

TO: DEPARTMENT OF ENERGY, ENVIRONMENT AND CLIMATE ACTION

RE: REHABILITATION BONDS IN VICTORIA

19 May 2023

Introduction

The Association of Mining and Exploration Companies (AMEC) welcomes the opportunity to provide a submission to the Victorian Government on rehabilitation bonds for exploration. At this time when costs are increasing and budgets are being tightened, it is timely to review this significant cost for mineral exploration. Note that this submission does not cover petroleum titles as AMEC does not represent the petroleum industry.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is the national peak industry body 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 represents a growing number of companies working and investing in Victoria.

Current framework for rehabilitation bonds in Victoria

The minerals industry supports the Victorian Government's efforts to provide a strategic way forward for rehabilitation to ensure safe, stable, and sustainable requirements under the *Mineral Resources (Sustainable Development) Act 1990* (the Act) and the *Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019* (the Regulations).

Currently in Victoria, prior to the grant of each exploration licence (EL), a rehabilitation bond is required to be provided to the Government as either cash, a bank guarantee, a bond, or another form (such as an insurance policy) as considered appropriate. As of February 1, 2023, the State of Victoria held a total of \$832 million in rehabilitation bonds, including coal mine liabilities (\$605 million) and work authorities (\$106 million). A total of 494 bonds (\$121 million) cover exploration, mining, retention, and prospecting licences (Appendix, Figures 2 and 3).

Rehabilitation bonds must be lodged before site works begin and can be adjusted during the life of a resource project, taking account of relevant changes in work approvals and any completed rehabilitation. Rehabilitation bonds are required for operations on private and Crown land.

The rehabilitation bond reflects 100% of the estimated rehabilitation cost and is in place to ensure that rehabilitation can be undertaken by Earth Resources Regulation (ERR), should the authority holder be unable to meet their rehabilitation obligations.

Any holder of a mining, retention, exploration, or prospecting licence who proposes to carry out exploration must currently submit a work plan to ERR. A work plan describes the nature and scale of proposed mineral exploration activities and identifies and assesses all risks the works may pose to the environment, to the public, or to nearby land, property, or infrastructure. A work plan must include a risk management plan and a description of the proposed rehabilitation of any areas subject to surface disturbance. The work plan must be approved before any exploration activity commences.

A standard bond is applied to the title at the time the first work plan for an exploration licence is approved, with a standard bond amount of \$10,000 applicable to all new exploration licences. The condition of a rehabilitation bond is that the authority holder rehabilitates the land as required by section 78 of the Act and in accordance with the conditions of the licence. Bonds are returned when the Government is satisfied the land has been rehabilitated and the Government has determined that full rehabilitation has been completed. Any funds remaining after rehabilitation is completed by the Department must be returned to the authority holder.

The Victorian Auditor General's Office, in the *2020 Rehabilitating Mines - Independent Assurance Report to Parliament*¹, noted there are many licences in the State that do not have any rehabilitation bonds and that the contingent liability could be as high as \$50 million for all Victorian earth resources sites. Figures 4-6 in the Appendix highlight the discrepancy in bonded licences between the published ERR and GeoVic databases.

Issues with the current rehabilitation bond framework and the case for change

The following issues are noted with the current rehabilitation bond framework in Victoria and could be considered impediments to investment in the State:

High-cost requirements for low risk – Exploration is generally a low impact, low risk and short-term activity in Victoria and the current rehabilitation bond framework is unnecessarily complex and administratively onerous. At present, the Victorian Government's standing policy for authority holders is to lodge a rehabilitation bond to cover 100% of the estimated rehabilitation cost for each site. AMEC understands that ERR has never prosecuted any licence holder to enforce rehabilitation or to recoup additional costs of rehabilitation incurred by the State.

Increased costs for industry and Government – ERR may request an authority holder to undertake a self-assessment² of their rehabilitation obligations as an initial step in determining the amount of bond required for a new site. The industry self-assessment approach will also be applied as part of the department's bond review program and in the work plan variation and transfer processes. This self-assessment of rehabilitation obligations by industry participants requires completion of the multi-page *Rehabilitation Bond Calculator* Excel spreadsheet and accompanying form and then submission and assessment of these documents by Government, as well as changes to cash or other security instruments held by Government. This is an onerous process that in most cases would have little net change but carries significant administrative cost for both industry and Government.

¹ https://www.audit.vic.gov.au/sites/default/files/2020-08/20200805-Rehabilitating-Mines-report_0.pdf?

² <https://earthresources.vic.gov.au/legislation-and-regulations/guidelines-and-codes-of-practice/rehabilitation-bonds>

Further, bond costs have increased significantly recently for many industry operators, noting the following case study:

CASE STUDY – Bond Increase

A member reports of an example where transfer of a small mining licence on Crown land triggered a bond reassessment under section 79A of the *Mineral Resources (Sustainable Development) Act*. Using the Rehabilitation Bond Calculator devised by Earth Resources Regulation (ERR), a self-assessment determined a rehabilitation bond liability approximating the original and existing bond that was in place. Following submission to the Rehabilitation Liability Assessment Officer at ERR the bond was revalued upwards with a nine-fold (900%) increase in rehabilitation bond liability.

Difficulties with obtaining bonds – Currently, the regulator accepts rehabilitation bonds in the form of an unconditional bank guarantee and cash bonds up to the value of \$50,000. AMEC understands from industry members that it is increasingly difficult and costly to obtain bonds or alternatives to cash deposits. This means more and more companies are needing to sterilise cash as security deposits, so decreasing the investment of companies in real exploration on the ground.

Need to ‘pay for rehabilitation twice’- The Victorian Government holds the full cost of rehabilitation in bonds, meaning that companies have to find the money to fund rehabilitation twice – once held by Government as a security and only released after satisfactory completion of rehabilitation and the other to do the actual work. This is a considerable cost imposition, especially for junior companies with little or no income.

Locking up capital that could be invested in Victorian exploration – The minimum rehabilitation bond imposed in Victoria is \$10,000. Currently the Victorian Government holds \$3.2 million in rehabilitation bonds for mineral exploration licences. For exploration companies with multiple tenements, this represents significant monies held either in cash or bonds by the Government. If some or all of these monies were released there would be a considerable increase in investment in Victorian exploration.

Encouragement of progressive rehabilitation and additional fieldwork – Industry members note that to keep the costs of rehabilitation bonds to a workable level, companies are regularly undertaking full rehabilitation on a program before completing a follow-up program in the same area. For example, a company may complete a drilling program with 50 holes then, due to promising results, plans to undertake follow-up program drilling 100 deeper into the same holes or holes very close to the original holes. Under the current bond regime, the company would need to fully rehabilitate each hole from the first program to have the bond returned then submit an activity approval for the 100 new holes and re-pay the bond for the second program when holes would be reopened for the deeper drilling

Inequity of financial benefit for interest earned on the rehabilitation bonds – Currently the bond money held by the Government in security deposits provides no direct financial benefit to the company providing the funds, which are often held for five or more years. In comparison, when money is held in trust, for example as part of a property sale, any interest earned is divided equally between the parties.

Every dollar counts for mineral exploration companies

Access to capital is one of the most important 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 rehabilitation bonds. The minerals industry is committed to high environmental standards and the importance of the bond to 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.

Effective rehabilitation and allocation of rehabilitation responsibility and liability must also need to consider multiple ownership changes, management changes, starts, closures and restarts. As explained above, exploration is generally a low impact, low risk and short-term activity in Victoria and the current rehabilitation bond framework is unnecessarily complex and administratively onerous.

Victoria has struggled to compete with other Australian States and Territories as a preferred investment destination and is now ranked the lowest Australian jurisdiction for the three key indices in the Fraser Institute *Annual Survey of Mining Companies 2021*³; the Policy Perception Index (termed the 'report card for Governments' and assesses the attractiveness of policies), Investment Attractiveness Index and Best Practices Mineral Potential Index. Victoria was also ranked amongst the lowest jurisdictions internationally for uncertainty concerning administrative and environmental regulations as well as for regulatory duplication and inconsistencies.

While the Victorian Government has enjoyed record levels of exploration investment in recent years, the recent ABS statistics⁴ on mineral exploration show quarterly exploration expenditure in Victoria has fallen by more than 30% over the twelve months to December 2022. This also highlights the funding challenges apparent across much of the industry.

The Fraser Institute results point to a damaging perception of Victoria as poorly regulated and largely unattractive to investors. Improving the current rehabilitation bond system and alternatives would help reduce this negative perception and restore and attract exploration investment to Victoria.

For exploration companies with no income, every dollar counts. Exploration is generally undertaken by small companies that undertake capital raisings and have no income. These companies are usually lean, focussed organisations where every dollar counts, as does every hour of time spent on administrative and compliance requirements. If the bond framework in Victoria could be streamlined and improved, then there is real potential for the investment attractiveness of this State to substantially improve.

Comparison of rehabilitation security frameworks across Australia

Across Australia, every jurisdiction has a framework to minimise potential liabilities to the State if the title holder fails to deliver on their rehabilitation obligations. **Figure 1** provides a comparison of the different security regimes in the major mining jurisdictions for mineral exploration.

³ <https://www.fraserinstitute.org/categories/mining>

⁴ <https://www.abs.gov.au/statistics/industry/mining/mineral-and-petroleum-exploration-australia/dec-2022>

Most jurisdictions have traditionally had a security bond framework like the current system in Victoria, but in recent years there has been a move to implement an annual levy or adopt alternative frameworks.

In WA this structure was changed in 2012 with the implementation of an annual levy of 1% of the rehabilitation liability (tenure with a rehabilitation liability estimate at or below a threshold of \$50,000 are exempt) and previous bonds and security deposits were returned to companies.

South Australia is also looking at implementing a levy structure following Queensland’s successful introduction of a hybrid system for mining (not exploration) in 2018. The Northern Territory has a combination of security deposits, and a non-refundable levy and New South Wales is currently reviewing its traditional security deposit structure.

Tasmania requires a security deposit plus a levy per km² and a levy based on a percentage of the first 2 years proposed expenditure. It should be noted there was no levy nor industry funded program to support rehabilitation of derelict mines in WA and the Northern Territory prior to the implementation of the levy.

Figure 1. Jurisdictional comparison of security frameworks for exploration

| STATE | SECURITY OR FINANCIAL ASSURANCE |
|---------------------------|---|
| New South Wales | Security – Security deposit (minimum of \$10,000) as cash or bank guarantee required before grant of tenure. Security deposits are reviewed before and after each exploration activity program as part of the activity approvals. Following advocacy from AMEC, the NSW Government recently made the change to enable activity up to the rehabilitation cost of \$30,000 before change to the standard \$10,000 is made as well as introduce group bonds. |
| Northern Territory | Security – Minister calculates amount of security to be provided by an operator by reference to the level of disturbance likely to be caused by the mining activities to be carried out. Levy – Annual 1% levy of full amount of operator's environmental bond to go into the Mining Remediation Fund that is set up to address legacy mining liabilities across the Territory |
| Queensland | Security – Hybrid model (pooled fund + surety) where Environmental Authority holders for a resource activity must calculate their estimated rehabilitation cost (ERC) and apply for an ERC decision. The financial assurance payment, known as 'surety' will equal the ERC. |
| South Australia | Security – 100% of the estimated rehabilitation liability. The rehabilitation liability estimate should be the reasonable third-party costs of undertaking the rehabilitation strategies covered by the approved program for environment and rehabilitation (PEPR). The Department reviews the estimate prior to setting the final bond. |
| Tasmania | Security – \$5,000 + \$20 per km ² + 1% exploration expenditure for first 2 years as cash or bank guarantee and lodged before grant. |
| Victoria | Security – \$10,000 rehabilitation bond required in cash or unconditional bank guarantee. |
| Western Australia | Security – \$5,000 security must be lodged with every application and transfer. The Minister may require the holder to lodge an additional security. Mining Rehabilitation Fund – Annual levy of 1% of estimated environmental rehabilitation liability is payable based on deemed cost of rehabilitating disturbances on tenements. If the estimate is less than the \$50,000 threshold, no levy is payable. Bonds – The Department may impose Unconditional Performance Bonds on tenements where it considers there is a high risk of the rehabilitation liability reverting to the State, regardless of MRF payment |

Source: AMEC⁵, Government websites

⁵ <https://0h50cf.a2cdn1.secureserver.net/wp-content/uploads/2021/09/AMEC-Exploration-requirements-comparison-Tenure-Licensing-.pdf>

Alternative frameworks and recommendations for Victoria

Alternative security frameworks that would streamline administration while maintaining surety for Government could include:

Review rehabilitation bond structure to maximise the use of industry funds - AMEC strongly supports a full review of the current bond system in Victoria with consideration given to an annual levy toward a pooled fund for rehabilitation. To encourage and promote new and further investment in exploration and mining activities, some Australian jurisdictions have moved to a pooled rehabilitation fund model based on annual levy contributions as detailed above. The levy/pooled fund model is advantageous to both Government and industry as it enables the release much needed working capital and removes the need for administratively and financially expensive up-front rehabilitation charges without reducing environmental standards or the operator and State's obligations.

In Western Australia, the Mining Rehabilitation Fund has freed up over \$1.2 billion of much needed working capital with interest from the fund underwriting the WA Government's ability to rehabilitate abandoned mines across the State.

Consider alternatives such as Trust or Levy - A trust system such as that used in real estate could be an alternative to the current deposit regime and allows for both industry and Government to benefit from the security investment. The trust could be drawn down for use to pay for the rehabilitation and so avoid the 'pay twice' issue.

Lower security deposits on grant of exploration tenure - Low impact or reconnaissance activities only are permitted on grant of exploration tenure in Victoria, as an application to undertake exploration activity must be completed prior to any surface disturbing activities. Removing the rehabilitation bond requirement help company cash flows and enable companies to increase reconnaissance activity with no increased risk for Government.

Introduce group bonds - Group bonds for exploration would ease administrative costs and generally provide Government greater surety as the security is held over all the licences and often companies hold fewer exploration licences than the maximum on the group security. Exploration companies are inherently agile and pick up, relinquish, and joint venture regularly. A more flexible bond regime would allow for this, and a group bond would minimise the administrative burden for Government and Industry.

Review the Rehabilitation Bond Calculator annually - In 2021, ERR released an updated Rehabilitation Bond Calculator⁶, following the last major update eleven years prior in 2010. The updated rates will be have significant additional costs (typically a 30-50% increase⁷). The intention is for the calculator to "be periodically reviewed to consider aspects such as market variability and inflation"⁸. An annual review of the calculator. would ensure more flexibility, currency, and useability, minimise the impact of significant changes and ensure that bonds align with contemporary costs.

⁶ <https://earthresources.vic.gov.au/legislation-and-regulations/guidelines-and-codes-of-practice/rehabilitation-bonds/bond-calculator>

⁷ Pers. Comm, 24 August 2021

⁸ <https://earthresources.vic.gov.au/legislation-and-regulations/guidelines-and-codes-of-practice/rehabilitation-bonds>

AMEC believes a full review of the current framework for rehabilitation bonds should be undertaken collaboratively by Government and industry to deliver an improved system that continues to provide surety for all stakeholders.

The minerals industry welcomes simplified, streamlined, and improved regulation in Victoria and AMEC looks forward to further consultation on this important matter. If you have any queries regarding this brief, please do not hesitate to contact:

Lucy McClean

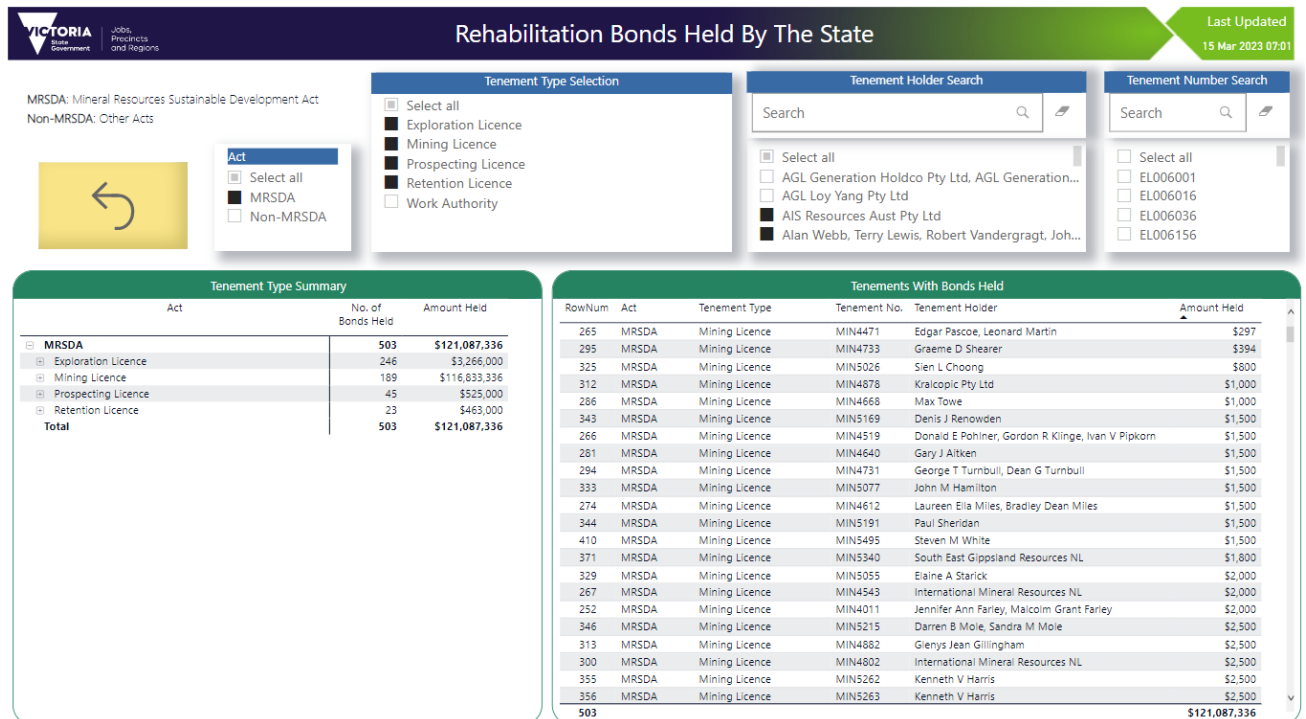
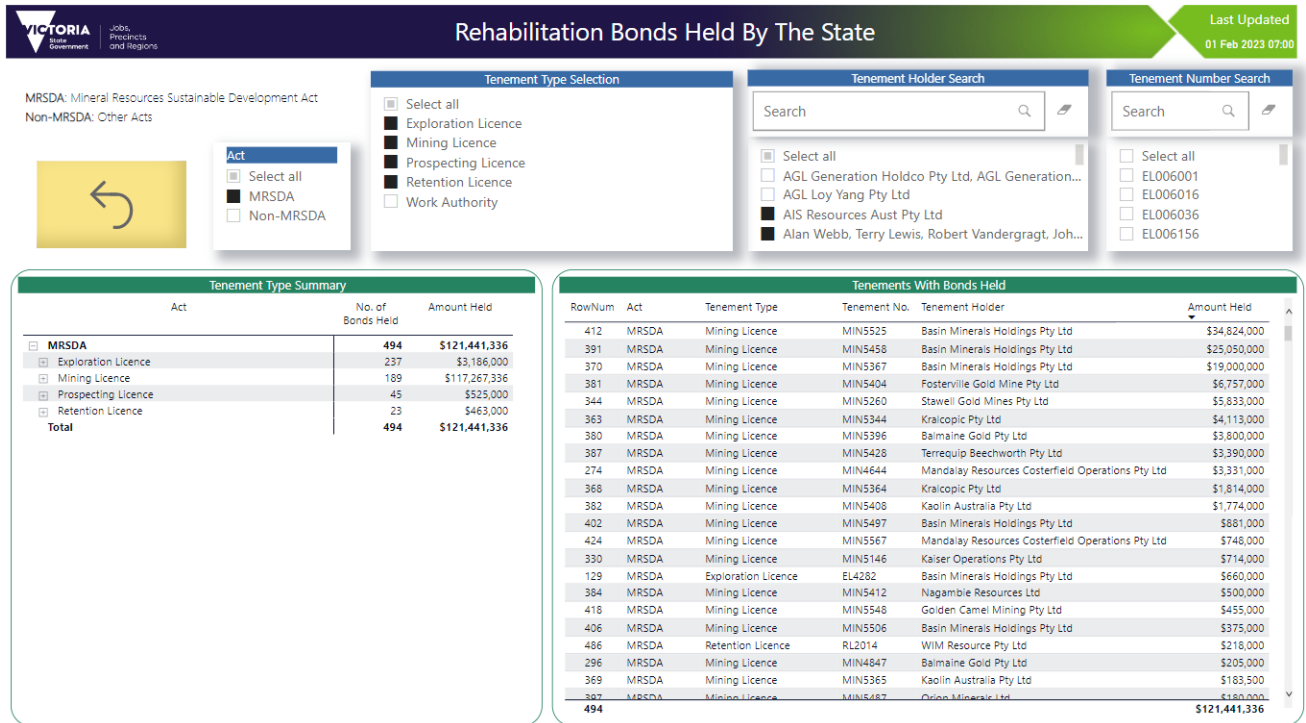
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APPENDIX – Current Rehabilitation Bonds in Victoria

FIGURE 2. Rehabilitation Bonds Held By the State of Victoria* (on February 1 and March 15, 2023)



*Above figures are MRSDA bound only and exclude coal/work authority(extractives) rehabilitation bonds

Source: Victorian State Government

FIGURE 3. ERR Register of Rehabilitation Bonds (Victoria)* (at February 1, 2023)

| LICENCE TYPE | Exploration | Mining | Prospecting | Retention | TOTAL |
|------------------------|--------------------|----------------------|------------------|------------------|----------------------|
| Number of Bonds | 237 | 189 | 45 | 23 | 494 |
| <i>% of Total</i> | <i>48.0%</i> | <i>38.3%</i> | <i>9.1%</i> | <i>4.7%</i> | |
| Bond Amount | \$3,186,000 | \$117,267,336 | \$525,000 | \$463,000 | \$121,441,336 |
| <i>High</i> | <i>\$660,000</i> | <i>\$34,824,000</i> | <i>\$25,000</i> | <i>\$218,000</i> | |
| <i>Low</i> | <i>\$10,000</i> | <i>\$1,000</i> | <i>\$2,500</i> | <i>\$10,000</i> | |
| Avg\$/Bond | \$13,443 | \$620,462 | \$11,667 | \$20,130 | \$245,833 |

*Above figures are MRSDA bound only and exclude coal/work authority(extractives) rehabilitation bonds

Source: Earth Resources Regulation

FIGURE 4. GeoVic Register of Rehabilitation Bonds (Victoria)* (at February 1, 2023)

| LICENCE TYPE | Exploration | Mining | Prospecting | Retention | TOTAL |
|------------------------|--------------------|----------------------|------------------|------------------|----------------------|
| Number of Bonds | 262 | 116 | 32 | 24 | 434 |
| <i>% of Total</i> | <i>60.4%</i> | <i>26.7%</i> | <i>7.4%</i> | <i>5.5%</i> | |
| Bond Amount | \$5,263,000 | \$109,563,860 | \$442,500 | \$473,000 | \$115,742,360 |
| <i>High</i> | <i>\$660,000</i> | <i>\$34,824,000</i> | <i>\$25,000</i> | <i>\$218,000</i> | |
| <i>Low</i> | <i>\$10,000</i> | <i>\$1,000</i> | <i>\$2,500</i> | <i>\$10,000</i> | |
| Avg\$/Bond | \$20,088 | \$944,516 | \$13,828 | \$19,708 | \$266,687 |

*Above figures are MRSDA bound only and exclude coal/work authority(extractives) rehabilitation bonds

Source: Earth Resources Regulation

FIGURE 5. GeoVic Percentage of Bonded Licences (Victoria)* (at February 1, 2023)

| LICENCE TYPE | Exploration | Mining | Prospecting | Retention | TOTAL |
|--------------------------|--------------|--------------|--------------|--------------|--------------|
| Licences Issued | 769 | 136 | 59 | 59 | 1023 |
| Bonded Licences | 262 | 116 | 32 | 24 | 434 |
| <i>% Bonded</i> | <i>34.1%</i> | <i>85.3%</i> | <i>54.2%</i> | <i>40.7%</i> | <i>42.4%</i> |
| Unbonded Licences | 507 | 20 | 27 | 35 | 589 |
| <i>% Unbonded</i> | <i>65.9%</i> | <i>14.7%</i> | <i>45.8%</i> | <i>59.3%</i> | <i>57.6%</i> |

*Above figures are MRSDA bound only and exclude coal/work authority(extractives) rehabilitation bonds

Source: Earth Resources Regulation

FIGURE 6. Database Licence Variance (Victoria)* (at February 1, 2023)

| LICENCE TYPE | Exploration | Mining | Prospecting | Retention | TOTAL |
|----------------------|--------------------|--------------------|-----------------|-----------------|--------------------|
| DATABASE | | | | | |
| <i>ERR Dashboard</i> | <i>237</i> | <i>189</i> | <i>45</i> | <i>23</i> | <i>494</i> |
| <i>GeoVic</i> | <i>262</i> | <i>116</i> | <i>32</i> | <i>24</i> | <i>434</i> |
| <i>Variance</i> | <i>25</i> | <i>73</i> | <i>13</i> | <i>1</i> | <i>60</i> |
| | <i>\$2,077,000</i> | <i>\$7,703,476</i> | <i>\$82,500</i> | <i>\$10,000</i> | <i>\$5,698,976</i> |

*Above figures are MRSDA bound only and exclude coal/work authority(extractives) rehabilitation bonds

Source: Earth Resources Regulation