

To: **NSW Mining, Exploration and Geoscience**

Re: **SUNSET CLAUSE ON REPORT RELEASES**

2 July 2020

## Introduction

The Association of Mining and Exploration Companies (AMEC) welcomes the opportunity to provide a submission to NSW Department of Regional NSW Mining, Exploration and Geoscience (MEG) following the Discussion Paper on the Sunset clause on report releases (Discussion Paper) provided to the Minerals Industry Liaison Committee for comment.

## About AMEC

AMEC is a leading national industry body representing over 275 mining and mineral exploration companies across Australia. Our members are explorers, emerging miners, producers, and a wide range of businesses working in and for the minerals industry. AMEC represents a number of companies exploring, mining and investing in NSW.

## Tenure is the foundation of the minerals industry

To maximise the resources of NSW, the Government grants tenure to explore and mine for minerals. Tenure is the foundation of the industry that contributes billions of dollars and thousands of jobs to the State of NSW.

In 2018-19, the minerals industry contributed approximately \$2.1 billion in royalties to the NSW Government, a 15% increase from the previous year<sup>1</sup>. Over the four years to 2021-22, the mining sector will deliver nearly \$8 billion royalties revenue to the New South Wales State Budget<sup>2</sup> with an average of \$1.9 billion per year to support the State deliver on its commitments – this equates to double the State's current surplus or double the recent funding announcement to support communities following the bushfires<sup>3</sup>, the whole of the new spending on drought relief, or double the spending on building new or significantly upgrading forty schools<sup>4</sup>.

The strong return mining provides to the community in jobs, revenues and royalties underlines the reliance of New South Wales on a strong mining sector.

## Data allows future explorers to 'stand on the shoulders of the giants'

The data produced by exploring or mining tenure is provided to Government in annual reports that are currently kept in confidence until the relinquishment of tenure. Upon release, these reports form an invaluable base for

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<sup>1</sup><https://www.planning.nsw.gov.au/-/media/Files/DPE/Reports/annual-reports-and-corporate-plans/dpe-annual-report-2017-18.pdf?la=en>

<sup>2</sup><https://www.budget.nsw.gov.au/>

<sup>3</sup><https://www.nsw.gov.au/news-and-events/news/bush-fire-affected-communities-receive-1-billion-funding-boost/>

<sup>4</sup><https://www.budget.nsw.gov.au/>

future explorers and miners who 'stand on the shoulders of the giants who came before them' to use new thinking or technology, or come at a time with favourable commodity prices to see future potential of the areas and take up the ground. This has been the age-old process of exploration and has led to reworking old ground and discovery of new deposits and mines.

### Publication of reports for live tenure is “horrifying”

Data is one of a company's most valuable resources and annual reports were previously written on the understanding that they would be kept in confidence for the term of the tenure. The addition of Clause 64 of the *Mining Regulation 2016* that provides for publication of reports from 'live tenure' was implemented with minimal industry consultation and communication.

The potential publication of reports for live tenure has meant that some companies have now provided Government and the future industry with annual reports that have the bare minimum of data, techniques, interpretation and information. This is disappointing for future explorers who will no longer profit from the full knowledge of the work and thinking that has gone on before them.

Some industry members were completely unaware of the potential publication of live annual reports. One AMEC member, a significant exploration and mining company with long experience in NSW, was surprised and, in their words “horrified”, at the potential release of annual reports for live tenure following our circulation of the Discussion Paper for comment. This example shows that the change in the *Mining Regulation 2016* has not been well communicated to industry and that recent reports have been written without understanding this change.

### Value to the sector related to publication of reports from live tenure

The Discussion Paper notes the value to the sector following the publication of reports from live tenure. Some AMEC members have expressed interest in viewing reports from live tenure due to not only scientific interest but also to provide insights into similar or near geoscientific information.

However, it must be noted that this advantage is purely academic as the tenure is currently held, and so unlike the release of reports from relinquished tenure, will not stimulate further exploration as the area under question is already being explored.

AMEC members also note that there is currently a delay on release of reports from relinquished tenure. This should be the priority for Government first and foremost.

### Concerns regarding publication of reports from live tenure

Industry members have expressed the following concerns regarding the potential release of reports from live tenure:

- **Commercial in confidence information** - 'Commercial in confidence' relates to information that, if disclosed, may result in damage to a party's commercial interests, intellectual property or trade secrets. This is important to any organisation but especially to ASX listed entities that have strict compliance and governance regulations. Many companies would designate much of their data, modelling and

interpretation as 'commercial in confidence'. An example of the extreme sensitivity of the data in these reports is the current investigation into discrepancy of coal lab analyses<sup>5</sup>.

- **Intellectual property** – As with commercial in confidence information, intellectual property is critical for companies and the public release of this information has commercial and governance implications for any company.
- **Privacy issues** – Community Consultation and Environmental reports routinely contain details regarding landholders and other key stakeholders, as well as the status of land access agreements or issues in the community. Even redacting the direct information under the *Privacy Act 1988* requirements still leaves some of this information exposed as, especially in small tenure, the local community would be able to identify the stakeholders as rural communities regularly 'know everyone'.
- **Disclosure of location information on endangered species** – Exploration reports often contain not just sensitive information on communities but also exact location of endangered flora and fauna. With a booming illegal trade in Australian rare and endangered species it would be irresponsible to publish this information, with the Pink-tailed Worm Lizard in Dubbo as a perfect example. Reports<sup>6</sup> have recently noted that poachers use online reports to track species. The NSW Government should no more release the location of the wild Wollemi Pines than some of the information in exploration reports.
- **Exposure and pressure on Government decisions** – Publication of reports, especially the full compliment of geoscience, environmental and community reports, will lead to third parties, potentially including community stakeholders, activist groups or rival companies, questioning tenure decisions of Government. For example, decisions to renew tenure or require area reduction will be exposed and equity across the State could be easily queried if this information was in the public forum. This potential consequence will have far reaching impacts on Government decisions and could expose issues with the equity and transparency of decisions.

Further, decisions by MEG to publish reports against the wishes of the company will have legal consequences and lead to a diminution of trust between industry and Government. This will ultimately act in direct opposition to the prime Government objective of growing minerals industry investment in NSW.

## Responses to specific questions posed in the Discussion Paper

### A. Whether MEG should release both exploration and mining reports in part or in their entirety

As described above, there are varying views on the interest and value in releasing reports from live tenure. On balance, AMEC recommends that MEG should not release exploration nor mining reports for live tenure. There was minimal consultation prior to the implementation of this amending clause and, as noted above, some companies were completely unaware of this potential outcome.

If MEG must release tenure reports, then only a redacted version of the reports should be released. Releasing environmental, community, work programs before relinquishment could also lead to pressure from rival exploration companies onto the Department to 'act' if they feel that tenement retention is not justified due to

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<sup>5</sup> <https://www.afr.com/companies/mining/rumpelstiltskin-in-the-coal-lab-70b-dilemma-of-fake-tests-20200417-p54krf>

<sup>6</sup> <https://www.abc.net.au/news/2017-05-27/poachers-anu-canberra-endangered-animals/8565182>

various community, environmental or technical reasons. An alternative for consideration is for release of an executive summary of reports instead of the full reports.

**B. Whether MEG should release both mineral and coal exploration and mining reports**

As above, AMEC recommends that MEG should not release any mineral or coal reports due to the public sensitivity of the data in these report and potential negative impact on the NSW minerals industry.

**C. Whether authority holders should have the right to apply for redaction of sensitive information**

Some reports were never written with the understanding that this information would be made public before relinquishing a tenement and so redaction on fair grounds must be available.

**D. The appropriate parameters for redaction (if necessary)**

Redaction is appropriate for all reports, regardless of report lodgement date. Redaction parameters should include any information as designated by the company due to commercial in confidence, privacy or sensitive information, or for reasons of intellectual property. Requests for redaction should include a minimum of six months for review by the company to provide time for considered legal review. Redaction requests should not be denied by MEG. An alternative could be to request an executive summary of reports for public release.

**E. Whether redactions should be time limited (eg for an additional five years after the release date)**

Optimally no time limit should be placed on redactions nominated by the company or requests for redactions could nominate review in five or ten years until the relinquishment of tenure.

### Recommendations on a way forward

The NSW minerals industry is currently under pressure following the impact of COVID-19 and the recent bushfires that have cost and disrupt industry operations. The NSW Government is now actively working to support minerals industry investment in NSW, with the Deputy Premier noting that his primary objective is to make NSW the leading destination for minerals industry investment.

The release of sensitive data from live tenure could seriously disrupt and dismantle the growing confidence of the sector in the Government's pledge to support and promote the industry, with the primary gain principally academic. AMEC notes that this potential action also comes at a time when reports from relinquished tenure that do have real potential to promote exploration are not released on time due, as we understand, to resourcing issues.

AMEC strongly recommends:

1. MEG focusses limited resources on publishing reports from relinquished tenure that have a direct and material benefit to the future investment in the minerals industry.
2. If MEG pursues the publication of reports from live tenure then a clear communication program is needed for industry. Acknowledging that some companies were unaware of the potential publication of reports from live tenure, then companies should be provided with the option to either agree to release reports or request redactions on the grounds of sensitive information. Requests for redaction should not be denied by MEG. An alternative could be to request an executive summary of reports for public release.

3. Review the amendment to the *Mining Regulation 2016* that provides for the publication of reports, with consideration of the protection of sensitive information in annual reports, especially for live tenure. This review should be undertaken with appropriate and considered consultation with industry.

AMEC would welcome further consultation on this important matter and if you have any queries regarding this submission, please do not hesitate to contact:

Lucy McClean  
Manager – New South Wales, Victoria & Tasmania  
[lucy.mcclean@amec.org.au](mailto:lucy.mcclean@amec.org.au) or 0412 283 252