

To: **REGIONAL NSW, MINING, EXPLORATION AND GEOSCIENCE**

Re: **CONSULTATION ON NSW EXPLORATION PACKAGE**

8 October 2021

Introduction

The Association of Mining and Exploration Companies (AMEC) welcomes the opportunity to provide a submission to the Department of Regional NSW, Mining Exploration and Geoscience (MEG) on the draft Exploration Package of 5 documents comprising:

1. **Mineral and coal exploration statement (Statement)**
2. **Exploration in NSW overview (Overview)**
3. ***Exploration security deposits – Proposed reforms position paper (Security deposits)***
4. **Exploration licences - Renewals policy (EL renewals policy)**
5. **Assessment leases - Grant and renewal policy (AL policy).**

About AMEC

AMEC is a leading national minerals industry body representing over 400 member companies across Australia. Our members are explorers, emerging miners, producers, and a wide range of businesses and services working in and for the minerals industry.

Exploration secures the future of the minerals industry

AMEC welcomes these documents that focus on initiatives and support for the mineral exploration sector. NSW needs a strong and prosperous mining and mineral exploration sector to support the future growth and development of the States' economies and regional communities. To achieve this, it is critically important that NSW is a preferred destination for mineral industry investment, in both exploration as well as mining activity, to ensure the stability and future of the industry.

The NSW Government has prioritised attracting minerals industry investment through a number of initiatives. These include the recent release of the *NSW Minerals Strategy*, *Strategic Statement on Coal*, *Future of Gas Statement*, *Future of Minerals Report*, *Online Minerals Prospectus*, and world class geoscience information such as the high-tech metal resources map and Seamless Geology Project. It is appropriate that focus has now turned to the engine room of the sector – exploration.

External Government documentation should be written to support and guide industry and investment

Government documentation intended as information for industry and investment should be clear, concise, and well presented. This is particularly true for material directed to explorers who often have limited administrative resources and do not have the capacity to sift through complex, unclear, and unhelpful Government documents.

To ensure the important information presented in the exploration package is effectively communicated with industry, it must be presented in a way that is clear, succinct and helpful.

Review documentation and compare with other States and jurisdictions

NSW has an industry reputation for being a difficult jurisdiction in which to explore, something borne out in the feedback from the Fraser Institute Survey¹ responses that rate NSW poorly for clarity in regulation, investment attractiveness and policy perception.

The production of an exploration package of information is an opportunity for NSW to turn around these poor perceptions. AMEC recommends that instead of producing information that is not aligned to the needs of the users, MEG reviews and benchmarks how similar information has been delivered in other jurisdictions. There are many learnings on the contemporary framing and presenting of information to support investors, industry, and government as appropriate. Some examples from other Australian jurisdictions that manage and regulate the minerals industry include:

- [Western Australia](#) has largely moved away from lengthy static documents to clear information on webpages
- [Queensland](#) has more information on webpages as well as some information in guideline and code documentation
- [Victoria](#) has a series of guidelines and codes to guide explorers through the exploration licence and work plan processes as well as step by step information on the website
- [Tasmania](#) has a streamlined Information for explorers in a document, as well as clear web-based information, largely guided by the needs of the user.

AMEC strongly recommends that MEG undertakes a holistic review of all documentation for exploration to ensure that it is presented in a clear, succinct format. This review should include all related documentation including the strategy, statement, guidelines, codes and forms.

AMEC provides the following comments on the components of the Exploration package as follows:

Document 1 - Mineral and Coal Exploration Statement

AMEC welcomes the initiative by MEG to provide a document that promotes minerals industry investment in NSW and provides important information to industry. However, the document could be better structured and presented to meet the needs of the users.

Clarify the objective and align this document

This document looks and reads like a Government facing document, especially in comparison to the recently released *Strategic Statement on Coal* and *Future of Gas Statement*. If this document is designed to clearly state the Government's policy and priorities and attract investment into the State, then the document should be

¹ <https://www.fraserinstitute.org/studies/annual-survey-of-mining-companies-2020>

reformatted to align with these recently released documents. Much of the information on the first seven pages of the Overview document would be better placed in this Statement.

Amend the Statement to include minerals and critical minerals (not coal)

To align with Government priorities for the minerals of today and tomorrow, this document should focus on only minerals and critical minerals, not coal which is already covered in the *Strategic Statement on Coal*. This would align with Government focus on critical minerals and allow the document to more directly promote this growing and important sector of the industry.

Ensure this document is well structured

AMEC makes the following additional comments on the content the Statement:

- **Promote NSW as an investment destination** – If the objective of the document is to promote NSW as a minerals industry investment destination, then the section ‘NSW: open for business’ should lead the document, not be buried behind detail on geoscience programs.
- **Include priorities and strengths of NSW** – NSW is often regarded as a jurisdiction that is ‘too hard’ by interstate explorers due to the complex regulatory framework or ‘regulatory maze’. For an outward facing document to promote investment, this Statement should include sections on the strengths of Government (geoscience, industry support including a concierge service, new online portals) as well as priorities and focus for the future.
- **Include the New Frontiers Cooperative Drilling program as a feature of the geoscience section** – The New Frontiers Cooperative Drilling program is mentioned as a program available to explorers in NSW, however, the program has been and continues to be one of the greatest contributors to exploration investment in NSW. This program should feature in the geoscience section.

Document 2 - Exploration in NSW – Overview

Exploration in NSW has long been perceived as difficult principally due to the complex regulatory framework. AMEC welcomes documents that provide guidance on the process for explorers, however this must be presented in a clear and concise manner to be useful for industry.

Clarify the objective and refocus this document

As with the Statement, the Overview also looks and reads like a government facing document while also including items relevant to investors and high-level information for explorers. The document, as is, would be an excellent information source for a new Government employee with an interesting collection of information, but does not really serve a useful purpose for industry or the community.

Assuming that the Statement is the outward facing document that provides the Government’s policy, priorities and information to attract investment into the State, then there should be no need for the Overview to duplicate this in more detail. In its current format, the Overview does have extensive useful information but needs to be restructured to be directly useful for industry.

Restructure the overview as a guideline for industry

AMEC strongly recommends that this document is restructured and streamlined into a guideline with clear information and direction that is useful to industry. Much of the information could be kept and simply pivoted for external use. An outward facing guideline could include sections on:

1. NSW Government supporting exploration – shorten this section to avoid repetition with the Statement. Include sources of pre-competitive data and the New Frontiers Cooperative Drilling Program
2. How to apply for an EL – provide a step-by-step guide, with link and related information
3. How to maintain an EL – include the work approvals process and annual/other reports. A flow chart detailing the process would be helpful.
4. Land access and native title – include basic requirement and web-linked references
5. How to renew, relinquish and transfer an EL.

All sections of the document should include:

- Fees, charges, levies and security bonds – how much and when these are due to be paid/returned
- Weblinks for forms and further information
- Codes and guidelines related to each section
- References to other Government departments or external sources as appropriate.

Document 3 - Exploration Security Deposits – Proposed Reforms

AMEC welcomes the proposed reforms to exploration security deposits. AMEC provided NSW Government with a detailed submission on this important matter in March 2020 and we are pleased that recommendations such as reforms to the group security deposits have been now proposed.

The reduction in red-tape and, in some cases, financial burden to industry through the introduction of a security deposit threshold and the proposed amendments to the group security scheme will release much needed funds for explorers and give more confidence to potential investors in NSW.

Security Deposit Threshold is a welcome first step

AMEC welcomes the introduction of a securities deposit threshold to \$30,000 and acknowledges the clarity and reasoning provided in the position paper for this quantum. The reduction in red tape and administrative burden that this will provide for explorers and government is substantial.

The introduction of a security threshold is a first step in reducing this administrative burden, however the holistic review of the security framework and potential introduction of a pooled model or alternative would substantially reduce this through eliminating the need for this assessment all together.

Review the rehabilitation bond framework, not just the thresholds

Access to capital is one of the most critical issues for the mineral exploration sector. Any capital raised that is not directly related to exploration is seen as a disincentive to investors. This includes capital tied to security bonds.

The minerals industry is committed to best practice environmental standards and the importance of the bond to maintain and improve social licence, however a system must be established that encourages investment and

does not disadvantage the smaller, entrepreneurial companies (essentially the explorers) by tying up significant funds. Capital that is tied to a bond, or bank guarantees that must be serviced by explorers and miners, reviewed and adjusted for exploration activities has significant administrative costs for both industry and Government. Considering there has never been a need to call upon a security bond for an explorer, the current system is excessive and penalises explorers who are doing the right thing.

AMEC strongly supports a full review of the current system and potential introduction of a pooled fund model, similar to Western Australia's Mining Rehabilitation Fund that removes the need for expensive bonds without reducing any environmental standards or obligations. Queensland has also initiated a similar pooled fund model for some tenure. The Mining Rehabilitation Fund in Western Australia is growing strongly and has released over \$1.2 billion of much needed working capital and removed the need for administratively and financially expensive rehabilitation bonds without reducing any environmental standards or the State's obligations.

Group Securities are welcome, with further clarification needed

AMEC supports the proposed reforms to reduce the minimum security deposit for group securities to 50% of the minimum deposit across the ELs or the calculated rehabilitation costs (whichever is greater). The proposed reforms will benefit industry and Government by simplifying and streamlining the processes and providing flexibility in tenure management.

For the operation of group securities, the following should be clarified in guidance information:

- Location of the ELs in a group security - whether ELs for group securities need to be contiguous or close geographically, in the same geologic terrain, or simply anywhere in NSW.
- Adding and removing ELs to a group security – how and when ELs can be added or removed from a group security
- Variation to the quantum of the group security - how and when the amount of the security is varied; how the varied amount is added or subtracted from the security; timeframe for varying the security.
- Number of ELs that may be included in the group security.

Document 4 - *Exploration Licences – Renewals policy*

AMEC welcomes the updates to the EL renewals policy and the clarity and guidance the updates provide to industry. However, it is important to acknowledge that due to the individual nature of exploration, each renewal application will still require careful and individual evaluation.

There are significant concerns in the following comments on this policy, and AMEC strongly recommends further consultation on this important policy.

Assess the quality of work completed, not how exactly it followed the work program

Exploration, by nature, is dynamic and involves working with the unknown. At the start of an exploration program, the assumptions around the subsurface conditions are purely speculative. As the picture unfolds, it often becomes necessary to change tactics to effectively explore an area and the previously submitted work program may no longer be the best approach. In these cases, renewal should be based on if the licence holder has 'worked the licence effectively' rather than the strict completion of the work program that was drafted months or years before the work was undertaken.

Extenuating factors must be fit for purpose and consider the true issues facing explorers

AMEC makes the following comments on extenuating factors:

- **Consider a change in exploration concepts as an extenuating factor** – Under the previous EL renewals policy, extenuating factors for not meeting general renewal criteria included: “*a change in exploration concepts will result in a substantial increase in exploration activity.*” AMEC recommends this extenuating factor be considered for the current EL renewals policy as this is a common action in any exploration program.
- **Consider ongoing land access negotiations outside of arbitration as an extenuating factor** – The formal arbitration framework can be costly, time-consuming, and can damage an explorer’s social licence to operate and relationship with the landholder. Many explorers will engage in protracted private land access negotiations in an effort to avoid activating the formal arbitration framework. Where ongoing and pro-active negotiations with landholders can be demonstrated, but the explorer has not activated the formal arbitration framework, AMEC recommends these delays are considered as an extenuating factor.
- **Acknowledge commercial arrangements as an extenuating factor at all stages of exploration** – Commercial arrangement occur at all stages of exploration, not only at Stage 4. As such, commercial arrangements should be considered as an extenuating factor at any stage of the exploration cycle. Consideration must also be given to the fact that many negotiations are highly confidential and may not always be able to be included in detail in renewal documentation.
- **Clarify how force majeure applies** – The document states that an inability to secure or allocate appropriate staff or machinery is not an extenuating factor, however this has been an issue for many explorers due to the current COVID issues including closed borders and lockdowns. AMEC recommends MEG clarify how the application of force majeure as an extenuating factor will apply.
- **Include inability to secure appropriate staff or machinery as an extenuating factor** – In situations where the explorer can demonstrate that they have been pro-actively trying to secure appropriate staff or machinery, this should be assessed as an extenuating circumstance. Securing appropriate staff, and particularly machinery, can be difficult and time consuming, especially during times when industry is thriving. In situations with protracted land access negotiations, there may be little time left on the EL by the time the explorer is allowed access to the land covered by their licence and they may not be able to secure appropriate machinery in this short amount of time. There are many scenarios such as this where the inability to secure staff or machinery should be considered as a valid extenuating factor.

The decision as to which portions of the EL are to be relinquished should only be made by the explorer

The draft policy includes the statement that “*The relevant decision maker may direct a licence holder as to which portions of the land subject to the exploration licence are to be relinquished*”. The explorer has the best knowledge of the EL and of their proposed work program.

AMEC strongly recommends that the decision of which portion of an EL to relinquish should solely be that of the explorer.

Clarification of application of the renewals policy

We understand that in times when the minerals industry is thriving (such as now), that a ‘use it or lose it’ policy for tenure would be strongly applied by Government. When the minerals industry and take up of ground in NSW is not as strong, the application of a renewals policy may be more lenient or applied differently. There is the

need for equity in application of the renewals policy, not, for example, more generous consideration of renewals for a company with significant holdings or projects.

AMEC recommends that clarification is provided on the application of the renewals policy to ensure transparency and equity across industry.

Document 5 - Assessment Leases – Grant and Renewal Policy

As with the EL renewals policy, AMEC welcomes the increase in clarity and guidance provided by the policy. However, particularly at the advanced stage of exploration of any project applying for an assessment lease, the specific circumstance of each project will require careful individual evaluation.

Different factors may impact renewals other than those applied at the application stage

The events of the past two years (fires, floods, pandemics) have demonstrated that many events and commercial factors can and do occur and can have a major effect on operations. As an example, six years ago an explorer may have applied for an assessment lease due to unfavorable commodity prices, however currently that same explorer may need to delay applying for a mining lease due to COVID related issues. Explorers should not be penalised due to extenuating factors outside of their control.

AMEC recommends that where an explorer presents different, yet valid, commercial factors at the renewal stage than those that applied at the application phase, these should be considered.

Clarification of application of the assessment lease policy

As above for the renewals policy, AMEC recommends that clarification is provided on the application of the assessment lease grant and renewals policy to ensure transparency and equity across industry.

AMEC looks forward to further consultation on this important package of reform and if you have any queries regarding this submission, please do not hesitate to contact:

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