

Mineral exploration minimum standards

A response to key issues raised by stakeholders during the public consultation November - December 2019

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Overview

Schedule 1B of the *Mining Act 1992* (Mining Act) allows decision-makers to consider published minimum standards when assessing applications for the grant, transfer or renewal of an authority. The standards apply to work programs and the technical and financial capability of an applicant to carry out a work program. The Department of Regional NSW's Mining, Exploration and Geoscience (MEG - formerly the Division of Resources and Geoscience) has developed minimum standards for specific application to exploration licences (ELs) and assessment leases (ALs).

MEG released draft Mineral exploration minimum standards for work programs and technical and financial capability (Minimum standards) for public consultation in early November 2019. The consultation period ended in early December 2019. MEG received a total of ten formal written submissions from a cross section of stakeholders comprising industry, peak bodies, environmental NGOs (ENGOs) and landholders.

MEG closely considered the feedback contained in the submissions, some of which influenced the published version of the Minimum standards. This document summarises the key issues raised in the submissions, MEG's position on each issue and how particular issues were addressed. This document is intended to 'close the loop' with stakeholders by:

- providing a general overview of the feedback received on the draft Minimum standards.
- clearly explaining how MEG considered the feedback and the rationale for including or excluding applicable suggestions in the published version of the Minimum standards.

This document follows the structure of the draft Minimum standards, dividing commentary between its three components: work programs, and technical and financial capability. Stakeholders also made a number of general comments about the draft Minimum standards. The essence of these comments is also captured below.

Work program minimum standards - feedback and response

Industry feedback focussed primarily on how MEG would determine effective working of exploration tenure, the factors that constitute 'project status', and the terminology used throughout the document to describe various exploration phases and activities. As discussed in the draft Minimum standards and associated FAQs, publishing minimum standards will result in changes to MEG's Work Program Guidelines. Industry stakeholders sought clarity on the extent of the changes and whether there would be future opportunities to comment on the proposed changes.

Appropriateness of work program content and MEG oversight

Landholders and environmental NGOs (ENGOS) reiterated the importance of environmental management and community consultation activities and describing the environmental impact of such activities. In addition, ENGOS called for the retention of the annual work program variation arrangement currently in place. ENGOS regard the current arrangement as a necessary mechanism for ensuring work program compliance and authority holder performance.

MEG response

The Work Program Guidelines communicate the requirements for detailing environmental management activities. The approved work program defines the benchmark against which MEG measures exploration performance during the term of an authority. It is not an approval to undertake the activities proposed. On-ground exploration is not permitted unless the authority holder first obtains a land access agreement with the relevant land holder (where applicable). Community consultation, environmental assessment and notification obligations also apply before exploration activities can be undertaken.

MEG is committed to engaging industry stakeholders on the proposed changes to the Work Program Guidelines required to accommodate consideration of minimum standards.

The overarching objective of the Minimum standards is to ensure that those holding exploration tenure in NSW are supporting the objects of the Mining Act. From a work program perspective, this primarily means the work conducted by prospecting authority holders must support the efficient exploration and development of the State's mineral resources. This concept forms the basis of the requirement under the work program Minimum standards for renewal applications. When applying for renewal, an applicant must demonstrate tangible and authentic exploration progress. Underpinning an assessment of tangible and authentic exploration progress is the requirement for applicants to nominate and commit to the exploration stage/s to be worked through over the term of the authority. MEG regards this as an improvement on the current work program management approach, which is effective in overseeing specific exploration activities but is limited in its ability to indicate overarching exploration progress. The prescriptive, year-to-year approach can divert an explorer's focus from achieving strategic exploration objectives to completing specific isolated exploration activities simply to retain tenure.

'Effective' exploration and 'project status'

Industry stakeholders sought clarity on MEG's expectations on 'effective' exploration, with respect to various activities and rates of exploration. For example, whether a single authority could be subject to multiple exploration stages and expected rates of progression. One stakeholder suggested that quantifiable metrics could be incorporated into the Minimum standards and/or Work Program Guidelines as a means for consistently tracking exploration progress.

Industry stakeholders also sought clarity on the geoscientific and proprietary parameters for grouping authorities as a project. For example, whether an applicant could group authorities as

part of a joint venture into a 'project', and whether authorities related only by their geological host formation could be considered a 'project'.

MEG response

MEG's objective is to ensure that work programs reflect an explorer's commitment to progress, within a reasonable timeframe, an exploration program to on-ground activities. Such activities will substantively add to the State's knowledge of the resource potential of the land over which a respective authority is granted.

MEG expects that exploration will progress at different rates on different parts of an authority. An authority may therefore be worked in multiple exploration stages. MEG would typically expect an applicant to progress exploration from stages 1 through to 2 or 3 on higher priority targets over a six-year authority, depending on the level of pre-existing geological knowledge in the area. On the other hand, MEG would not consider it reasonable nor appropriate for a proposed work program for a six-year authority extend no further than Stage 1.

MEG acknowledges that after an initial six-year term, it may be appropriate at renewal to propose spending another six-year term operating entirely at a level of activity consistent with Stage 3. Stage 3 is a pivotal exploration stage where explorers work to determine the resource potential of validated prospects. Stage 3 is a success-dependant gateway to higher intensity exploration stages. It is Stage 3 where MEG places sharper focus on the concept of tangible and authentic commitment to exploration progress.

Where different areas of an authority are operating at different exploration stages, MEG considers the entire licence to be at a stage equivalent to the most advanced level of work within the authority. To strengthen work program performance measurement under the new approach, MEG is considering a standardised RC (percussion) drill metre equivalent metric to cover all work conducted on an authority. This could include guidance for the appropriate amount of work at each exploration stage. MEG will consult with industry on the future development of metrics to be applied to assessment of work program performance.

With respect to proprietary commercial interests in authorities grouped as a 'project', MEG has referred in part to its definition of project status within the *Petroleum Minimum Standards and Merit Assessment Procedure*. That is, all authorities must be operated by a common entity with or earning a majority financial interest.

From a geoscientific perspective, MEG reviewed its position on project-based work program administration and considered the grouping of authorities based on host formation alone to be inadequate. Host formations can be very broadly defined or geographically extensive. Mineralisation relationships can also be further differentiated temporally, genetically or by precipitation depth. The Curnamona Province, for example, is a host province covering an extensive geographical area. The Province includes multiple mineralising events of widely varying styles spanning over 1,200 million years. MEG would only grant project status to a company targeting different commodities or mineralisation styles within this province if they could demonstrate that a downstream commercial or metallurgical relationship between target commodities existed. For example, MEG would not consider as a project authorities primarily targeting mineralisation such as iron oxide copper gold (IOCG) proposed to be grouped with authorities primarily targeting Broken Hill Style mineralisation.

Terminology, definitions and the stages of exploration

Industry stakeholders made a number of suggestions to clarify glossary definitions, particularly for activities that are typically expected to occur in respective exploration stages and the names of stages. Examples included distinguishing feasibility studies from pre-feasibility studies in the glossary to account for the range of activities that may occur in exploration stage 4 or 5; including the consideration of high-level social, economic and environmental constraints (collectively JORC modifying factors) to progressing a project to mining; and renaming Exploration stage 1 (reconnaissance) to 'initial review'.

Industry stakeholders also sought clarity on MEG's expectations around the length of time expected to be spent working within a nominated exploration stage.

MEG response

MEG does not consider it necessary to include 'low impact exploration' in the description of activities in Stage 1 in addition to 'reconnaissance'. This is because any form of reconnaissance licence would be subject to the Minimum standards and would, by default, be operating in Stage 1. In addition, MEG regards it unnecessary to change the name of Exploration stage 1 to 'initial review' as reconnaissance is a broad term inclusive of both initial review and early target identification/generation.

MEG considers that high-level social, economic and environmental constraints are more appropriately categorised as 'modifying factors' as described in the JORC Code. The level of attention to the relevant modifying factors is adequately described in the JORC Code for differing levels of confidence in a Mineral Resource (stage 4 or 5 exploration) and an Ore Reserve (stage 5 exploration or exploration on AL / ML tenures).

MEG is reluctant to prescribe timeframes for working in each respective exploration stage as this is highly subjective. However, MEG will include in the revised Work Program Guidelines general guidance on typical timeframes for working within each stage according to mineral group. The rationale for the new approach to work programs is to use the term of the authority as the timeframe for achieving stated and defined objectives of the stage/s an applicant nominates. As stated above, an applicant may nominate to work within a single exploration stage or multiple exploration stages across the term of the authority if there is geoscientific justification for doing so.

Technical capability minimum standards - feedback and response

Feedback from landholders and agricultural stakeholders focussed largely on the technical manager's understanding of land access, community and landholder engagement and environmental management. Industry stakeholders largely sought clarity on how technical capability minimum standards would be administered.

Land access, community consultation and environmental management

Both landholders and agricultural stakeholders advocated for the technical capability minimum standards to include evidence or declarations of the nominated technical manager's experience in, and understanding of, the Department's land access arrangements, landholder and community engagement and environmental management.

Some landholders also advocated for standards of conduct for explorers on private land to be incorporated into the technical capability minimum standards. In addition, agricultural stakeholders advocated for evidence of professional development in landholder engagement and negotiations being incorporated into the technical capability minimum standards.

MEG response

MEG sees merit in the concept of ensuring technical managers have a working understanding of their landholder engagement and land access obligations, and leading practice environmental management. However, these aspects of exploration sit outside the scope of minimum standards per se. The Department and MEG have existing legislative, regulatory and policy levers to regulate environmental management, community consultation and land access. MEG will include information on the broader regulatory and policy framework around exploration into relevant guidance material (e.g. FAQs, Work Program Guidelines). MEG will also investigate opportunities for collaboration with industry around professional development for technical managers in environmental management, community consultation and land access.

Technical manager qualifications, experience and track record

Landholders, agricultural and industry stakeholders all sought clarity on the criteria for demonstrating compliance with the mandatory requirements. Some stakeholders sought clarity on MEG's interpretation of a 'serious offence', while others suggested that the offences section be broadened to include offences under relevant work health and safety legislation. Agricultural stakeholders called for a zero-tolerance approach to any past offences by technical managers. In addition, landholders called for technical managers to be full-time employees of the authority holder as a mandatory requirement.

Some landholders argued that technical manager experience alone was insufficient and that any experience needs to be reinforced with qualifications and membership with a professional body. The qualifications would also ideally be verified by a third party.

One industry stakeholder suggested that the technical manager's experience be limited to geoscientific experience to ensure that appropriate personnel are managing exploration projects. Another industry stakeholder suggested that in addition to holding the relevant professional membership, the nominated technical manager should not have had their membership suspended, cancelled or declined within the last 10 years.

In instances where a nominated technical manager has previously met minimum standards with respect to another authority in NSW, one industry stakeholder suggested waving MEG's technical capability assessment to streamline the application process.

MEG response

MEG has defined 'serious offence' in the glossary of the final Minimum standards document. The definition is based on an appraisal of serious offences in the Mining Act, NSW work health and safety legislation and criminal legislation, and the Department's internal procedures for investigating offences. Offences are generally 'serious' when they attract gaol terms, heavy fines or are classified as serious based on a substantial accumulation of lower-level offences. MEG regards it important to ensure that any previous offences by a nominated technical manager are 'serious' for the purposes of minimum standards. This is because low-level administrative breaches, such as the late submission of reports or late payment of fees, are considered 'offences' generally and taking such a broad interpretation of an 'offence' would therefore be excessive and create unnecessary barriers to entry.

With respect to technical manager curriculum vitae, MEG regards its assessment of a curriculum vitae as sufficient, and that third-party verification is therefore unnecessary. With respect to experience, MEG takes a broad view of technical manager exploration experience. Exploration experience applies to a range of activities required to successfully undertake and manage exploration projects. Often this can include broader disciplines than geoscience. MEG also notes

that in many cases, the role of technical manager for an exploration project is not a full-time job and it is therefore inappropriate to make such a requirement mandatory.

Any decision on whether to streamline application processes where a technical manager has previously met minimum standards on another authority within NSW is a procedural matter that sits outside of the scope of minimum standards. MEG will investigate options internally for dealing with such applications.

Demonstrating compliance with the Minimum standards

Industry stakeholders sought clarity on the arrangements for demonstrating compliance with the mandatory criteria for technical capability. In particular, they raised the relationship between demonstrate compliance with the mandatory criteria and the Department's *Statement of compliance, environmental performance and financial history* form (December 2019) (formerly the Statement of Corporate Compliance (SOCC) form).

MEG response

The SOCC form is primarily the domain of the Department's Resources Regulator. While it forms a critical component of the application process, it does not form part of any assessment of a technical manager in a minimum standards context. MEG considered the potential for confusion and duplication between the SOCC form and the requirements to demonstrate compliance with the mandatory criteria in the Minimum standards. Despite the potential confusion, MEG considers a simple, standardised and all-inclusive statutory declaration form the most effective means for demonstrating compliance. This form will exist independent to the SOCC form and will be used solely to demonstrate compliance with the technical and financial capability minimum standards.

Financial capability minimum standards - feedback and response

Scope of the capability to meet forecast expenditure

Landholders, agricultural and industry stakeholders all sought clarity on whether financial capability to meet the forecast expenditure of the work program and the associated evidentiary requirements applied to the entire work program (i.e. for the entire term of the authority).

MEG response

'Financial capability to meet the forecast expenditure of the work program' extends to the entire work program. This is important to note as MEG shifts to outcome-focussed work programs based on iterative and sequential 'exploration stages'. Applicants would therefore be required to forecast the expenditure required to meet their exploration objectives (including environmental management and community consultation) and either have the capital upfront or the ability to raise the required capital over the term of the authority.

MEG has clarified this point in the final version of the Minimum standards. It should be noted, however, that levels of expenditure are estimates only and any indicative activities listed in support of the over-arching objectives are subject to change based on results. The anticipated expenditure is therefore likely to change as work within the exploration stages progresses.

Landholder engagement, consultation and compensation

Both landholders and agricultural stakeholders argued that the concept of 'financial capability' should be extended to include an applicant's ability to engage with - and compensate - landholders.

Agricultural stakeholders suggested that exploration licence (EL) or assessment lease (AL) applicants be required to take out a security deposit to cover any disturbance caused and compensation payable to landholders.

MEG response

Landholder *compensation* sits outside the scope of minimum standards as the legislative provisions in the Mining Act around work programs only mandate the inclusion of landholder *engagement* activities. The financial capability minimum standards only apply to the applicant's ability to carry out the work program. Specific compensation agreements between landholders and exploration licence applicants or holders are private, confidential agreements which do not form part of a work program. There are alternate provisions in the Mining Act with respect to land access and compensation. With respect to financial assurance, exploration licences and assessment leases are subject to a security deposit condition which require the holder to provide the Department with a security deposit that covers the Government's full costs in undertaking rehabilitation in the event an authority holder cannot meet the obligations. These security deposits cover all obligations under the conditions of an authority, including rehabilitation, and obligations under Part 11 of the Mining Act (protection of the environment).

Eligibility of applicants seeking exploration tenure

Some individual landholders argued that the Minimum standards should explicitly exclude small proprietary companies such as so-called \$2 shelf companies from obtaining exploration tenure. This was due to the perception that small proprietary companies were not able to engage landholders effectively, compensate landholders appropriately and make good on any environmental impacts caused by their operations.

MEG response

MEG's priority is to foster sustainable mineral exploration in accordance with the objects of the Mining Act. The Minimum standards aim to ensure that candidates for exploration tenure in NSW are of a high quality. They will also ensure that those companies or individuals granted tenure share MEG's ethos of efficient and sustainable resource development. Such development must be mindful of the rights of landholders and is sensitive to the social and environmental landscape in which explorers operate.

Mineral exploration is a dynamic, iterative and results-based activity. Very small to medium-sized operators undertake a significant portion of modern exploration that may lead to major discoveries or mines. These operators are valued almost entirely on their discoveries or prospects for discovery. Some may begin as small proprietary companies. Most invariably operate at a loss and have very limited assets such as operating capital or plant. Common benchmarks to value mainstream industrial shares or registered companies, such as earnings or net tangible asset backing are not appropriate in the case of mineral exploration. Without limiting the generality of any provisions under the Mining Act, Schedule 1B of the Mining Act lists the grounds for the refusal of an application for an authority. These criteria do not explicitly include the number of shares issued by an applicant, their market capitalisation or the value of individual shares.

The Minimum standards are designed to be flexible enough to facilitate constructive and sustainable exploration activity by a broad range of individuals and operators, mindful of the dynamic nature of exploration. They operate as a mechanism to facilitate turnover of ground, especially of ground which is not being explored effectively (i.e. land banking).

Monitoring, compliance and enforcement

Both landholders and agricultural stakeholders advocated for financial capability minimum standards to form the basis of ongoing monitoring, compliance and enforcement across the term of an authority.

MEG response

Minimum standards support a 'point in time' assessment of *applications* for exploration licences and assessment leases. They are not intended to support ongoing assessment and monitoring of an authority holder across the term of the authority. The Mining Act has separate mechanisms for monitoring an authority holder's compliance with the Act, and authority conditions, over the term of an authority. However, the Minimum standards and an applicant's merit assessment against the standards may influence the conditions that are imposed on an applicant at grant or renewal. Conditions are monitored and assessed across the term of the authority by the Resources Regulator.

Demonstrating compliance with the mandatory requirements

Landholders argued that bank statements should be the primary evidentiary requirement for proving financial capability. They also argued that deeds of agreement between applicants and third parties for the provision of capital were an inappropriate means of demonstrating compliance with the mandatory requirements.

Industry stakeholders sought clarity on the following matters:

- the currency of the information required to be submitted to demonstrate compliance with the Minimum standards (i.e. how recent any documentation must be)
- the arrangements for submitting the required information (e.g. whether the evidentiary requirements would be integrated into the Department's *Statement of compliance, environmental performance and financial history* (SOCC) form)
- whether MEG will specify the terms of any statutory declaration required of an applicant
- the nature and extent of the information required to demonstrate past successful capital raisings.

Industry stakeholders suggested the inclusion of an additional evidentiary option, being that companies listed on the Australian Stock Exchange (ASX) could provide copies of financial statements submitted to the ASX. These statements would demonstrate the net assets and the cash and cash-equivalents held by an applicant.

MEG response

MEG does not consider bank statements to be an effective indicator of financial position as the assessment is 'point in time' and money can be easily moved between accounts. It is also for this reason that MEG does not consider it practical to examine financial statements. The onus should fall on the applicant to make an honest statement in the respective statutory declaration. Providing false and misleading information in a statutory declaration is a criminal offence under the NSW *Oaths Act 1900* as well as the Mining Act (section 378C).

MEG is currently developing an all-inclusive statutory declaration form to capture all of the mandatory criteria for technical and financial capability. The declaration will also replace the option to submit details of successful past capital raisings. The terms will be standardised for consistency, transparency and adherence with the Oaths Act. The statutory declaration will operate in addition

to the *Statement of compliance, environmental performance and financial history* form, as this form is the domain of the Resources Regulator and does not form part of the merit assessment under minimum standards. MEG recognises that submitting a statutory declaration places an additional requirement on applicants. However, MEG also notes that a simple, standardised statutory declaration form is less burdensome than any requirement to produce evidentiary documentation as part of an application.

Changes in control

Industry stakeholders sought clarity on the arrangements in the event of a change in control of an EL or AL. One industry stakeholder suggested that the authority holder could be required to lodge a statement signed by the proposed controlling entity attesting to their ability and commitment to completing the existing approved work program.

MEG response

In the event of a change in control, the work program submitted as part of the application for the authority in question remains valid and in force. Any change to the existing work program brought about by the change in control would require a work program variation. This would then trigger the work program minimum standards and bring the new controlling entity under the umbrella of Schedule 1B of the Mining Act.

Other general comments

Compliance, enforcement and audit

ENGOS, agricultural stakeholders and landholders all advocated for the Minimum standards to support ongoing compliance and enforcement monitoring across the term of an authority. Landholders and agricultural stakeholders also reiterated the need for explorers to be alert to the potential environmental impacts of their activities. In addition, they reiterated the need for MEG to ensure that explorers understand their landholder compensation and land access obligations.

ENGOS, agricultural stakeholders and landholders all made suggestions for improving exploration tenure management. This included ongoing audits of explorers against their exploration licence conditions and expenditure commitments. In addition, ENGOS and agricultural stakeholders expressed concerns around the heavy focus on technical capability from a geosciences perspective and relative lack of focus on environmental management.

MEG response

Work program minimum standards will influence MEG's work programs assessment and management approach. By extension, this will also influence how compliance with the condition of an authority, to complete the work program, is measured¹. However, the Minimum standards themselves are not a compliance and enforcement mechanism per se. Schedule 1B (4) of the Mining Act makes clear that the scope for consideration of minimum standards is confined to 'applications'. MEG has a range of legislative and regulatory tools at its disposal to monitor and manage compliance across the term of an authority.

With respect to general exploration tenure management, MEG is considering improvements to its processes for communicating with authority holders throughout the term of the authority. This will ensure transparency in MEG's expectations of authority holders with respect to completing the

¹ It is a standard condition of mineral prospecting authorities that the work program be completed across the specified timeframe. Under the new approach to work programs, this will usually be the term of the authority.

approved work program. It will also establish a firmer basis for decisions to refuse the renewal of an authority where the work program condition has not been met. As mentioned earlier and in the Minimum standards document, it is a legal requirement to detail the environmental management activities that will take place over the term of the authority. These activities must be consistent with the level of exploration - or the exploration stage - proposed. MEG therefore expects that the technical manager has the expertise, or access to appropriate expertise, to undertake these activities. It is also worthwhile noting that mineral exploration activities, from an environmental perspective, are relatively low impact in the early stages of exploration. It is usually at around Stage 3 when exploration activities start to increase in intensity. Stage 3 usually involves the use of drilling equipment to test targets identified during the earlier stages. Stage 3 is a significant milestone in the exploration process and given the results-based nature of exploration, many exploration programs do not reach this point.

Scope of the Minimum standards

Industry stakeholders sought clarity on the scope of the Minimum standards. They also queried the rationale for excluding mining leases from the scope of the minimum standards, despite Schedule 1B of the Mining Act applying to all authorities issued under the Act. In addition, industry stakeholders queried whether coal authorities were included in the scope of the Minimum standards.

MEG response

The Minimum standards will not apply to applications for the grant, renewal and transfer of mining leases at this time. MEG prioritised the development of exploration minimum standards as many aspects of mining projects proposals are assessed through the development consent process under the *Environmental Planning and Assessment Act 1979*. Further information on the development consent process for mining can be found [here](#). MEG recognises that there are some aspects of the development consent process that do not directly support the objectives of the Minimum standards, namely expectations around the effective working of tenure. MEG will consider the need to expand the minimum standards to mining leases once the mineral exploration minimum standards are operational.

Acknowledgments

MEG thanks all industry, environmental and community stakeholders that took the time to make submissions on the draft Minimum standards. MEG carefully considered this feedback, some of which has directly influenced and improved the final product.

If you wish to contact MEG regarding your submission or this document, please email consultation.drg@planning.nsw.gov.au