

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

Re: **DRAFT MINING AMENDMENT REGULATION 2022**

18 October 2022

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 *Mining Amendment Regulation 2022* (Draft Regulation) and *Explanatory Guide: Proposed Mining and Petroleum (Onshore) Regulation Amendments* (Guide).

As AMEC does not represent the petroleum industry, we will leave comments on the amendments regarding petroleum to other industry stakeholders.

About AMEC

AMEC is a leading national minerals industry association representing over 500 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. AMEC has a growing number of companies working and investing in NSW.

Reform to the regulatory Mining framework is important for the NSW minerals industry

The Draft Regulation supports and operationalises reforms included in the *Mining and Petroleum Legislation Act 2022* (Act). The Draft Regulation also “takes the opportunity” to make further amendments to the *Mining Regulation 2016*¹, including prescribing hydrogen and other nonmetals, amendments to the application of rehabilitation conditions and miscellaneous amendments.

It is disappointing that some of the broader regulatory issues have not been included in this opportunity to amend the Regulation.

As noted in our AMEC submission on the recent amendments to the Act, regulatory reform is an opportunity for NSW to dispel the widely held industry reputation for being a difficult jurisdiction to mine, explore and attract more industry investment. The perception is reinforced with data - the 2021 Fraser Institute Survey² results show that NSW remains amongst the lowest jurisdictions in the world for uncertainty for environmental regulations, administration and enforcement of existing regulations and inconsistencies. The expenditure on exploration in NSW³ may have risen in recent years, reflecting the national trend, however, NSW has a long way

¹ Explanatory Guide: Proposed Mining and Petroleum (Onshore) Regulation Amendments

² <https://www.fraserinstitute.org/studies/annual-survey-of-mining-companies-2021>

³ ABS, Mineral and Petroleum Exploration, Australia, Cat No. 8412.0 (as at June 30 2022)

to go to fulfil the objective of the NSW Government to “*make NSW the number one mining investment jurisdiction*”. Of the FY 2022 national exploration expenditure, NSW attracted just 8.4% (down from the previous year of 8.9%) compared to WA 64%, Queensland 13%, Victoria 5.7%.

Amending the Regulation is an important opportunity to improve this perception by cutting red tape, streamlining requirements and industry regulation.

Further, the Government commitment detailed in the *NSW Minerals Strategy*⁴ to review mining regulations, policies and processes is long awaited. The Strategy Action 4.1 to “*conduct a targeted review of mining legislation*” with the noted benefit to “*align policy with national and international regulatory best practice*” had a designated completion timeframe of February 2020.

Further reform needed, and should be commenced soon

The reforms in the recent Act and this Draft Regulation include some important changes and improvements to the existing legislative framework. However, AMEC’s position remains that many of the important roadblocks to industry and development have not been tackled, nor has there been an external review and benchmark comparison undertaken to fulfil Action 4.1 of the *NSW Minerals Strategy*.

The minerals industry is one of the most important industries in NSW and deserves a contemporary regulatory framework. It remains disappointing that this recent amendments to the now thirty-year-old *Mining Act 1992*- and six-year-old *Mining Regulation 2016* in many years will only provide limited improvements for both industry and Government.

AMEC strongly recommends that a holistic review of the legislation is commenced soon, with the objective for a full review within the next election cycle.

AMEC provides comment on the detail of the Draft Regulation in APPENDIX A. Recommendations for further reform, as previously provided in our submission on the recent Act, both legislative and regulatory, are detailed in APPENDIX B.

AMEC welcomes the recent changes to the Act and this Draft Regulation as a first and second step. We look forward to working with Government on the rest of the marathon to bring real improvement to the regulatory framework for the minerals industry in NSW. If you have any queries regarding this submission, please do not hesitate to contact:

Lucy McClean
Director – New South Wales, Victoria & Tasmania.

⁴ <https://www.regional.nsw.gov.au/meg/exploring-and-mining/titles-management-system/nsw-minerals-strategy>

APPENDIX A: COMMENT ON THE DRAFT REGULATION

AMEC provides the following comments on the Draft Regulation and Guide with recommendations to clarify and improve the proposed amendments. The comments below align with the clauses in the Draft Regulation or Explanatory Guide for ease of reference, and TABLE 1 details comments and recommendations on specific provisions.

Consultation needed on the detail

As an initial overarching comment, it is unfortunate that there was no industry consultation on the detail of the *Draft Regulation* prior to publication. This has meant that there are issues with clarity, consistency, and practicality with some of the amendments.

These amendments include detail that will ‘make or break’ the recent legislative reform such as the period to renew authorities, mechanism to advertise new tenure and process for rejecting administratively incomplete tenure applications as well as fee requirements and appropriate transitional arrangements with potential unintended consequences. Many of these activities are business critical processes that can have a material impact on exploration and mining in NSW. Detail on specific issues and recommendations on specific provisions are detailed in TABLE 1.

Review of the Regulation and further amendments

This Draft Regulation should have been the opportunity to reflect and review the current Regulation and any additional changes that could have been incorporated into the Draft Regulation. As above, recommendations for further reform, as previously provided in our submission on the recent Act, both legislative and regulatory are detailed in APPENDIX B. Examples include making changes in the Regulation to expedite processes for critical minerals, review and reduce fees, alternatives for application submission that would ensure the best explorers for tenure in NSW and wider review of publication of notices or advertising requirements.

Further, it is disappointing that one of the key amendments in the recent reform to the Act of the Royalties for Rejuvenation Fund has not been included in this Draft Regulation and delayed and deferred to a later date.

AMEC strongly recommends that further review of the current Regulation is undertaken, and improvements included in the next amendment to the Regulation that will incorporate the Royalties for Rejuvenation Fund.

Re-consideration of Mineral Allocation Areas for nonmetal groups

The Draft Regulation prescribes hydrogen and other nonmetals to the proposed Group 12 and the Explanatory Guide notes the intention of the Government to “*impose a mineral allocation area for hydrogen and other*

nonmetals over the whole of NSW...This would allow the NSW Government to better understand the potential opportunities associated with this emerging industry before exploration occurs”⁵.

The imposition of a mineral allocation area is a blunt regulatory instrument that sterilises opportunity for investment in NSW and potentially delays and defers opportunity for new energy and resource opportunities. AMEC strongly recommends that there is reconsideration of the sterilisation of investment and exploration for both this new Group 12 Nonmetals as well as the current geothermal mineral allocation area. An industry and government partnership to explore and assess these new opportunities would support and maximise the resources of NSW.

⁵ Explanatory Guide: Proposed *Mining and Petroleum (Onshore) Regulation Amendments* Sep 22, page 8

TABLE 1: AMEC COMMENTS ON SPECIFIC PROVISIONS IN DRAFT MINING AMENDMENT REGULATION 2022

Clause in draft Reg	Issue	Description of proposed amendment	AMEC comments and recommendation
8	Change in meaning of 'landholder'	Adds Hunter Water and management of Tomago Sandbeds to definition of 'landholder'	AMEC recommends consultation on this inclusion as some NSW Water managers have been included as 'landholder' under the Act but not others - the equity and status for all other land and water managers in NSW needs to be clarified.
9	Change to mapping	Change from MGA94 to MGA2020	AMEC supports the delay in the commencement of this clause to change the standard map form for one year to allow appropriate time for transition.
12	Fossicking	Permits use of handheld metal detectors but negates important clauses regarding surface disturbance.	The insertion of proposed clause 2(A) removes the application of important surface disturbing activities for users of handheld detectors. AMEC recommends that if the intention is to permit use of handheld detectors, this would be more clearly undertaken through a simple additional subclause instead of removing clause 2(A) for metal detector users.
14	Application for EL	Includes new requirements for information to be provided with an ELA	AMEC supports clarification of requirements for tenure applications, but suggests the following amendments: <ul style="list-style-type: none"> ▪ Define 'approved form' or amend to 'in the form, and include the information, required by the Secretary' as set out in the current Regulation. ▪ Part (e) and (h) - clarify 'as set out on the approved form' to avoid confusion ▪ Part (f) and (e) - remove repetition of financial information to remove duplication and avoid confusion ▪ Part (e) and (g) – remove repetition of technical manager/advice requirements to remove duplication and avoid confusion.
21,25, 33, 42	Application for AL, ML, Renewal of EL, ML and Transfers etc	Additional requirement regarding corporate compliance	Note recommendation for Clause 14 re 'approved form'
26A	Prescribed period	Stipulates 3 year period for lodgement of MLA to lodgement of DA	The three-year period between lodgement of MLA and lodgement of DA can incur several delays including delays in response from Government agencies, complexity due

Clause in draft Reg	Issue	Description of proposed amendment	AMEC comments and recommendation
			to biodiversity regulations, major weather events that can prevent access to land and can have damaging effects on monitoring equipment. AMEC recommends that the three-year period for lodgement of an MLA has an option to extend or simply changed to five years to ensure that there is adequate time to gain land access and prepare an appropriate Environmental Impact Assessment (EIS).
32C	Renewal criteria	Matters for deciding whether land is genuinely required for renewal	The inclusion of clause 32C is subjective due to the high level of discretion required by Government decision-makers especially surrounding the applicant's work performance and potential environmental impacts on the land. AMEC understands that judgement is required for making of these decisions but note that often they could benefit from clarification or more detailed geoscientific understanding and that an exhaustive list of requirements may not be feasible. AMEC recommends that a potential or appropriate solution would be the inclusion of clear guidance for industry on each aspect of the renewal requirements as well as detail on the justification of the Government decision and an opportunity to appeal with an independent review of applications. Consideration should especially be given to the removal or clarification of the ' <i>potential environmental impacts</i> ' requirements that duplicate or pre-empt the detailed REF, EIS approval process.
35	Work program requirements	Details new requirements for work programs	AMEC recommends that further consultation is required on the new extended work program requirements including the reversion to the ' <i>estimated amount of money that the applicant proposes to spend</i> '. There is currently no guidance on how expenditure should be including a proposed minimum or maximum as well as how the estimated amount of money that an applicant proposes to spend will be used in the assessment of the work program as well as the impact (if any) on tenure application. AMEC suggests that should this clause be retained; clear guidance be provided on these important matters through potential policy or guidelines to ensure transparency is achieved for all parties.
67	Extension for reporting	Amends to allow partial and final report extensions within 15 days but annual to remain at 30 days	AMEC supports the reduction in the period for applications for extension of reporting. The current period of 30 days has not allowed for external and unforeseen issues that can arise. For this reason, we support a period of 15 days for all applications for extension of reporting as these issues can apply to any reporting forms.

Clause in draft Reg	Issue	Description of proposed amendment	AMEC comments and recommendation
			Further, Clause (4) requires amendment as this currently provides for Secretary advice on the outcome 21 days after the application that will now be too late for some extension requests
79B	Late payment	Introduces late payment fee cost of 15% overdue amount pa compounded quarterly	AMEC recommends further consultation and benching on the proposed late fees to ensure that these align with other Government late fees.
80(3)	Part units in annual rental fee costs	Omits the current clause that clearly removes part units from calculation of rental fees!	The omission of the clause that clearly removes part units from rental fees and the explanation in the Guide that this is to 'confirm that annual rental fees are also payable, as is currently the case with part hectares, square kilometres or metres' is a significant change. AMEC understands that it has been Government practise to charge rental fees for part payments and so this issue deserves further review and wider industry understanding of what, how and when the new calculations and charges will be levied.
86	Administrative Levy details	Details administrative levy as 1% of the security deposit including providing for a refund from date of decision	AMEC understands that the decision on the relinquishment of a renewal can take many months. AMEC recommends that assessment of the levy is from date of application, not assessment date as industry should not have to pay for Government extended or delayed processing time.
Part 9B	Fit and proper person	Details requirements for Fit and Proper person	Definition of 'relevant legislation' does not clarify if only in NSW only or other jurisdictional legislation. This clause is also duplicative with requirements for 'environment protection legislation' as well as specifying the EPA Act. AMEC recommends that this is clarified and ensure these requirements align with similar requirements for other sectors.
89K, 89L	Publication of notices	Provides for online notices and alternative to local paper publications	This new clause extends the requirements for publication of notices to online publication and external online platforms. AMEC recommends further consultation on this clause as alternatives to provide for the changes to local papers that have been adopted for other sectors include removal of the need to publish (for example local development approvals). In other States, publication is now expanded to company websites, social media, Government website etc that should be considered in NSW.
92A	Security deposit quantum	Provides for a group deposit 'not less than 50% of the sum of the minimum deposit'	AMEC welcomes the option for amendments to the security deposits and looks forward to further consultation on guidance on this new amendment and suggests that a Government form should be developed to facilitate this process.

Clause in draft Reg	Issue	Description of proposed amendment	AMEC comments and recommendation
93A	Content of security deposit	Details content of security deposit	AMEC recommends further consultation on the new requirements for security deposits including clarification on the meaning and requirements of 'progress reports' and 'independent auditing'.
94AA	Period to pay fee or levy	Provides for one business day to pay for a fee or levy	In consideration of the time taken for a bank to transfer payments and for Government systems to accept payments, one business day for the payment of fees is impractical. AMEC strongly recommends that this period is extended to 5 business days or if shorter, evidence of payment by the applicant (for example an electronic receipt from their payment) is provided.
94AB	Period to lodge application information	Details the requirements for application and allows for 10 business days to lodge information	AMEC supports the clarification of requirements for tenure applications, but the provision of 10 business days for basic information will only encourage automated applications. AMEC recommends further consultation on this important matter to ensure that tenure in NSW is not simply provided to the quickest computer system user.
Schedule 10 Penalty Notices	New penalties	Adds penalty for prospecting without an access agreement (\$1500 for individual, \$2,500 for corporation)	In consideration of the large number of landholders in NSW and difficulty in clarifying land ownership, penalty for prospecting without and access agreement should have provisions for 'show cause' to allow for honest mistakes. Further, consistency of fees and penalty notices as points or in dollars would be a simpler and more consistent approach in this regulation.
		Issues with references	AMEC notes the following issues with references in the Draft Regulation Paragraph 52 – 94AB - reference to s318B Paragraph 64 – Section 394(5) of Act

APPENDIX B: RECOMMENDATIONS FOR FURTHER REFORM

AMEC provides the following comments and recommendations on the broader regulatory framework for the NSW minerals industry.

Consider further legislative and regulatory reform following review and benchmark best practice

The *NSW Mining Act 1992* is now 30 years old. In fact, AMEC understands that around half the contents of the current Act is actually derived from the *Mining Act 1906*. The minerals industry is one of the most important industries in NSW and deserves a contemporary regulatory framework.

AMEC recommends a full review of the current legislation and consideration of a complete overhaul to ensure that the industry has a contemporary regulatory framework that is appropriate for the minerals industry of today and tomorrow. Commencing this process in late 2022 would provide an opportunity to fully benchmark best practice and consultation within the next political cycle.

Streamline Government documentation and systems

The formation of the Department of Regional NSW (DRNSW) that includes both Mining, Exploration and Geoscience (MEG) and the Resources Regulator (RR) has been a great opportunity to reset and remedy longstanding bureaucratic issues. Industry has noted a recent improvement in the culture and service at MEG to align with the Government vision of customer service, as well as supporting and increasing minerals industry investment in NSW.

Compliance requirements for the NSW minerals industry, however, can be impractical, overly prescriptive, and increase the administrative burden for minimal regulatory, community or environmental benefit. As an example, the Improved Management of Exploration Regulation (IMER) introduced in 2015 brought in some positive changes but has increased the administrative requirements and complexity of tenure management.

AMEC strongly supports a clear, fair, and streamlined regulatory framework that meets compliance, community, and environmental expectations. In NSW, a holistic review of the regulatory framework is needed to ensure that regulation is up to date, risk-based and outcomes focused. In many instances, recommended improvements may not need legislative changes but achieved through policy changes that could be approved and achieved by MEG.

AMEC recommends the following improvements to Government documentation and systems:

- **Further improve the MEG websites** – The current MEG and RR websites have benefited from some recent improvements; however large parts are still confusing and difficult to navigate. The website is the shopfront of any organisation in 2022 and it must be welcoming, clear and contemporary to encourage investment in NSW.
- **Implement workable online portal/s** – Both MEG and RR have independently developed online portals that should be linked and fully functional. The Titles Management System (TMS) has cost over \$10 million

and RR online portal over \$5 million⁶, but AMEC understands that there remains no schedule for these systems to work co-operatively. Having two separate systems leads to confusion for industry and significant duplication in both costs and administration and so must be remedied without delay.

- **Streamline the Government forms, guidelines and codes** – In NSW the ‘cradle to grave’ process for an exploration licence (including application, one activity approval, renewal and relinquishment) requires review and/or completion of over 600 pages of NSW Government documentation including almost 200 pages of forms and over 400 pages of guidance documents. This is a significant burden, especially for exploration companies that are typically small (often one to ten employees) who cannot afford to spend time and resources on unnecessary administration, as well as for Government to process and keep updated. AMEC understands that some of the forms are currently under review, but this project must be broadened to include all forms and ensure that the guidelines and codes are similarly updated and streamlined where possible as a matter of urgency.
- **Extend the role of the MEG concierge service** – AMEC welcomes the recent initiative of the MEG concierge service; however, the current scope and resourcing is limited. This service should be extended to support intra-Government issues for exploration (for example the difficulties, costs, and time associated with exploring on Crown land and in State Forests) and project development (with Planning, biodiversity, etc.) as well as issues for current operators (for example finding water, EPA licencing and infrastructure issues).
- **Continue to prioritise the elimination of the backlog on tenure processing** – AMEC supports the recent work by MEG to prioritise the backlog on tenure process with the ‘Aged Dealings’ team. Instilling processes to prevent the creation of future backlogs should also be a priority for Government.

Review and streamline land access for exploration

The current requirements for land access for exploration are complex, time consuming and expensive, often prohibitively expensive. Land access in NSW is regularly viewed as a ‘showstopper’ and a key deterrent for industry investment.

AMEC strongly recommends that the framework for land access be reviewed and amended to provide a process that is fair and equitable for both landholders and explorers, and acknowledges the rights, roles and responsibilities of each party. This should include:

- **Review the land access framework** – Land access arrangements across similar jurisdictions should be reviewed and assessed for leading practice. Comparison of processes and costs for other similar activities in NSW should also be sought, for example the rental process in NSW and agreements for tenants and landlords, WHS disputes and processes, etc.
- **Review current cost structure** – Cost is the most prohibitive issue for land access and special focus should be placed on the current costs and how they can be minimised and streamlined.
- **Review the current land access process** – The current negotiation/mediation/arbitration and Court process is long, painful and especially costly for landholders and explorers alike, and it rarely supports the

⁶ <https://www.regional.nsw.gov.au/about-us/Reports-and-publications>

future working relationship between explorer and landholder. Alternative mechanisms and options to shorten the process should be considered. These could include a short circuit for the mediation/arbitration/Court process and alternative dispute mechanisms such as a Tribunal.

- **Consider and review the cost caps** – Currently the Government has Gazetted cost caps for negotiation of an agreement but not for arbitration. AMEC understands that this process is currently under review.
- **Consider a streamlined process for reconnaissance activities** – Until recently, low impact or reconnaissance exploration was undertaken with a verbal agreement between explorer and landholder (and continue for NSW fossickers and landholders). This was an opportunity for the development of trust and a good working relationship. Other jurisdictions have processes to support access in these situations such as the informed verbal consent in Victoria and the Notice of Entry in Queensland. NSW would benefit from a similar process to support access for reconnaissance activities for explorers, noting that for fossickers in NSW, these activities continue to be undertaken with a verbal agreement.
- **Review the significant improvement definition, costs and process** – The matter of 'significant improvements' has been the subject of recent Court challenges. This issue requires a full review, including the matter of costs as there is currently no equity for explorers.

Review security bond structure to maximise the use of industry funds

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. The NSW Government currently holds over \$3.4 billion⁷ in rehabilitation security deposits for the minerals industry, with \$36.6 million (1% of the full security holdings) held for security over all mineral exploration tenure⁸.

The minerals industry is committed to high environmental standards and understands the importance of security bonds to social licence. The current process, however, requires significant up-front capital to be provided to the Government. Capital that is tied to a bond, or bank guarantees that must be serviced by explorers and miners and reviewed and adjusted for every exploration activity have a significant administrative burden and cost for both industry and Government.

The Amendment Bill includes some reforms to increase the activity threshold and provide for group securities, but further steps are needed. AMEC provided the NSW Government (both Mining Exploration and Geoscience and the Resources Regulator) with a detailed submission on this matter, with a focus on the potential introduction of a pooled fund model in March 2020 and we look forward to working with Government on the next steps.

AMEC recommends a full review the security bonds structure to maximise the use of exploration funds and assess the potential introduction of a pooled fund model to increase the investment attractiveness of NSW.

⁷ <https://www.regional.nsw.gov.au/about-us/Reports-and-publications>, amount as at 30 June 2021

⁸ *Exploration security deposits – Proposed reforms position paper*, June 2021

Expedite processes for critical minerals

Currently, all minerals are governed by the same legislative requirements, with some changes for coal and petroleum. The Government has recently prioritised critical minerals and high-tech metals with a clear strategy. Options for investment attraction for these important groups of minerals could include streamlined and fast-tracked regulatory systems and processes.

AMEC recommends that consideration should be given to opportunities to fast-track, simplify and streamline the process for the minerals that are critical for the future of NSW. This could include separating critical minerals as a Group of mineral and providing fast track tenure processing with reduced fees as well as the Critical Mineral Fund support program.

Review, reduce and eliminate unnecessary penalties, fees and levies

Currently NSW tenure holders may receive penalties for submission of late reports, inadequate reports, late payments or mistakes on applications that then lead to penalty infringement notices and other permanent records for the company that must be declared in all future applications. Similar activities such as late car registration payments or speeding in NSW incur fines or warning letters. This system deserves review to ensure that it is equitable and reasonable, as well as benchmarked with other jurisdictions.

AMEC recommends that the penalties, fees and levies in NSW are reviewed and benchmarked to ensure that NSW has a fair, competitive and transparent regime that supports the development of the minerals sector.

Review tenure advertising requirements

With the recent closures of local papers in many regions, the requirement for companies to advertise new tenure locally is difficult. Replacing local advertising with state-wide or national papers does not generally fulfil the objective of informing local communities and attracts significant expense as well as potential unintended consequences. Alternative forms of communicating with local communities could be considered, such as a notice on the MEG website, as has recently been adopted in Victoria following similar issues. The Amendment Act and Draft Regulation includes some reforms to tenure advertising but further consultation for a holistic reform is needed.

AMEC recommends that a full review of tenure advertising is considered with industry consultation to provide a contemporary process for communication with local communities.

Fast track development opportunities to support economic growth minerals

The application for a mining approval is a long and arduous process in NSW and often held up with intra-Government delays. Industry members report that there is duplication and confusion between different Government departments and groups, and this acts as a disincentive for investment and exploration in NSW. An example is the ongoing issues with Water NSW and NRAR as well as the importance of consistency for biodiversity requirements between NSW and the Commonwealth. These 'choke points' need to be identified, prioritised, and streamlined.

NSW Government has recently taken important steps to progress development applications including the welcome reforms to the Independent Planning Commission and the recent 'fast-track' processes and 'one stop shop' planning hubs. AMEC believes that minerals developments should be included in the recently introduced NSW Planning 'fast-track' processes and 'one stop shop' planning hubs. The concierge service at MEG could also support the minerals industry as 'project champions' and help work through the 'maze' of Government requirements and processes.

AMEC recommends that the planning process is reviewed and streamlined to fast-track development in NSW.