

Introduction

It is a priority for the NSW Government to ensure we develop our mineral resources to benefit our communities, both now and into the future. With long lead times from the discovery of an economically viable mineral resource to the start of mining operations, we must invest more in mineral exploration now so future generations can benefit.

A growing minerals industry needs a healthy pipeline of exploration investment. However, the rate of new discoveries has struggled to keep up with the rate of extraction in recent years. Historically, exploration in NSW has been largely limited to areas where the prospective rocks are found at the surface. The 80 per cent of NSW where these rocks are covered by younger rocks or soils is largely unexplored. We need new technologies to help locate these buried deposits and allow us to benefit from potentially significant untapped resources.

Exploring for minerals is a high-risk investment activity with long lifecycles that can exceed 20 years. We must act now to secure a long-term pipeline of projects that will continue to support our economy.

Accordingly, the Department is seeking to ensure the current regulatory and policy setting strikes the right balance between removing unnecessary burden to encourage responsible exploration while still maintaining NSW's strong standards in relation to rehabilitation and security deposits.

Purpose

The objects of the *Mining Act 1992* are to encourage and facilitate the discovery and development of mineral resources in NSW, having regard to the need to encourage ecologically sustainable development and include the need to:

- recognise and foster the significant social and economic benefits to NSW that result from the efficient development of mineral resources
- provide an integrated framework for the effective regulation of authorisations for prospecting and mining operations
- require the payment of security to provide for the rehabilitation of mine sites
- ensure effective rehabilitation of disturbed land and water.

Building on these objects, the Department has been actively promoting NSW as a destination of choice for investors as part of our goal to become the number one state for new exploration and resources investment in Australia.

Further, the Department recognises that exploration is generally a low-impact, low-risk and short-term activity. In this respect, this paper proposes a number of reforms to remove unnecessary administrative and regulatory burden on both government and industry, while still maintaining an appropriate level of assurance and securities commensurate with this risk.

By implementing these reforms, the Department is of the view that it will achieve a fairer balance between the above objects.

Reduction to the \$10,000 minimum security deposit

Section 261BF of the *Mining Act 1992* specifies that security deposits cannot be less than the minimum prescribed by the Mining Regulation 2016. Clause 93 of the regulation specifies that for an exploration title, the minimum security deposit amount is \$10,000.

Some industry participants have suggested that the lowering of the minimum deposit amount would encourage more exploration by reducing the up-front financial requirement for explorers to obtain an exploration licence. However, other industry participants have suggested that the \$10,000 minimum acts as an appropriate gateway so that only explorers with requisite finances can enter the market. It has further been suggested that a significant lowering of the required minimum may result in ‘cowboys’ or unqualified explorers entering the market.

The Department acknowledges that reducing financial impacts (where appropriate) can be a strong lever to encourage exploration. However, the Department believes that these levers can be more appropriately achieved through the two other reforms proposed in this paper and does not support the reduction of the \$10,000 minimum for the following reasons.

Potential increased burden

During the past two years the Department has processed 300 activity approvals for higher impact exploration activities. Of these, 218 (73%) were assessed as resulting in a rehabilitation impact of \$10,000 or less and therefore did not require the lodgement of an increased security deposit. Explorers were immediately able to undertake the activities following the receipt of the approval.

Should the minimum be reduced, it is likely that a substantial number of these applications would result in the explorer having to lodge an increased security deposit over the reduced minimum amount. This creates significant burden on both industry and the Department in relation to increased paperwork and assessments and time delays. In this situation the explorer would not be able to undertake the exploration activities until the exploration licence document had been updated with the new security condition and the deposit paid. This could lead to substantial delays. In addition, the exploration licence holder would have to complete further forms and await assessment to seek the refund on the additional security once the approved activities had ceased.

The Department does not believe this is an effective use of its finite resources. While the Department is proposing to introduce a threshold before applying any increase (detailed below), this risk threshold would exponentially reduce if the minimum were to be reduced below \$10,000.

Loss of landowner and community confidence

The Department is of the view that the current minimum deposit amount of \$10,000 contributes significantly to landowner and community confidence in NSW’s rehabilitation framework. Some industry participants have stated that this creates a compelling talking point with landowners when negotiating land access, and it provides a significant level of assurance that they will not be left with unrehabilitated land following exploration activities.

The current amount of \$10,000 is likely viewed by these stakeholders as significant, and any reductions to this amount may not provide the same level of confidence and assurance.

Provides appropriate threshold for market entry

The Department agrees with some industry views that the current \$10,000 minimum creates an appropriate gateway test for companies to undertake exploration in NSW. The Department does not regard the \$10,000 as unduly onerous and would have concerns with the financial capacity of an applicant if they were unable to produce this level of surety.

However, the Department also recognises that when considering the holding of multiple titles, the cumulative impact of the \$10,000 may create unreasonable burden and is proposing the reforms to group securities below to address this issue.

Additional security not required for increases within threshold

The Department has processed 300 activity approvals for higher impact exploration activities during the past two years. As detailed earlier, 218 (73%) resulted in no increases to the required security to be lodged. The remainder resulted in the following increases:

Increase	# applications
\$10,001 - \$20,000	44
\$20,001 - \$30,000	9
\$30,001 - \$40,000	10
\$40,000 - \$50,000	4
\$50,001 - \$90,000	5

Assessing these applications and applying an increased security creates significant additional work for both industry and the Department and leads to delays in explorers being able to undertake the exploration activities.

While most of the above applications only resulted in a very minor increase in the security deposit required, the assessment and processing of these applications can take anywhere from 2 to 8 hours depending on the level of detail, complexity and information provided. Notably, at the upper end, this resource expenditure is commensurate with the time spend assessing a high-risk mine that has a 21-year mining lease life and security in excess of \$100 million. Further resources have to then be expended in updating exploration licence documents and ensuring the appropriate lodgement of funds. This resource impost is then repeated, in some cases only weeks later, when the explorer seeks to have the security refunded.

Industry faces the same administrative burden in preparing the appropriate paperwork and securing and lodging funds. More importantly, these processes normally add weeks, if not months, to the process and during which time they are unable to undertake the exploration activities. This can create knock-on impacts in terms of securing the required equipment (e.g. drill rigs), technical expertise and land access if there is not an appropriate level of certainty for when the approval process will be completed.

To address these issues, the Department is proposing to introduce a threshold whereby an exploration licence holder does need to lodge an increased security in the following circumstances:

1. The Department currently holds the minimum \$10,000 deposit.

2. The proposed activity will not result in rehabilitation obligations exceeding \$30,000.
3. There are no compliance or rehabilitation concerns in relation to the licence.

Therefore, using the above statistics, exploration licence holders would not be required to lodge an additional security in respect of 53 applications.

The Department will give effect to this policy position by publishing a Ministerial guideline. Under section 261BC(10) of the *Mining Act 1992*, the Resources Regulator (as a delegate of the Secretary) in exercising its functions in relation to assessing security deposits is to have regard to any guidelines approved by the Minister.

Low risk

The Department is of the view that the introduction of a threshold presents a very low risk.

Under the proposed threshold, the maximum single risk exposure for the Department would be \$20,000. Notably, the Department currently holds about \$3.3 billion in security deposits with the single largest security being \$260 million.

Of significance, the Department has never called upon a security deposit for an exploration licence. This risk exposure is well within the Department's risk tolerance, particularly when considered against:

- the level of burden that these processes create for both government and industry
- the enforcement tools available
- the range of penalties that apply for non-compliance.

Security deposits are a last resort

The Resources Regulator has a range of tools to ensure that appropriate rehabilitation is carried out. These tools include:

- strict conditions and activity approval requirements on exploration licences
- the power to issue enforceable directions under section 240
- penalty notices and prosecutions
- court orders to undertake rehabilitation, pay the cost of rehabilitation, and pay investigation costs or legal costs.

It is only after all these avenues had been exhausted that the Department would seek to access the security deposit, if still required.

The Department is of the view that these tools provide an effective mechanism and is demonstrated by the fact the has never been a need to call upon a security deposit for an exploration licence.

Strict enforcement approach

The Department is of the view that a strict enforcement approach provides a more effective deterrent to exploration licence holders not completing their rehabilitation works than holding the full security amount.

In addition to the tools above, the Resources Regulator would actively pursue executive liability offences against all relevant persons (in addition to a company) in the event that an exploration licence holder failed to meet their rehabilitation requirements.

In these circumstances directors and other executives face potential maximum fines of \$220,000 and further penalties of \$22,000 per day that the rehabilitation remains unfulfilled. For companies, potential maximum fines of \$1.1 million and further penalties of \$110,000 per day may apply.

Fines and penalties hypothecated and can be used for rehabilitation

All fines and penalties issues by the Resources Regulator are hypothecated back to the Resources Regulator.

For the 2019-20 period these fines totalled in excess of \$125,000. In the unlikely event that the Department was required to access funds to undertake rehabilitation works, it would access these funds to meet any shortfall arising from the threshold policy.

Reducing minimum amount for group securities

Section 261BC of the *Mining Act 1992* allows for the lodgement of a group security (i.e. where an explorer holds multiple titles, they can lodge one security deposit which covers all the nominated tenures).

However, section 261BC(7) of the *Mining Act 1992* specifies that minimum cannot be less than the sum of the minimum for each individual title. This means that, as an example, where an explorer holds 10 titles, the group security cannot be less than \$100,000. This creates little incentive for explorers to lodge a group security and the Department understands that prior to 2015, the group security framework provided for a tiered reduction (per title) as the cumulative total increased.

The Department is proposing to introduce a revised group security framework whereby the group security cannot be less than:

- 50% of the sum of the minimum deposit for each of the affected exploration licences, or
- the calculated actual rehabilitation costs across all the affected exploration licences, whichever is the greater.

The Department notes that section 261E of the *Mining Act 1992* enables the Minister (or delegate) to provide less by way of a security deposit if the holder has received notice from the Minister that the security deposit that is required to be provided under the exploration licence is 'taken' to have been provided, based on a security deposit already provided by the holder in relation to another exploration held by that same holder. The Department will seek amendments to section 261BC of the Act to formalise the above changes.

Negligible risk

The Department is of the view that the introduction of the above changes presents a negligible risk as at all times the Department would continue to hold a security that would cover the full cost of the actual disturbance across the exploration licences.

Appropriate level of cumulative minimum still required

In order to continue to provide community and landowner confidence in the rehabilitation and security framework, the Department is of the view that there still needs to be an appropriate

increase in the total security required with each additional exploration licence included as part of the security. Put another way, the Department does not believe it is appropriate to only hold a total \$10,000 for any multiple of exploration licences.

The minimum amount also needs to be set at a level to cover reasonable exploration activities across all of the exploration licences. Otherwise, should the total security held be too low, then this may lead to additional burden as the required security would have to be constantly updated to reflect the actual disturbance.

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