

To: **MINISTER HOUSSOS**

**DRNSW, Mining, Exploration and Geoscience**

Re: **REHABILITATION SECURITY DEPOSITS – ISSUES AND  
RECOMMENDATIONS**

18 January 2024

## Introduction

The Association of Mining and Exploration Companies (AMEC) welcomes the opportunity to provide a submission to New South Wales (NSW) Department of Regional NSW Mining, Exploration and Geoscience (MEG) on rehabilitation security deposits for exploration. AMEC has long advocated for a review of the current framework for security deposits for mineral exploration in NSW and this submission outlines the current framework and its issues as well as alternative options and recommendations on a way forward.

Note that as AMEC full members (explorers and miners) in NSW do not have interests in coal or petroleum, this submission does not relate to these commodities.

## 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.

## Current NSW framework for rehabilitation security deposits

Currently in NSW, prior to the grant of each exploration licence (EL) or mining lease (ML), a security deposit 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. The NSW Government currently holds \$3.7 billion (as at July 2023) in rehabilitation security deposits for the minerals industry<sup>1</sup>. From prior policy information provided by the Resource Regulator, around 1% of the full security holdings (\$37 million) is held for security over mineral exploration tenure,<sup>2</sup> with the balance held for mining tenure.

AMEC understands that there has never been a security deposit for exploration called on by the NSW Government nor relinquished to the Government in NSW.

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<sup>1</sup> <https://www.resourcesregulator.nsw.gov.au/sites/default/files/2023-12/RR-annual-report-2022-23.pdf>

<sup>2</sup> [https://www.resourcesandgeoscience.nsw.gov.au/\\_data/assets/pdf\\_file/0020/96104/PUB17-283-ESP1-Rehabilitation-security-deposits-policy.pdf](https://www.resourcesandgeoscience.nsw.gov.au/_data/assets/pdf_file/0020/96104/PUB17-283-ESP1-Rehabilitation-security-deposits-policy.pdf)

Security deposits are intended to minimise potential liabilities to the State in the event that the title holder fails to deliver their rehabilitation obligations. The purpose of the deposit as stated in the NSW Government's Policy *Rehabilitation Security Deposits*<sup>3</sup> is:

*"All title holders engaged in coal, mineral and petroleum exploration as well as mining and petroleum production activities are required to lodge a security deposit.*

*The security deposit must cover the government's full costs in undertaking rehabilitation in the event of default by the title holder. The title holder is required to provide an estimate of rehabilitation costs. The department will consider this estimate when determining the amount of the security deposit required for a title, or group of titles.*

*The department is responsible for determining when rehabilitation has met the required standard, taking into account the rehabilitation objectives and rehabilitation completion criteria, and compliance with the title conditions, before the title is relinquished and the security deposit released."*

The Resources Regulator notes in the 2022-23 Annual Report<sup>4</sup>:

*"We regularly access the surface disturbance (or proposed disturbance) of a mine or exploration site to calculate the security deposit, this is known as the assessed deposit. Before partial or full security bonds are returned, evidence must be provided to demonstrate rehabilitation objectives have been met and final approved landform has been implemented.*

*During the reporting period, we reviewed 333 assessed deposits. Of these, 226 were exploration deposits, 105 were mining deposits and a further 2 were determined by the Minister on appeal."*

The minimum deposit for a title is set pursuant to clause 93 of *Mining Regulation 2016* as \$200 for a small-scale minerals title, \$1,000 for an environmental assessment permit and \$10,000 for any other title. Figure 1 from the *Rehabilitation Cost Estimate Guideline*<sup>5</sup> details the current triggers and process for a review of a security deposit:

- Prior to grant, renewal and/or transfer of a title
- Prior to the relinquishment, suspension or cancellation of a title
- As part of an approval granted by the department for activities and operations undertaken on the title (e.g. an exploration activity approval)
- As part of a plan lodged with the department (e.g. Mining Operations Plan, Petroleum Operations Plan, Rehabilitation Management Plan)
- As part of an annual report (e.g. Annual Environmental Management Report only where a "snapshot" in time calculation methodology has been used)
- At the request of the title holder following the completion of rehabilitation
- At the request of the title holder in the event of an increase or decrease in rehabilitation liability

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<sup>3</sup> <https://www.resourcesregulator.nsw.gov.au/sites/default/files/2021-08/Policy-Rehabilitation-security-deposits.pdf>

<sup>4</sup> <https://www.resourcesregulator.nsw.gov.au/sites/default/files/2023-12/RR-annual-report-2022-23.pdf>

<sup>5</sup> [https://www.resourcesregulator.nsw.gov.au/sites/default/files/2021-08/Guideline-Rehabilitation-cost-estimate\\_0.pdf](https://www.resourcesregulator.nsw.gov.au/sites/default/files/2021-08/Guideline-Rehabilitation-cost-estimate_0.pdf)

- At the request of the department (e.g. in response to an audit, environmental incident or change in final land use or rehabilitation liability).

Prior to review of exploration regulation with the implementation of the Improved Management of Exploration Regulation (IMER) in 2015 there was

- No review of security deposits over the lifetime of an exploration licence – For ELs, a \$10,000 security deposit was provided prior to grant then returned on relinquishment of tenure and satisfactory fulfilment of obligations. Only rarely was the security deposit increased if significant surface disturbance was planned.
- Group security deposits with flexibility on tenure – The NSW Government accepted a group security with the exploration licence where an organisation with multiple exploration licences had a combined security holding. The wording for the group securities noted that “*the single security will generally apply to all licences of the holder*” so providing added surety for Government. Even further surety for Government was provided as companies often held fewer licences than the maximum number for the group security. AMEC understands that the group securities were as follows:

0-9 exploration licences - \$50,000

10-25 exploration licences - \$100,000

26-50 exploration licences - \$200,000

51-75 exploration licences – \$300,000

More than 75 exploration licences - \$400,000.

Following industry advocacy, recent reforms<sup>6</sup> for security deposits included:

- Introduction of \$30,000 threshold prior to a change in exploration security deposits – For ELs, a \$10,000 security deposit is provided prior to grant then only increased if more than \$30,000 of rehabilitation for surface disturbance is planned.
- Group security deposits with a discount for multiple deposits - The holder of multiple ELs can lodge a group security that covers nominated licences. This minimises administrative and regulatory burden on government and industry. Clause 92A of the *Mining Regulation 2016* allows the Government to apply a discounted security deposit to a grouping of commonly held ELs but not be less than 50% of the sum of the minimum deposits for the licences.

AMEC acknowledges that these recent reforms have improved the administration of security deposits for both Government and industry but believes that more needs to be done.

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<sup>6</sup> <https://www.resourcesregulator.nsw.gov.au/sites/default/files/2022-04/Exploration-rehabilitation-security-deposits-guidelines.pdf>

## Issues with the current security deposit framework in NSW and the case for change

The following issues are noted with the current security deposit framework in NSW:

- 1. Administrative costs for industry and Government** – The current system requires re-assessment of the level of security on grant, before and after each exploration activity and as part of every annual report and renewal as well as on transfer, suspension or relinquishment of tenure. This generally requires the completion by industry of the multipage Rehabilitation Cost Estimate Tool<sup>7</sup> and then submission and assessment of these documents by Government as well as changes to cash or other security instrument held by Government if the estimated cost of rehabilitation is more than \$30,000. This is an onerous process that in most cases would have little net change and significant administrative cost for both industry and Government.
- 2. High-cost requirements for low-risk activities** – Exploration is generally a low impact, low risk and short-term activity in NSW. Even following the recent changes to increase the change threshold to \$30,000, the current security deposit framework is complex and administratively onerous. As above, AMEC understands that in living memory, there has never been a security deposit for exploration called on by Government nor relinquished to the Government in NSW.
- 3. Difficulties with obtaining bonds** – 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.
- 4. Need to ‘pay for rehabilitation twice’**- The NSW Government holds the full cost of rehabilitation in security deposits, 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 exploration companies that generally have no income.
- 5. Locking up capital that could be invested in NSW** – Currently the NSW Government holds \$3.7 billion in security deposits for mineral exploration licences. At the current record rates for investment in exploration, with an estimated \$37 million for exploration tenure. This represents approximately half of the quarterly investment expenditure in exploration in NSW<sup>8</sup>. For exploration companies this represents significant monies held either in cash or bonds by the Government. If some or all these monies were released there could be a considerable increase in investment in NSW exploration.
- 6. Significant increases in security deposit requirements for operating mines following review** – AMEC understands from multiple members that recent reviews of their rehabilitation security deposit on operating mines have led to very significant increases in the security deposit requirements. These reviews are generally opaque processes for industry and the reviews have led to two- and three-fold increases to the security deposit requirements. Companies then have difficulties finding these additional tens of millions of dollars, especially in the current climate where costs have risen, investors are

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<sup>7</sup> <https://www.resourcesregulator.nsw.gov.au/rehabilitation/rehabilitation-security-deposits>

<sup>8</sup> <https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8412.0Main+Features1Dec%202019?OpenDocument>

reticent, and banks are reluctant to support mining projects. This leads companies to seek alternative funding sources that generally incurs at least double the standard bank interest rates.

7. **Encouragement of premature rehabilitation and additional fieldwork** – Industry members note that to keep the costs of security deposits to a workable level, companies are regularly needing to undertake 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 want to undertake follow-up program drilling 100 deeper into the same holes or holes very close to the original holes. With the current security regime, the company would need to fully rehabilitate each hole from the first program to have the security deposit returned then submit an activity approval for the 100 new holes and re-pay the security deposit for the second program when the holes would be reopened for the deeper drilling.
8. **Ongoing issues with return of security deposits** – Although return of security deposits was a parameter of the Service Delivery Standards<sup>9</sup> in NSW, industry members continue to report delays and problems with return as we understand that MEG has little control on the process for release of funds from central Government. Security deposits should be returned after 10 business days, but AMEC members report significant delays for returns.

***Case study A – More than 90-day delay in return of security deposit***

Company A is an established operator with exploration and mining projects in multiple jurisdictions. Company A relinquished NSW exploration tenure and needed the return of the security deposit. Each day from day 50 to day 93 the company sent Government an email requesting further information and an update. The security was released on day 93 (in fact double paid to the company!), highlighting not just the delays but also the additional administrative burden of this security regime.

9. **Fees offset the benefits for project consolidation and group bonds** – Most advanced exploration programs are operated on a project basis, i.e. where geological structures and key prospects are spread over contiguous exploration licences that are worked on as a group by the company for logical and logistical reasons. Optimally these areas of interest would be combined to one exploration licence and one security deposit to simplify administration and annual reporting. However, AMEC members report that the fees to combine the tenure and security deposit negate the financial advantage.

***Case study B – Government not able to release cash deposit for bond exchange***

Company B has multiple exploration projects in NSW. The company wanted to combine exploration licences on three of their key projects – one with three licences and the two others with two licences each. The Government costs to combine any or all these projects negated the financial and administrative benefits for the company, leaving the additional administrative burden for both the company and Government with multiple licences.

10. **Lack of financial benefit for interest earned on the security deposits** – Currently the \$3.7 billion held by the Government in security deposits provides no direct financial benefit to the company that

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<sup>9</sup> <https://meg.resourcesregulator.nsw.gov.au/mining-and-exploration/service-delivery-standards>

provided the funds which are often held for six or more years. In comparison, when money is held in trust for example as part of a property sale in NSW, funds are held in trust and the interest earned is divided equally between the parties.

- 11. Delays with transfers and exchanges of funds for security deposits** – The current security deposit framework requires a bank deposit or cash bond. AMEC understands that there are significant delays for companies that change these facilities.

**Case study C – Government not able to release cash deposit for bond exchange**

*Company C has mining and exploration projects in NSW. The company wanted to exchange their current cash security deposit for bank guarantee. The bank required the cash (millions of dollars) to issue the bond. However, the Government needed 28 days to return the cash deposit so the cash could not be exchanged for the bond. The suggestion of an in-person exchange, just as is currently undertaken for NSW property settlements, was not possible.*

### Every dollar counts for industry - the case for change in NSW

For the minerals industry, the NSW security deposit framework is financially and administratively onerous. The minerals industry is also currently facing challenges raising funds due to slow market where capital raising has slowed significantly and many of the banks are reticent to further invest in the mining industry. This comes at the same time as the industry is facing steep cost increases, especially in energy costs and suppliers.

NSW is now rated amongst the lowest jurisdictions Australia and internationally in the Fraser Institute *Annual Survey of Mining Companies 2022*<sup>10</sup>. Although the Survey concluded that “Australia continues to be the most attractive region in the world for mining investment”, New South Wales has struggled to compete with other Australian States and Territories as a preferred investment destination, and is ranked among the lowest Australian jurisdiction for the three key indices in the Survey; 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.

NSW is attracting strong mineral exploration investment<sup>11</sup> in line with other Australian jurisdictions, but the Fraser Institute results point to a damaging perception of NSW as relatively unattractive to investors. Improving the current security deposit system would help reduce this negative perception and attract additional exploration investment to NSW.

### Comparison of 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. **Table 1** provides a comparison of the different security regimes in the major mining jurisdictions for mineral exploration.

<sup>10</sup> <https://www.fraserinstitute.org/categories/mining>

<sup>11</sup> <https://www.abs.gov.au/statistics/industry/mining/mineral-and-petroleum-exploration-australia/latest-release>

Most jurisdictions have traditionally had a security deposit framework like the current system in NSW, 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 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 Victoria is currently reviewing its traditional security deposit structure. Tasmania requires a security deposit plus a levy per km<sup>2</sup> 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.

**Table 1. Jurisdictional comparison of security frameworks for exploration**

STATE	SECURITY OR FINANCIAL ASSURANCE
<b>New South Wales</b>	<b>Security</b> – 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. Recent changes to enable activity up to the rehabilitation cost of \$30,000 before change to the standard \$10,000 is made as well as introduced group bonds.
<b>Northern Territory</b>	<b>Security</b> – 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. <b>Levy</b> – Annual 1% levy of full amount of operator’s environmental bond to go into the Legacy Mines Fund that is set up to address legacy mining liabilities across the Territory
<b>Queensland</b>	<b>Security</b> – 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.
<b>South Australia</b>	<b>Security</b> – 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.
<b>Tasmania</b>	<b>Security</b> – \$5,000 + \$20 per km <sup>2</sup> + 1% exploration expenditure for first 2 years as cash or bank guarantee and lodged before grant.
<b>Victoria</b>	<b>Security</b> – \$10,000 rehabilitation bond required in cash or unconditional bank guarantee.
<b>Western Australia</b>	<b>Mining Rehabilitation Fund</b> – 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. <b>Bonds</b> – 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: AMEC<sup>12</sup>, Government websites

<sup>12</sup> <https://amec.org.au/interjurisdictional-analysis-of-exploration-requirements/>

## Recommendations to improve the security deposit framework in NSW

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

- 1. Review the amount of security deposits annually only** – Currently a full rehabilitation cost estimate and review of the security deposit is required on grant, prior to and post exploration activities, annually, on renewal and on request as well as at transfer and suspension or cancellation of tenure. The administrative costs for industry and Government for these multiple reviews would usually outweigh the risk. Completing a rehabilitation cost estimate liability annually as part of annual reporting and provision of a work plan would ensure that the rehabilitation liability of Government was updated annually, as commonly occurs in other States and minimise administrative processes. Additionally, this annual review could also be used to confirm company details as we understand that there are many inaccuracies and inconsistencies over the multiple Government databases.
- 2. Review the security deposits procedures and tighten timeframes on return** – Security deposits are an important component of tenure processing and for many companies involve very significant amounts of money. Following the issues noted above, AMEC recommends reviewing the Government process and return of security deposits to tighten timeframes and improve procedures.
- 3. Consider holding security deposits in Trust** – A Trust system, as used in NSW real estate, could be an alternative to the current deposit regime and allow 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.
- 4. Consider a Levy system** - The introduction of a Levy, as has occurred in Western Australia and other States, could also provide an alternative framework, although in NSW funds already paid to Government in the Administrative Levy and Rental fees mean that one of the core objectives of the Levy in other States is already satisfied in NSW. The pooled fund system in Western Australia has lowered the capital costs for low cost and low impact exploration yet delivered a significant fund that may be called on by Government.
- 5. Lower security deposits on grant of exploration tenure** – Low impact or reconnaissance activities only are permitted on grant of exploration tenure in NSW as an application to undertake exploration activity must be completed prior to any surface disturbing activities. Removing the security deposit on grant would help company cash flows and enable companies to increase reconnaissance activity with no increased risk for Government. This initiative would also help deliver on actions prioritised in the *NSW Minerals Strategy*<sup>13</sup> including reducing tenure processing times (action 1.3) and enabling very low or no-impact survey activities without full licence requirements (action 4.3).
- 6. Reduce fees for projects and group security deposits** – The system of group securities has been recently re-introduced and was commonplace prior to IMER. Group securities for exploration 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. The Government fees for consolidation of projects, however, can negate the financial advantages.

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<sup>13</sup> <https://meg.resourcesregulator.nsw.gov.au/mining-and-exploration/titles-management-system/nsw-minerals-strategy>



AMEC recommends that the Government costs for projects and group securities are reviewed and minimise to encourage streamlining of tenure and reduce administrative costs for both industry and Government.

### **The way forward**

AMEC believes that a full review of the current framework for security deposits should be undertaken collaboratively by Government and industry to deliver an improved system that continues to provide surety for Government, industry and the community.

The minerals industry welcomes simplified, streamlined and improved regulation to maximise resources for the State of NSW. AMEC would welcome further consultation on this important matter and if you have any queries regarding this submission, please do not hesitate to contact:

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