

May 2023

Guideline

Rehabilitation security deposits

For exploration licences granted under the Mining Act 1992

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 and principles

The overarching purpose of these guidelines is to support the objects of the *Mining Act 1992*, which 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 preferred Australian state for new exploration and mining investment.

These guidelines are guided by the following core principles:

- that exploration is generally a low-impact, low-risk and short-term activity

- that the objects of the Mining Act are best served by minimising administrative and regulatory burden on both government and industry, while still maintaining an appropriate level of assurance and securities commensurate with the mineral exploration risk profile
- that a robust financial assurance framework is critical for building and maintaining the mineral exploration sector's social licence to operate.

Rehabilitation security deposits policy

The minimum security deposit amount is \$10,000

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 licence, the minimum security deposit amount is \$10,000.

The Department processes many activity approvals for higher impact exploration activities. Of these, a significant amount result in a rehabilitation impact of \$10,000 or less and therefore do not require the lodgement of a security deposit above the minimum amount. Exploration licence holders are usually able to immediately undertake the activities following receipt of the approval.

Minimum security deposit amount ensures community confidence in mineral exploration

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.

Minimum security deposit amount provides an appropriate market entry threshold

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 exploration licences, the cumulative impact of the \$10,000 may create unreasonable burden and these guidelines seek to address this issue.

Additional security not required for increases within threshold

The Department has introduced a threshold whereby an exploration licence holder does not need to lodge an increased security in the following circumstances:

- the Department currently holds at least the minimum \$10,000 security deposit
- proposed exploration activity will not result in rehabilitation obligations exceeding \$30,000
- there are no compliance or rehabilitation concerns in relation to the licence.

In such cases the Department will not undertake any further assessment of the amount of the security deposit.

The threshold will not apply in circumstances where a security deposit assessed above \$30,000 and is then subsequently reassessed below \$30,000. In those circumstances, the titleholder will be required to provide the assessed amount of security.

Under section 261BC(10) of the *Mining Act 1992*, the Resources Regulator in exercising its functions in relation to assessing security deposits is to have regard to any guidelines approved by the Minister. These guidelines have been approved by the Minister for the purposes of section 261BC(10) of the *Mining Act 1992*.

Calling on a security deposit is a last resort

The Department's 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.

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

Reducing minimum amount for group securities

In accordance with section 261BC(7)(a) of the Mining Act, the holder of multiple exploration licences can lodge a group security (i.e., they can lodge one security deposit which covers all the nominated licences). This minimises administrative and regulatory burden on government and industry pursuant to this Guideline's core principles.

Clause 92A of the Mining Regulation 2016 allows the Department to apply a discounted security deposit to a grouping of commonly held exploration licences but not be less than 50 per cent of the sum of the minimum deposits for the licences. The Department will apply a group security framework whereby the group security cannot be less than:

- 50 per cent of the sum of the minimum deposit for each of the exploration licences in the grouping where the security deposit amount is the minimum deposit and there are no exploration activity approvals for licence, and
- the actual assessed deposit for any other exploration licence included in the grouping.

An exploration licence will no longer be eligible to receive the discount when an activity approval has been granted for an exploration licence that will result in an assessed deposit above the minimum deposit of \$10,000. That is, the exploration licence holder must pay the full security deposit as assessed. The discount will also not apply to an exploration licence to which the threshold approach above applies, as in such circumstances the Department must hold at least the minimum \$10,000 security deposit for that licence.

Examples

Example 1 – single exploration licence

Explorer A holds a single exploration licence. They have not obtained an activity approval for exploration to be undertaken on the licence. Therefore, the Resources Regulator has not assessed the rehabilitation liability. Explorer A will pay a minimum security deposit of \$10,000.

Example 2 – multiple exploration licences at the minimum

Explorer A is granted two additional exploration licences. They now have three exploration licences. All three licences do not have any activity approvals. Explorer A's licences will each attract a minimum deposit of \$10,000 (i.e., a combined total of \$30,000). When grouped, a 50 per cent discount can be applied, bringing the total the security deposit for the group down to \$15,000.

Example 3 – multiple exploration licences, some at minimum security deposit and some assessed

Explorer A then obtains an activity approval on one of the three licences. The Regulator determines that the assessed deposit to cover the rehabilitation liability is \$45,000. The exploration licence that received the activity approval will no longer be eligible for a discount. While the licence may remain part of the group, Explorer A will be required to provide a security deposit of \$45,000 for that single licence. Explorer A will now have only two exploration licences eligible for the discount and must provide a security deposit of at least \$10,000 (i.e. 50 per cent of \$20,000).

Accordingly, if Explorer A wishes to have the licence that received the activity approval remain grouped, they would need to provide a security deposit of \$55,000. As explorer A has already provided an initial \$15,000, they are required to provide a further \$40,000 to meet the new amount. The holder may choose to remove the exploration licence with an assessed security deposit of \$45,000 from the group as it now does not receive the discount. However, the total security deposit amount will remain at \$55,000 for the three exploration licences.

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