

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

Re: **REMAKE OF MINING REGULATION**

22 June 2023

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 remake of the *Mining Regulation 2016* (Regulation). Without information on the proposed changes to the Regulation, the scope for this submission is appropriately broad.

About AMEC

AMEC is a leading national minerals 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 exploring, mining and investing in NSW.

Remake of the *Mining Regulation 2016* is an important opportunity for update and improvement

Regulatory reform is an opportunity for NSW to update regulatory requirements and dispel the widely held industry reputation for being a difficult jurisdiction to mine and explore. Legislative reform is a key mechanism for improving this perception through cutting red tape and streamlining requirements and industry regulation.

AMEC understands that the core of the remake of the *Mining Regulation 2016* will be to incorporate amendments necessary to support the remaining provisions of the *Mining and Petroleum Legislation Amendment Act 2022* (Amendment Act) that have yet to be commenced. However, the remake of the Regulation is also an important opportunity to improve some of the administrative issues to streamline processes for both industry and Government.

Consultation needed on the detail that will be in the Regulation and other policy documents

As an initial overarching comment, many of the sections in the Amendment Act moved the regulatory detail from the Act to the Regulation. There is minimal industry understanding of the proposed content for this remake of the Regulation, nor supporting policy documentation. This means that there is currently no industry understanding on the detail that will make or break the legislative reform.

Key matters include the period to renew authorities, mechanism to advertise new tenure and process for rejecting administratively incomplete tenure applications as well as appropriate transitional arrangements and potential unintended consequences. Many of these activities are business critical processes that can have a material impact on exploration and mining in NSW.

AMEC strongly recommends that industry must be consulted on the detail of the Regulation including appropriate transitional arrangements and potential unintended consequences as many of the aspects are business critical processes that can have a material impact on exploration and mining in NSW.

Further reform needed and should be commenced soon

The reforms in the Amendment Act included some important changes and improvements to the existing legislative framework. However, 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 is disappointing that the recent amendments to the now thirty-year-old *Mining Act 1992* in many years only provided 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 this election cycle.

AMEC provides detailed comment on recommendations for the remake of the Regulation and further reform, both legislative and regulatory, in **APPENDIX A**.

AMEC welcomes the opportunity to provide comment prior to the Regulation remake and looks 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

APPENDIX A: RECOMMENDATIONS FOR REGULATION REMAKE AND FURTHER REFORM

AMEC provides the following comments and recommendations for the remake of the Regulation and 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 soon would provide an opportunity to fully benchmark best practice and full consultation within the current 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 focussed. 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:

- **Streamline payments and refunds** – Currently there are several fees and charges for tenure that could be streamlined through reform to the Regulation. An example is the payments for tenure units as part of initial and renewal tenure applications that are required upfront by the Regulation. Often, however, the units change or are not renewed, and so these fees need to be refunded in a process that is administratively cumbersome for both industry and Government. A simpler system could include unit charges on offer of the new tenure or renewal, so payment is provided once without the potential for

refunds. Another example is to provide industry with one invoice each year or even one invoice for all fees and levies at application or renewal, that again would streamline administration for both industry and Government.

- **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.
- **Further improve the MEG websites** – The current MEG and RR websites have benefited from some recent improvements but large parts are still confusing and difficult to navigate. The website is the shopfront of any organisation in 2023 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 million¹, but AMEC understands that there remains no schedule for these systems to work together. Having two separate systems leads to confusion for industry and significant duplication in both costs and administration and so must be remedied without delay.
- **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.

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 strategy. Options for investment attraction for these important groups of minerals could include streamlined and fast-tracked regulatory systems and processes, as is being considered in other States and by the Commonwealth.

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.

¹ <https://www.regional.nsw.gov.au/about-us/Reports-and-publications>

Consider the inclusion of Project Status

Project status is a common mechanism in many jurisdictions and streamlines administration of tenure for both Government and industry. With the changes to group security deposits, project status for groups of exploration licences could become more common. Currently, information on project status is included in the draft renewal policy for ELs and some forms, but there is lack of clarity on whether project status will include both annual tenure reporting and/or securities. The Regulation remake could at least provide a head of power for project status to enable government to clarify the details in Regulation and/or policy.

AMEC recommends that project status is included in the legislative reform as this is an important mechanism for Government and industry to streamline tenure administration.

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 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 housing rental process and agreements for tenants and landlords, WHS disputes and processes, etc.
- **Review current cost structure** – Time and cost are the most prohibitive issues 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 what will need to be the 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 mechanisms 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 mechanism 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.
- **Ensure land access agreements are not published with commercially sensitive or personal information** - AMEC understands the importance of providing appropriate information on public registers. The Amendment Act provides for the publication of arbitrated access agreements (section 156A) but this needs to be carefully considered as agreements often include commercially sensitive and personal information. In other States, these public registers have been used to gain details of landholders who have signed agreements, with significant adverse consequences. AMEC recommends that the legislative amendments do not permit the publication of commercially sensitive or person information on public registers.

Clarify the new definition of prospecting and consider current activities

The new definition of prospecting in the Dictionary in the Amendment Act is poorly worded and unnecessarily complex. The implications for the amended definitions to current activities and agreements (including land access agreements) needs to be fully considered and could be included the remake of the Regulation.

AMEC recommends that the definition of prospecting is simplified and the implications of the amended definition on current activities and agreements included in the transitional provisions.

Review security bonds structure to maximise the use of exploration 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 billion² 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 tenure³.

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 significant administrative costs for both industry and Government.

The Amendment Bill included 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.

² <https://www.regional.nsw.gov.au/about-us/Reports-and-publications>

³ *Exploration security deposits – Proposed reforms position paper*, June 2021

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 Bill included some reforms to tenure advertising and AMEC would welcome further consultation during the drafting of the Regulation.

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. 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 opportunities to support economic growth and streamline intra-Government 'choke-points'.