



# RESPONSE TO SUBMISSIONS

## Draft Mining Securities Policy and Procedure

### Introduction

The Department of Mines, Industry Regulation and Safety (DMIRS) released draft revised Mining Securities Policy and Procedure documents for public comment on 17 September 2019 closing 29 November 2019.

The revised Mining Securities Policy and Procedures clarify the relevant considerations and support procedural fairness relating to the requirement, review and discharge of unconditional performance bonds for compliance with environmental conditions.

This framework for mining securities complements the operation of the *Mining Rehabilitation Fund Act 2012* and ensures unconditional performance bonds are used effectively to protect the State from incurring rehabilitation liability from non-compliant tenement holders.

This document is a summary of the feedback received and DMIRS' responses to those comments.

### Stakeholder Comments

The review process notified respondents that their submissions would be made publicly available on the DMIRS website, with personal details or company names made confidential on request.

Submissions were received from the Association of Mining and Exploration Companies (AMEC) and the Chamber of Minerals and Energy of Western Australia (CME). For the purposes of grouping and responding to feedback from stakeholders, the submissions have been sorted by section of the draft document, however the text of the submissions are included verbatim.

DMIRS thanks all stakeholders for their considered input into the process.

**General Comments**

Ref #	Stakeholder	Section	Comment	DMIRS Response/Action
	<b>AMEC</b>	<b>Progressive Rehabilitation</b>	The DMIRS website, when referring to UPBs suggests that the process is designed to encourage progressive rehabilitation. That is not explicitly explained in the policy or procedure. The reference to Regulation 112A does guide the reader to understand that if conditions have been complied with the bond may be returned, however it does not recognise the intent outlined on the website of encouraging progressive rehabilitation.	Previous bond rates and scale of reductions that applied to all similar landforms which was required when bonds were required on all instances rather than a case by case calculation. The previous mechanism for calculating bond reductions was more explicitly based on the achievement of rehabilitation milestones. The revised policy and procedure is more clearly founded on risk factors for non-compliance with conditions. This aligns more with Regulation 112A that demonstrated compliance with conditions is required for the reduction or discharge of bonds. DMIRS will update the website text to more clearly reflect the updated Mining Securities and policy and procedure.
	<b>AMEC</b>	<b>Mining Rehabilitation Fund payments</b>	The relationship between an UPB and MRF payments must be explicitly clarified. It is AMEC's understanding that a UPB will be paid in addition to MRF payment. This should be made explicit.	The Context section has been updated to identify that the requirement for a bond does not affect the operation of the MRF Act.
	<b>AMEC</b>	<b>Transparency of Bonds held</b>	It is difficult to discover how many UPBs there are cumulatively held by DMIRS or whether the amount has changed year on year. The MRF is highly transparent with regular reporting. UPBs should have similar transparency with annualised cumulative numbers published on the DMIRS website.	While not within scope of the policy and procedure document, DMIRS will consider how to improve transparency of bonds held.
	<b>AMEC</b>	<b>Mining Rehabilitation Fund Audit process</b>	AMEC notes the content and ongoing success of the Mining Rehabilitation Fund (MRF) as detailed in the yearly report for 2018/19. This includes the growth in the balance of the Fund to \$150 million at 30 June 2019, the high reporting compliance rate, and the management of the State's historic abandoned mine features. We do however note that the most common reporting errors were in relation to transport or service infrastructure corridors, and significant landforms being incorrectly reported as Land Under Rehabilitation. If this is the case, DMIRS should draft relevant guidance material in liaison with industry to remove any ambiguity or misunderstanding. AMEC has had a number of members express their concerns with the current MRF audit process which has taken considerable time, effort and resources to satisfactorily respond to Departmental queries. In one case, there were over 50 audit observations resulting in numerous exchanges of correspondence and meetings over several months – all of which were resolved. To avoid this in the future clear guidance is necessary for Departmental and proponent use.	Comments noted with thanks and will be taken under consideration. The Mining Rehabilitation Fund audit process is outside the scope of the Mining Securities Policy and Procedure.

**General Comments**

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	<b>AMEC</b>	<b>Treatment of salt and potash projects under the Mining Rehabilitation Fund</b>	<p>We understand that a review of the <i>Mining Rehabilitation Fund Act</i> is to occur in 2022. In advance of that review we consider that the treatment of emerging long term salt lake and potash projects using numerous evaporation ponds in their operation deserves earlier investigation. The Mining Rehabilitation Fund is levied on the assumption that an average mining project has a mine life of between 5 to 20 years. These salt lake and potash projects have potential mine lives spanning several decades, based on a renewable resource, and requires minimal environmental interruption across most of the assessed tenement. The environmental impact if any is therefore minimal.</p> <p>The current classification scheme under the Mining Rehabilitation Fund Regulations compounds the impact of this long mine life, by considering all of the evaporation ponds in the project as having a negative environmental impact, despite the project design revolving around the naturally occurring resource. The result is that these projects will be making disproportionate levy contributions to the Fund when compared to other mining operations.</p> <p>It is noted that the contribution to the MRF does not remove a proponent's legal obligation to fully rehabilitate the mine following closure pursuant to the <i>Environmental Protection Act 1986 (WA)</i> and other associated environmental legislation. Members have suggested that there should be consultation upon a capped amount / period of time proportionate to the project's impact.</p>	<p>Comments noted with thanks. DMIRS has committed to review the appropriateness of the Mining Rehabilitation Fund category rates with respect to minerals in brine projects. However, this matter is not within the scope of the Mining Securities Policy and Procedure.</p>

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Ref #	Stakeholder	Section	Comment	DMIRS Response/Action
	<b>CME</b>	<b>General</b>	No mention of the transfer of bonded tenements within the Policy. Given the industry landscape in WA this is important to consider, and worth including.	Comments noted with thanks. The policy has been updated to specify that when a bonded tenement is transferred, the obligation to lodge a bond is also transferred to the new tenement holder.
	<b>CME</b>	<b>General</b>	Formatting suggestion: the first 5 paragraphs of the Procedure are almost entirely duplicated from the relevant Policy. Instead, the Department could list any new information under the relevant headings, and state clearly at the beginning of the document that this Procedure is to be read pursuant to the relevant Policy, and vice versa.	Comments noted with thanks. The Document Hierarchy identifies that the policy and procedure are to be read together. These are two separate documents to clearly delineate the policy from the procedure. For ease of reading, DMIRS has elected to present the relevant contextual information in full.
	<b>CME</b>	<b>Introduction</b>	CME suggest that 'end' should be replaced with 'next' or 'post-mining' to reflect the importance of closure planning in consultation with the community for the next land use.	Comments noted with thanks. This has been updated to "post-mining" consistent with the Guidelines for Mine Closure Plans in Western Australia.
	<b>CME</b>	<b>Introduction</b>	Is this Policy proposed to extend to State Agreements not pursuant to the Mining Act with bonds held? CME expects that this intends to include those pursuant to the <i>Mining Act 1978</i> , however not specified. This should be clarified, if only to state the exception.	Comments noted with thanks. The document hierarchy section indicates that the overarching legislation is the <i>Mining Act 1978</i> , noting some State Agreement Acts include obligations to comply with the <i>Mining Act 1978</i> .
	<b>CME</b>	<b>Considerations in decisions to impose, vary the amount, discharge or retain a mining security</b>	Current phrasing allows consideration of the location and activity separate to the environmental risk posed. CME considers this consideration should be more directly linked to the environmental conditions imposed, and the environmental outcomes.	Comments noted with thanks. This has been updated to consider location and activity <i>in relation</i> to the environmental risk.
	<b>CME</b>	<b>Considerations in decisions to impose, vary the amount, discharge or retain a mining security</b> "the tenement holder is, or has previously been, subject to an enforcement action under the Mining Act for failure to comply with environmental obligations (e.g. Direction to Modify, Stop Work Order or forfeiture action);"	CME recommends the Department specify a period to which this risk consideration will extend. The current working creates the potential for the current tenement holder to be punished for previous holders failure to meet obligations, or for failures long ago and not relevant to the current company operations. Recommend setting of 5 year historical limit.	DMIRS will consider the history of compliance or non-compliance to the extent that it is relevant to the current reasons which relate to the application of a mining security.

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Ref #	Stakeholder	Section	Comment	DMIRS Response/Action
	<b>CME</b>	<b>Considerations in decisions to impose, vary the amount, discharge or retain a mining security</b> "the extent to which a tenement holder has complied with its environmental obligations (including compliance with tenement conditions and environmental obligations under the Mining Act);"	Is this intending to include non-environmental tenement conditions? CME would submit that this is not appropriate in this context, given the consideration extends only to environmental obligations. Suggest a re-wording to specify environmental tenement conditions.	MIRS will consider the history of compliance or non-compliance to the extent that it is relevant to the current reasons that relate to the application of a mining security.
	<b>AMEC</b>	<b>Factors to be considered when determining the amount of mining security required</b>	The Policy outlines the ability of the Minister (and the Minister's delegate) to prescribe an additional discretionary security, with DMIRS reserving the right to calculate the amount based on other risk factors or information available. These calculations should be provided to the tenement holder defining how it differs to the mandatory security and how it was estimated. To do so will increase certainty and transparency of the discretionary security and will overcome future questions of how the security was determined.	DMIRS agrees that the tenement holder should be advised how the discretionary securities for compliance with environmental conditions are calculated. The Policy document has been updated to identify that tenement holders will be provided with this information.
	<b>CME</b>	<b>Factors to be considered when determining the amount of mining security required</b>	Important to provide sufficient clarity regarding the way that the security is calculated, including the consideration of current vs future activity. Calculation of a security should relate directly to the current disturbance and environmental impact, not the planned impact. This can be extensive for some large mining proposals, and may result in disproportionately high security being applied to a tenement holder who has not conducted extensive on ground activities.	Comments noted with thanks. DMIRS reserves the right to apply UPBs in relation to both current and authorised future activities based upon the level of risk those activities represent to the environment and non-compliance with environmental tenement conditions. Tenement holders will be given detailed information on the manner for which a mining security requirement has been calculated.
	<b>CME</b>	<b>Factors to be considered when determining the amount of mining security required</b>	CME recommends this wording be revised to specify environmental risk factors and information to remain within scope of policy.	Comments noted with thanks. This has been updated.

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Ref #	Stakeholder	Section	Comment	DMIRS Response/Action
	<b>CME</b>	<b>Purpose</b>	Formatting suggestion: the first 5 paragraphs of the Procedure are almost entirely duplicated from the relevant Policy. Instead, the Department could list any new information under the relevant headings, and state clearly at the beginning of the document that this Procedure is to be read pursuant to the relevant Policy, and vice versa.	Comments noted with thanks. The Document Hierarchy identifies that the policy and procedure are to be read together. These are two separate documents to clearly delineate the policy from the procedure. For ease of reading, DMIRS has elected to present the relevant contextual information in full.
	<b>CME</b>	<b>Introduction</b> <i>"end land-uses"</i>	CME preference is to avoid the use of 'end' in this context. More accurate alternatives would be 'next' or 'post-mining' land use.	Comments noted with thanks. This has been updated to "post-mining" consistent with the Guidelines for Mine Closure Plans in Western Australia.
	<b>AMEC</b>	<i>However, it is intended the additional mining securities will not be required in the majority of cases provided that the wider industry performs in an acceptable manner".</i>	A minor amendment is the removal of a line on page 2 of the Procedure which steps beyond procedure into broader policy: "However, it is intended the additional mining securities will not be required in the majority of cases provided that the wider industry performs in an acceptable manner"	Comment noted with thanks. The Procedure document has been updated to remove that sentence, as mining securities held on each tenement are in response to specific issues on that tenement and not the broader performance of industry.
	<b>AMEC</b>	<b>Procedure to review mining securities requirement (including DMIRS initiated reviews)</b>	The procedure described allows the tenement holder to provide comment once the Executive Director of the Resource and Environmental Compliance Division has identified the tenement holder as needing their mining security review. This provision for natural justice is supported by AMEC. However, it is unclear what triggers DMIRS to initiate a mining security review. The policy refers to a 'material change in risk', while AMEC is broadly supportive of a risk-based approach, the reasons why a company now requires a different mining security need to be clearly explained. The current draft of the procedure does not include the presentation of a statement of reasons to quantify why the existing MRF payment is insufficient to meet DMIRS's revised risk assessment of the tenement holder. Detailing what precisely has been the 'material change in risk' and how the security amount was calculated, will increase transparency.	This has now been updated. Tenement holders will be given detailed information on the reasons for which a mining security review has been initiated, and will be invited to prepare a submission to address these matters. Tenement holders will also be given detailed information as to how a mining security requirement has been calculated.

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Ref #	Stakeholder	Section	Comment	DMIRS Response/Action
	CME	<p><b>Procedure to review mining securities requirement (including DMIRS initiated reviews)</b></p> <p><i>“When DMIRS initiates a mining security review, tenement holders will be notified and invited to provide information to assist in the review”</i></p>	<p>Tenement holders must be provided with sufficient detail of the risk factors identified by the Department to trigger a mining security review. The Procedure must explicitly state that this is required in the first step of the 1. Procedure to Review Mining Securities Requirement to allow for tenement holders to accurately provide relevant information to assist in the review.</p>	<p>This has now been updated. Tenement holders will be given detailed information on the reasons for which a mining security review has been initiated, and will be invited to prepare a submission to address these matters. Tenement holders will also be given detailed information as to how a mining security requirement has been calculated.</p>
	CME	<p><b>Procedure to review mining securities requirement (including DMIRS initiated reviews)</b></p> <p><i>“If a new or increased mining security is recommended, or there is a recommendation to retain an existing security, tenement holders will be informed and will be provided with a set timeframe in which to provide any additional information before a final recommendation”</i></p>	<p>Clarification required as to how this is proposed to work for a change to a current situation being recorded. I.e. progressive rehab. Currently, there is the provision to decrease/amend but not remove. Given the preference is to undertake progressive rehab. there should be provision for a review to be triggered resulting in the removal of the security requirement.</p> <p>This states that tenement holders will be informed of the increased/new security, however does not provide that the assessment report and risk factors for the changed assessment will be provided to the tenement holder. This must be explicitly included in the Procedure to drive transparency regarding the application of securities, and allow proponents to respond.</p>	<p>Comments noted with thanks. DMIRS advises that tenement holders are able to request a review of a mining securities requirement or the discharge of a UPB, however the extent to which progressive rehabilitation will be considered will be dependent upon the risk to the environment and risk of non-compliance with environmental conditions i.e. whether progressive rehabilitation has been completed and successful.</p> <p>Comments noted with thanks. This has now been updated. Tenement holders will be given detailed information on the reasons for which a mining security review has been initiated, and will be invited to prepare a submission to address these matters.</p>
	CME	<p><b>Procedure to review mining securities requirement (including DMIRS initiated reviews)</b></p>	<p>As per point above, the Procedure must require that the reasons for the revised security recommendation be provided to the tenement holder for transparency and facilitate the relevance of the additional information provided by the tenement holder.</p>	<p>Comments noted with thanks. This has now been updated. Tenement holders will be given detailed information on the reasons for which a mining security review has been initiated, and will be invited to prepare a submission to address these matters.</p>

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	<b>AMEC</b>	<b>Requesting the discharge of existing mining securities</b>	The procedure for requesting the discharge of existing mining securities does not provide a timeframe for the length of consideration by the Executive Director. The provision of feedback and the process of subsequently undertaking a review is supported as consistent and transparent policy.	Timeframes can vary depending on the complexity of each individual matter to be considered and therefore there are no timeframe commitments in the procedure document. These matters will be progressed in a reasonable timeframe in consultation with the relevant party.
	<b>CME</b>	<b>Requesting the discharge of existing mining securities</b>	Tenement holders engaging this process must be provided with the risk factor assessment and initial recommendation report for the application of the mining security, to be able to address the relevant risk factors adequately in an application for discharge. (Refer to comments on Procedure Item 1, Point 3).	Comments noted with thanks. This has now been updated. Tenement holders will be given detailed information on the reasons for which a mining security review has been initiated, and will be invited to prepare a submission to address these matters.
	<b>AMEC</b>	<b>Other</b>	The Policy does not provide for a standardised review of the UPB after a period of time has elapsed, for example ten years. This would seem a sensible addition to the policy as technology changes are likely to reduce the size of the bond required and the reasons for the UPB may have lapsed.	Comments noted with thanks. DMIRS considers the existing flexibility in the framework for initiating a review at any time with appropriate evidence will ensure that bond requirements adapt to changes in technologies and the reasons for holding the bond.



Government of Western Australia

**Department of Mines, Industry Regulation  
and Safety**

8.30am – 4.30pm

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