

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

Re: **REVISED ANNUAL REPORT RELEASE POLICY**

20 December 2023

## 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) as part of the public consultation on the revised annual report release policy and exploration reporting, with the following documents provided for consultation:

- *Consultation draft – Revised annual report release policy* (Draft Policy)
- *Consultation draft – Revised annual report redaction guide* (Draft Redaction Guide)
- *Consultation draft – Revised exploration reporting: a guide for reporting on exploration and prospecting in NSW* (Draft Reporting Guide)
- *Frequently Asked Questions: Annual report release, redaction and exploration reporting* (Draft FAQ)

## About AMEC

AMEC is a leading national industry body representing over 550 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.

AMEC members in NSW do not have interests in opals or coal, and so we will leave comment related to these matters to other industry stakeholders.

## Consultation on such important matters should be with authenticity

Consultation on this revised policy for annual report release has been launched publicly without any key stakeholder discussion or notice a month before Christmas when many companies are undertaking annual reporting and AGMs, as well as other end of year activities. The consultation documents are not clearly marked 'draft' and note an implementation date of February or 1 February, just a month after the end of consultation.

Further, Government has not taken this public consultation process as an opportunity for feedback and improvements on the current system, but simply extends the system to new mineral types, reports and data.

Many in industry have expressed concern that this is not authentic consultation, lacks respect for the importance of the subject matter, nor does the process allow time for thorough consultation and due process, nor communication of the changes and time for industry implementation.

## 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 to the mining industry what land titles are to landowners – the foundation of their entitlement and security to undertake activities over that parcel of land.

Tenure is the foundation of the industry that contributes billions of dollars and thousands of jobs to the State of NSW. The strong return mining provides to regional communities in jobs revenues and royalties underlines the reliance of New South Wales on a strong mining sector. Following the drought, bushfires, floods and COVID the minerals industry supports the State, with our heart in regional communities.

The resources industry is currently contributing record royalties to the NSW Government, with annual royalties of over \$4.6 billion forecast for 2022-23<sup>1</sup> (an increase of over a billion dollars from previous year), with an estimated increase of \$2.7 billion over the four years to December 2027 following the increase in the coal royalty rate on 1 July 2024. Royalties support important State spending on schools, hospitals, and flood recovery. Royalties from the minerals industry have more than paid for the recent NSW and Australian Government investment in NSW flood recovery.

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

Prior to 2021, the data produced by exploring or mining tenure in NSW over the previous more than one hundred years was provided to Government in annual reports that were kept in confidence until the relinquishment of tenure.

Upon release, these reports form an invaluable base for 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 had been the age-old process of exploration and has led to reworking old ground and discovery of new deposits and mines.

Interest in viewing reports from live tenure is of scientific interest and can provide insights into geologically similar or nearby exploration projects. As the tenure is currently held, the release of data will not directly influence exploration over the held ground but may increase geoscientific understanding and improve exploration strategies and outcomes for other explorers.

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.

## Publication of reports for live tenure must be undertaken with due regard to sensitivities

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.

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<sup>1</sup> <https://www.budget.nsw.gov.au/>

Following this new clause, consultation on release of reports did not occur until mid-2020 and in the interim, some industry members were concerned about the potential publication of information and so provided annual reports with 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. Other industry members did not know that the new clause had been inserted and, in the words of one member, were “horrified” that annual reports from ‘live tenure’ may be released as they were written and submitted without understanding of the change until consultation years later.

### Concerns regarding publication of reports from live tenure

Industry members have expressed the following concerns regarding the potential release of reports from live tenure prior to the implementation of the annual release policy that should be again noted:

- **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 investigation into discrepancy of coal lab analyses<sup>2</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>3</sup> have 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 complement 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.

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<sup>2</sup> <https://www.afr.com/companies/mining/rumpelstiltskin-in-the-coal-lab-70b-dilemma-of-fake-tests-20200417-p54krf>

<sup>3</sup> <https://www.abc.net.au/news/2017-05-27/poachers-anu-canberra-endangered-animals/8565182>

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.

### Comments on the consultation documents

AMEC provides the following specific comments on the draft Policy, Redaction Guide, Reporting Guide and FAQ provided for consultation:

#### Draft Annual Report Release Policy

- **Include an independent review of redaction decisions** – Redactions are requested by a company and reviewed by the Redaction Review Group that is comprised of two staff members in MEG. Although we understand that there have been no refusals for redaction requests to date, this revised policy will open a new range of data and reports for redaction. AMEC recommends that it would be good practice to include an appeal process where a redaction request that has been refused can seek independent review by a panel with an independent member and MEG representatives who were not involved with the initial redaction request.
- **Amend dates as required** – The consultation process for these revised documents has a tight timeframe, with all comment due by 20 December (and then extended to 25 January) and publication of the documents and 2024 annual report list on 1 February. Good practise would be to publish documents at least three months prior to implementation by a third party, but for these documents it will be a matter of days depending on the Government internal review and publication process. This is of especial concern regarding the transition period for annual reports submitted, as detailed below. AMEC strongly recommends that the timeline and dates noted under Schedule 1 are reviewed to provide time for communication and implementation by industry of these changes.
- **Include the term ‘sunset’ in the initial explanation** – The annual report release policy was originally termed the ‘sunset clause’ and this term is widely understood in the industry as it is the known term used in other key Australian mining jurisdictions. In the initial explanation of the policy, AMEC recommends that reference is provided to the ‘sunset’ to improve understanding of the process.
- **Include a clear table on ‘Release/Not for Release’ for clearer understanding** – The table on reports and data that will be released/not released provided in the consultation webinars on 5 December (slide 14) provided a clear and easy to understand information on what will and will not be released. AMEC recommends that this is included before Table 1 so that readers can understand this easily, before the details of Table 1 on the changes in the revised policy. Note that this table should also include the important point that environmental and community reports will not be released.
- **Clarify the management of exploration licences that are partial ‘flow on’** – An important change in this revised policy is the changes for ELs that ‘flow on’ to mining tenure, however there is no explanation for the common situation where part of an EL has ‘flowed onto’ mining tenure and part has not. AMEC recommends that this ‘partial flow on’ title is clearly explained.

## Draft Redaction Guide

- **Include the information on redaction in the core of the document** - This revised draft Redaction Guide combines the policy and technical information together which ensures all information on redaction is in one simple document. However, the industry users of this guide would generally be reading the document to find out the process of redaction. This information is now provided in an overview on page 5 but then only detailed in Appendix 4 on page 26 of a 28-page document. For improved readability of this document, AMEC recommends that the key 'how to' information in Appendix 4 should be in the body of the document, not the last Appendix.
- **Clarify the process to request redaction** - The section on 'How to request to redact a report' (page 26) is essentially the subject of the guide and of main interest to the reader, however, this information is not clearly stated – there seems to be a paragraph missing in this section or an error. The section describes how to requests historical reports and attachments for the email, but not requests for the redaction. AMEC recommends that this section is reviewed and more clearly written for the reader.
- **Provide alternatives to TMS for submission of the redacted reports** – The TMS system is well used by industry, but AMEC recommends there should be an alternative mechanism provided for submission of reports to provide for situations where companies have difficulty with TMS, have large files or want an additional level of confidentiality in the process.

## Draft Revised Exploration Reporting Guideline

- **Provide for a transition period where reports under the previous edition of the guideline will be accepted** – Companies routinely spend months planning, compiling data and writing geoscientific reports prior to submission to MEG. Due to the tight consultation and publication period, this Guideline will, at best, be published within a month of the commencement date. AMEC recommends that the Guideline includes provision for submission of reports under the previous edition for at least three to six months to allow for companies that have already drafted reports.
- **Provide further information on the new report building tool** – The report building tool that is mentioned in the guide and was referenced in the consultation webinar will be an important innovation in exploration reporting. AMEC recommends that MEG provides further information and guidance on this tool to support industry implementation.
- **Simplify the process for providing financial data** – As previously, industry members have noted the difficulty in submission of financial data that currently has to be completed manually, a process that is time consuming and may introduce human error. This is particularly frustrating as there are clear mechanisms for bulk submission of geoscientific data. AMEC strongly recommends that alternatives are provided to streamline the provision of financial data in annual reports.

## Draft FAQ

- **Include the term 'sunset' in the initial explanation** – As noted in the comments on the Draft Policy, the annual report release policy was originally termed the 'sunset clause' and this term is widely understood in the industry as it is the known term used in other key Australian mining jurisdictions. In the initial explanation of the policy, AMEC recommends that reference is provided to the 'sunset' to improve understanding of the process.

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- **Include a question on management of exploration licences that are partial 'flow on'** – As noted for the comments on the Draft Policy, an important change in this revised policy is the changes for ELs that 'flow on' to mining tenure, however there is no explanation for the common situation where part of an EL has 'flowed onto' mining tenure and part has not. AMEC recommends that a question on 'partial flow on' is included in the FAQ to clarify this point.
- **Include a question on data re-submission** – Concern has been voiced that the annual report release policy will require tenure holders to resubmit data from the term of the tenure in a new format, a process that would be resource intensive. AMEC recommends that a question on need for data re-submission is included in the FAQ to clarify this point.

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  
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