

**To: Department of Water, Environment Regulation**

**Re: Draft Environmental Protection Regulations (Publication and Confidentiality) Regulations 2021.**

8 September 2021

## Introduction

AMEC appreciates the opportunity to provide a submission to the *Environmental Protection Regulations Amendment (Publication and Confidentiality) Regulations 2021*.

Ensuring appropriate privacy and confidentiality of a commercial information is necessary to the smooth functioning of businesses.

## About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry body representing over 400 member companies across Australia, with the majority having project interests in Western Australia. Collectively, AMEC's member companies account for over \$100 billion of the mineral exploration and mining sector's capital value.

The mining and exploration industry make a critical contribution to the Australian economy, employing over 255,000 people, and in 2019/20, collectively paid over \$39 billion in royalties and taxation. In 2019/20 resources companies invested \$35 billion in new capital and generated more than \$176 billion in mineral exports. \$2.8 billion was spent on minerals exploration in 2019/20, representing an 18% increase from the previous year. In Western Australia, in 2020 the mining sector employed a record 140,940 workers, and generated \$148 billion from the sale of minerals.

## Drafted amendments

### General feedback

AMEC acknowledges the intention of the proposed amendments are to allow for the release of the details of companies and the nature of:

- proposals referred to the EPA
- clearing permit referrals or applications, and any accompanying information
- any amendment, revocation or suspension of a clearing permit
- applications and notices in connection with surrender of clearing permits.

Balancing appropriate transparency with commercial confidentiality is important for Industry.

### Section 11: Commercial confidentiality

AMEC is pleased that DWER has acknowledged the likely commercial sensitivities surrounding the release of some of this information in Section 11. AMEC is supportive of the drafting of this section.

## Section 12: Publication of personal information

AMEC asks that the proposed Section 12 (2) is rewritten to restrict the release of personal and bank account details unless consent is given. There does not appear to be a reason that personal or financial information need to be released to the public through this mechanism without prior consent.

The *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* are not operating in a vacuum. The most likely reason such details would be needed are for a prosecution, and the legislative framework already supplies sufficient powers to prosecute offences. Furthermore, the *Western Australian Freedom of Information Act 1992* already provides an independent structured process if there are matters of sufficient public interest to require the release of this information.

AMEC requests that it is rewritten with amendments in italics:

- (2) The CEO ~~must~~ *may at any time* refrain from publishing any of the following (whether or not a request has been made under regulation 11(1)) *unless consent is given by the information holder in writing.* —
- (a) personal information;
  - (b) bank account details;

The current wording seems to grant a disproportionate power to the CEO of DWER. It seems an overreach for the Government to be able to release a company's financial information, and personal information without seeking prior consent.

## How will this data be managed?

The regulations have been published in isolation of other guidance or explanatory material. A question from Industry that has arisen is how the information will be released and what involvement will an information holder have in the presentation of this information? AMEC considers that the company should be informed of what is proposed to be released.

AMEC requests that notification is given to all companies of the timing of the release of this data with sufficient time to respond. Without notification companies will be unable to exercise their rights as per Section 11.

## Commentary period

The release of commercial information by the Government is a sensitive topic. These regulations were provided with a response period of only two weeks. Unfortunately, this two week period appears to have unintentionally coincided with a breakdown in the Department's consultation pages RSS feed email notification system. This means not all stakeholders may have been aware of this consultation. AMEC requests the Department allow a month for consultation.

## Final comments

If the Government would like to discuss any of the above, please contact AMEC on the details below.

### For further information contact:

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