9 October 2015

Senior Advisor
Financial System and Services Division
The Treasury
100 Market St
SYDNEY NSW 2000

Dear Sir / Madam

Proposed industry funding model for ASIC

Thank you for the opportunity to provide comment on the Consultation Paper.

As the peak national representative body for hundreds of companies in the mining and mineral exploration sector, the Association of Mining and Exploration Companies (AMEC) has a direct interest in the activities of the Australian Securities and Investments Commission (ASIC).

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

I look forward to further consultation on this significant issue which has the potential to significantly impact on the industry.

Yours sincerely

Simon Bennison
Chief Executive Officer

Cc Senator the Hon Mathias Cormann, Minister for Finance
Hon Josh Frydenberg, Minister for Resources, Energy and Northern Australia
Hon Kelly O`Dwyer, Assistant Treasurer

Association of Mining and Exploration Companies
Offices located in Perth and Brisbane. Please address all correspondence to:
PO Box 948, West Perth WA 6872 | 6 Ord Street, West Perth WA 6005
P: 1300 738 184 | F: 1300 738 185 | info@amec.org.au | www.amec.org.au

Submission to Commonwealth Treasury:

Re – Proposed Industry Funding Model for the Australian Securities and Investments Commission Consultation Paper

ASSOCIATION OF MINING AND EXPLORATION COMPANIES

October 2015

Contents

1. INTRODUCTION 3
2. EXECUTIVE SUMMARY 3
3. STATE OF THE INDUSTRY 4
4. AMEC POSITION ON COST RECOVERY 5
5. SPECIFIC COMMENTS ON THE CONSULTATION PAPER 6

Prepared by

Association of Mining and Exploration Companies Inc. (AMEC)

Head Office
6 Ord Street, West Perth WA 6005
(Offices located in Perth, Brisbane and Sydney)
Please address all correspondence to:
PO Box 948
West Perth WA 6872
P: 1300 738 184
F: 1300 738 185
info@amec.org.au
www.amec.org.au

1. INTRODUCTION

Thank you for the opportunity of providing input to the Australian Government`s *Proposed Industry Funding Model for the Australian Securities and Investments Commission – Consultation Paper August 2015*.

As the peak national representative body for hundreds of companies in the mining and mineral exploration sector, AMEC has a direct interest in the activities of the Australian Securities and Investments Commission (ASIC).

Mining and mineral exploration companies require clarity, certainty and stability in public policy settings and business input costs for longer term investment and business decisions. This includes administration and compliance costs associated with ASIC.

These mining and mineral exploration companies discover future mines and generate massive revenue streams for Government which are then used to provide services and public infrastructure. They play a major role in stimulating economic growth and productivity and to the national economy.

The sector is also capital intensive, has a high investment risk profile, and a low successful discovery strike rate. Capital availability and cash flows are also very tight.

It is in this context that this submission is made.

2. EXECUTIVE SUMMARY

Collectively Australian mining and mineral exploration companies contribute billions of dollars annually into Federal, State / Territory and Local Government revenue streams.

At a company level, the total tax take ratio (company tax plus royalties) has increased on average from 42.1% in 2007/8 to 47.1% in 2012/13.[1] In comparison companies in other industry sectors are only faced with a flat 30% corporate tax rate.

These revenue streams make a significant contribution to the Consolidated Fund which enables Governments to fund core agency activities, community services and public infrastructure. In 2014/15, the Government provided ASIC with approximately $260 million (including funding for capital expenditure) from the Consolidated Fund to undertake its regulatory activities and statutory functions[2].

AMEC has not been provided with any business case, or rationale, to explain why the current funding source arrangement should change. A case has not been made for the introduction of cost recovery from industry as proposed in the Consultation Paper.

[1] Deloitte Access Economics – Minerals industry tax survey December 2014 – page ii
[2] Consultation Paper – Page 5

AMEC does not support the concept of cost recovery from industry as a means to generate additional income to support a budget shortfall, such as through the proposed ASIC industry funding model.

In addition, AMEC is strongly opposed to any cost recovery regime to fund ‘core’ Government statutory based activities. In this instance, services such as surveillance, enforcement, education, stakeholder engagement, guidance and policy development should be fully funded by the Government and not industry.

In any event, cost recovery should only be considered as a last resort after all other alternatives have been fully assessed (such as through increased agency efficiency, removal of duplication, organisational restructure, delegation of responsibilities and improved industry guidance material).

There is also a strong argument for the implementation of a comprehensive risk based compliance framework. Such an approach should increase efficiency, reduce workload and minimise the impact on ASIC resources, which can be directed towards high risk activities.

Imposition of the proposed industry funding model will undoubtedly have a detrimental impact on the financial position of many mining and mineral exploration companies.

This recognises that the industry is already paying a myriad of other Government related costs, such as corporate tax, goods and services tax, customs duty, fuel excise, royalties, tenement rentals, listing and registration fees, fees and charges for permits and licences, environmental offset charge, shire council rates and other utility charges for water and power.

The mining and mineral exploration industry, contrary to public perception, has no capacity to bear any further increases in business input costs without unintended economic and social consequences. The industry sector should therefore be exempt from the proposed ASIC funding model.

3. STATE OF THE INDUSTRY

Australia`s mining industry is no longer as cost competitive as it once was with production costs continuing to rise dramatically. Contemporary research has clearly identified that Australia is far less competitive than its international counterparts.

The economic climate in the mining industry is such that it is facing:

- Low prices in the majority of commodities,
- Fluctuating exchange rates,
- High and increasing production and operating costs,
- Lower grades and higher strip ratios and waste removal costs,
- Deeper deposits requiring increased pre-production expenditure and the subsequent higher mining and extraction costs,
- Tighter margins, and
- Limited cash flow.

The current cost pressures indicate that many projects are finely balanced with low margins. Various cost saving measures are being implemented on a daily basis by emerging miners in order to keep their operations viable.

Industry has experienced significant growth in production costs over recent years – energy (a large diesel fuel input is essential as there is limited access to the power grid in remote locations), labour, water, fees and charges, duties, levies, taxes, third party royalties, community support, regulation and compliance costs.

The additional burden of unjustified compliance costs is unsustainable, and acts as a major disincentive for critical investment and business decisions. It is also contrary to the Government`s stated deregulation agenda.

These increased costs of production and extraction, caused by deeper discoveries and the declining grade of deposits, have had a direct impact on waste stripping ratios and the Break Even Cut Off Grades (BECOG). Mid-tier emerging miners are also invariably faced shorter mine lives and increased unit costs as they do not have access to the same economies of scale available to large mature miners.

Over the years, we have seen less exploration with fewer mines being discovered and developed. Those that are being developed are often not much more than marginal operations and with shorter average mine lives. The result is a reduction in Government revenue streams.

The *Explorer Quarterly Cash Update Q4* produced by BDO Accountants is indicative of the current tight financial position many explorers are currently placed. The quarter ending 30 June 2015 shows that 71% of the 780 companies submitting Form 5B reports have less than 6 months of cash reserves available for net operating expenditure.

These trends are of extreme concern and requires Government intervention in order to increase mineral exploration to generate revenue from the mines of tomorrow, reduce business input costs and minimise the regulatory and compliance burden.

4. AMEC POSITION ON COST RECOVERY

AMEC is totally opposed to the concept of cost recovery as a means to generate additional income to support a budget shortfall, such as through the proposed ASIC industry funding model.

AMEC has publicly stated on many occasions that it is strongly opposed to any cost recovery regime to fund ‘core’ Government statutory based activities. In this instance, services such as surveillance, enforcement, education, stakeholder engagement, guidance and policy development should be fully funded by the Government and not industry.

In any event, cost recovery should only be considered as a last resort after <u>all other alternatives</u> have been fully assessed (such as through increased agency efficiency, removal of duplication, organisational restructure, delegation of responsibilities and improved industry guidance material).

There is also a strong argument for the implementation of a comprehensive risk based compliance framework. Such an approach should increase efficiency, reduce workload and minimise the impact on ASIC resources, which can be directed towards high risk activities.

Based on the limited information in the Consultation Paper, AMEC is not satisfied that any other alternatives have been considered.

5. SPECIFIC COMMENTS ON THE CONSULTATION PAPER

In the absence of a publicly available business case, AMEC has been unable to closely analyse or substantiate the funding model for companies as described in Attachment A of the Consultation Paper.

The high level statements that:

- *'currently, only around 15 per cent of ASIC`s costs are recovered through levies and fees on industry'*[3]*,* and
- '*the Government proposes to recover around $53 million through levies on companies'*[4]

are not justification for the imposition of cost recovery in any form.

AMEC notes the significant acknowledgement in the Consultation Paper that '*it may also not be appropriate to cost recover or implement full cost recovery where it would have an adverse impact on competition, innovation or financial viability of those who pay the charges.*[5]

AMEC considers that the proposal is particularly disadvantageous for junior listed companies as they will paying more under the proposed cost recovery model. Moreover, listed companies doing a capital raising via a prospectus could potentially be paying considerably more under some scenarios that are not that uncommon.

Based on the proposed levy arrangements described in Table A1[6], a junior ASX listed company with a market capitalisation of under $20m will pay an annual fee of $6000.

This compares to:

- The current annual fee of $1161;
- The proposed annual fee for a public listed company with a market cap of say $100m will pay $7840;
- The proposed annual fee for a unlisted public company which is a disclosing entity (ie. not listed on ASX but still has to give continuous disclosure because it has raised money from the public) will pay $920; and
- The proposed annual fee for a large unlisted proprietary company, including ones generating revenues in the many millions will pay $350.

AMEC is concerned that there are no financial costings provided in the Consultation Paper on how the thresholds, levies and proposed fees have been calculated. The calculations appear to have

[3] Consultation Paper – Page 2
[4] Consultation Paper - Page 33
[5] Consultation Paper – Page 3
[6] Consultation Paper – Page 35

been reverse engineered based on the desired budget divided by the number of companies. Page 33 of the Consultation Paper refers.

AMEC considers that there is nothing “user pays” in the proposed model because all of the above companies have to lodge annual and half yearly financials, so the work for ASIC in reviewing financials should be much the same.

The fact the listed companies are lodging announcements with the ASX which automatically get recorded on the ASIC database does not mean more work for ASIC because we do not believe that ASIC ever looks at listed company announcements on a routine basis.

It seems quite unfair that a well-behaving junior is going to be penalised with a minimum annual fee increase of 416% with little evidence provided by way of justification.

When it comes to prospectus capital raisings, then exploration and emerging mining companies could be particularly affected because:

1. The lodgement fees will be much higher if the prospectus needs to be supplemented or replaced; and
2. The fee will be fixed, ie. a junior mining company lodging a simple prospectus for a $1 million raising will pay the same fee as a major industrial lodging a complicated prospectus for a $100m raising, meaning the cost for a junior company is still comparatively very high relative to the capital raising amount and its capacity to bear the increased cost.

AMEC does not believe that there is any proper demonstration as to how the cost increases are truly justified on a user pays basis, let alone any proper demonstration that users are all being considered fairly and equitably.

It should also be noted that many of the junior listed companies and nearly all of the mineral explorers exposed to the proposed significant increase in annual fees **have no revenue** to absorb the increase and no capacity to pass the cost onto a customer, as they are equity funded. Generally speaking, many other companies such as industrials and financial service providers do have some capacity to pass the cost onto customers.

The statutory service which ASIC provides is for the general benefit of the economy and the community generally, not just the companies themselves. It seems inequitable that one sector appears to being subject to a very large increase relative to their size, in circumstances where that sector must simply absorb that cost, whereas other “users” can to some extent share the cost.

If a mandatory service payment is to be truly “user pays” there should be proper justification that the actual users are paying only for a fair share in an equitable manner.