

31 July 2008
Mr David Smith
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Department of Treasury and Finance
Submission – Pilbara Railways (Third Party Haulage) Regime
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Dear David,

PILBARA RAILWAYS (THIRD PARTY HAULAGE) REGIME

Thank you for the opportunity to comment in response to the Public Consultation Paper and the Draft Pilbara Railways (Third Party Haulage) Regime.

As you are aware the Association of Mining and Exploration Companies (AMEC) is the national industry body for junior and mid-sized mineral exploration and mining companies many of whom maintain direct interests in the Pilbara region.

AMEC congratulates you, members of PRAIC and the State Government for developing a draft third party haulage Regime for the Pilbara Rail Network on the basis that an industry-supported Regime will promote the optimal use of, and investment in future rail infrastructure in the region.

While AMEC is unable to respond to all eighteen questions raised by PRAIC, it is pleased to submit the following response to the draft Regime and public consultation paper:

- In responding to the draft Regime and public consultation paper AMEC notes that a haulage regime will not and should not negate the need to declare the Pilbara rail network accessible for third parties.
- AMEC notes that an operator of a rail network established primarily for the transport of their own product does not have a natural incentive to maximize the use of the network in the same way an operator of an open access regime does. We therefore agree it may be necessary that extra legislation and regulatory powers are required under this Regime to ensure that no third party is unnecessarily delayed or refused haulage services by the operator.
- It is AMEC's view that the final Regime must provide for strong independent regulatory oversight and efficient and equitable independent dispute resolution mechanisms.
- The regulator should be required to set and enforce timeframes for negotiations, including the resolution of any appeals or disputes that may arise between operators and third parties.
- AMEC believes it is imperative that the regulator is also adequately empowered to enforce significant penalties for any breach of the Regime.
- AMEC notes that the draft Regime applies only to the Provider's infrastructure and does not compel the Provider to haul third party product on third party infrastructure. This is likely to create significant inefficiencies because the third party will be forced to move product from their minesite using another mode of transport before unloading and transferring the product to the Provider's rail system.

- AMEC does not support a Regime that prescribes a set term for haulage agreements. Rather, it is preferable that a Regime allows a Provider and third party to negotiate the term of their haulage agreement.
- AMEC does not support a Regime that limits any party from repeatedly referring disputes to arbitration. Rather, a carefully drafted, well-supported Regime will minimise ambiguity and therefore diminish the likelihood of disputes.
- Given the above, it is prudent that the Regime should include mechanisms to recognise issues that generate multiple similar referrals to arbitration and provide a facility to review the Regime and amend it if necessary.
- AMEC further notes that a number of unresolved issues have been identified (page 14 of the Public Consultation Paper refers) and PRIAC has invited comment on those issues.

Should you have any queries in respect to this submission please do not hesitate to contact me.

Yours faithfully,

Dr Justin Walawski FCPA
Chief Executive