new Act, to include clear guidance on the requirements to avoid and minimise impacts to biodiversity and recommends that such a framework should be developed in consultation with the minerals industry.
- Regarding the discussion point that currently "*decisions made in regard to land use change do not always prioritise the need to conserve biodiversity*", AMEC notes that a move toward preferential land use for activities that avoid impacts to biodiversity may be favoured over minerals industry activities. AMEC advocates for a refresh of South Australia's Multiple Land Use Framework 2016, to ensure a balance of projects for biodiversity, the state's economic prosperity and access to minerals essential for decarbonisation infrastructure.

TOPIC 3 – Transparent decision-making

- AMEC agrees that being open and transparent strengthens trust and confidence. The mineral exploration and mining industry is familiar with publication and disclosure of decisions and

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actions taken, in accordance with legislation – including the continuous disclosure regime for those listed on the ASX.

- AMEC recommends that any additional mandatory reporting and regular assessment and evaluation of the effectiveness of environmental decision-making, as suggested in the discussion paper, must avoid being duplicative. Repeating the provision of information that is already supplied to regulators through the variety of reporting frameworks increases the cost of doing business and administrative burden for negligible improvements to environmental outcomes. AMEC suggests there must be consideration of additional government staff resources available for this administration. In addition, every effort should be made to ensure such requirements do not increase delays to the already lengthy approvals process and hold back the forthcoming benefits of new mining projects in South Australia.

TOPIC 5 – Assessing the risk of extinction

- The introduction of greater clarity on the types of native species that can be considered as threatened may result in listing species previously not on the list. Greater detail as to what these clarifications are, is needed. AMEC notes that South Australia already has a Threatened species list that is managed through DEW and seeks to understand how what is proposed will change the existing arrangements?
- The impact on exploration and mining projects with existing approvals and supporting baseline studies must be considered.
- This process will potentially further replicate the Commonwealth threatened species listed. AMEC seeks to understand if this replication has been considered and will lead to an improved environmental outcome?
- AMEC notes that an omission from this Topic is the delivery of Recovery Plans for the Threatened species. A Recovery Plan provides a framework for government agencies and key interest groups to plan and coordinate their efforts to conserve threatened species and/or threatened ecological communities. We note that nationally Australia has not completed recovery plans for all of the listed Threatened species, and that each of these Plans needs greater resourcing by Government.

TOPIC 7 – The benefits of information

- AMEC supports robust data collection and information dissemination. AMEC notes the intention of the new Act to provide a framework to enable information sharing with community and across government to assist in decision making. Mineral explorers and miners undertake significant environmental studies at considerable cost, and already provide substantial data and information to government to accompany licence applications, eg. Program for Environment Protection and Rehabilitation documents. AMEC seeks to ensure that the introduction of any new data collection and information sharing requirements will not negatively impact mineral explorers and miners' business operations with the burden of additional data capture and information provision.
- The Commonwealth Government's Nature Positive reforms includes a proposed Data and Information Standard. The draft of this Standard introduces three tiers of information quality.

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To pursue greater national harmonisation, AMEC would welcome consideration of the Commonwealth's proposal in the execution of this Topic.

- AMEC notes that systems for integrating and sharing such information could have the added benefit of creating efficiencies in approvals and regulatory monitoring. To achieve these outcomes their implementation should include budgeting and resourcing for the upgrade of DEW and other agency systems interface.

TOPIC 8 – Achieving 30 by 30

- The new Act could seek to improve, broaden and establish incentives to encourage non-government entities and private landowners to conserve and recover biodiversity. AMEC raises concerns about the sterilisation of undeveloped mineral resources through this process.
- AMEC recommends the Act consider how this might impact access to mineral resources, as these cannot be moved and developed elsewhere. Certain critical mineral resources may be rare in locality and occurrence. The Government should ensure areas proposed for such biodiversity recovery and conservation consider access for the exploration and extraction of these critical resources. At a minimum, low impact surveys, eg. geochemical and geophysical, should be undertaken to ensure that Government decision makers have sufficient information prior to sterilising an area that may create jobs, growth and provide the minerals for a clean energy transition.
- AMEC and Industry call on Government to begin early discussions with the Geological Survey of South Australia to identify locations that will be transformed into conservation areas. AMEC has a working group of active exploration companies who would welcome an opportunity to discuss the prioritised locations.

TOPIC 10 – Consequences of doing the wrong thing

- The discussion paper proposes; "*The Act could enable suitable non-government parties to commence proceedings for offences under appropriate circumstances*". AMEC seeks clarity regarding if there will be appeal rights against the proposed powers of these 'suitable non-government parties'. This is an important point to consider, as the proposed decision-making authorisation could lead to the need for dispute resolution and without appeal rights this would lead to an escalation of matters through the courts process.

Omissions

The Biodiversity Discussion Paper covers ten topics. AMEC notes that there are a range of other issues that are currently under discussion nationally in both the Commonwealth and State realms.

Regional Planning

The Commonwealth Government has committed $29.3m to deliver the Regional Planning Initiative with three areas in Queensland the initial priority. Regional Planning will offer a streamlined pathway for development through consideration of cumulative impacts and management of threats to biodiversity at a regional scale. AMEC would welcome an opportunity to further discuss South Australia's intentions in this area.

Restoration actions and restoration contributions (formerly known as offsets) reform

The Commonwealth Government, Western Australia and Queensland State Governments are all currently working independently on frameworks for Restoration Actions and Restoration Contributions. The Commonwealth Government, and Western Australia through the Pilbara Environmental Offset Fund, are refining schemes that allow for conservation payment methodologies. Further conversations on how such a framework could operate in South Australia could be a topic for future conversation.

Final comment

AMEC welcomes ongoing engagement and targeted mineral exploration and mining industry consultation with DEW during the next stage of development of the draft Biodiversity Bill. AMEC also appreciates the opportunity to provide further feedback on the draft Bill when it is ready to be shared with industry and the community via YourSAY.

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