



Mining Securities Procedure – Administration for compliance with environmental conditions

Pursuant to: sections 52(1a), 60(1a), 70F(2) and 84A(2) of the *Mining Act 1978*
Version 2.0, July 2019

Purpose

- This document outlines the Department of Mines, Industry Regulation and Safety (DMIRS) procedures for administering additional mining securities under sections 52(1a) (prospecting licences); 60(1a) (exploration licences); 70F(2) (retention licences) and 84A(2) (mining leases) and 126 (all securities) of the *Mining Act 1978* (Mining Act) for compliance with environmental conditions.

Objectives

The objectives of this document are:

- to provide guidance on the DMIRS administrative procedures relating to the imposition, variation, retention and discharge of mining securities; and
- to inform tenement holders of the process to request the discharge of an existing mining security.

Introduction

The purpose of mining securities is twofold:

- i.) to help ensure tenement holders' compliance with conditions imposed on their tenements; and therefore
- ii.) ensure that the State is not exposed to unacceptable costs should tenement holders fail to meet the mine closure requirements on their tenements.

DMIRS' regulatory objective is that resource industry activities are designed, operated, rehabilitated and closed in an ecologically sustainable manner, consistent with agreed environmental outcomes and end land-uses without unacceptable liability to the State.

With all forms of mining security, the legal obligation to comply with conditions imposed upon the tenement and to undertake mine closure resides with the tenement holder, and the mining security is in place to support compliance with these obligations and provide financial assurance to the State. Mining securities do not in any way relieve the tenement holder from meeting their closure and rehabilitation obligations.

Legislation

The Minister responsible for the Mining Act (the Minister) or their delegate may require the lodgement of additional mining securities for compliance with conditions imposed in relation to the tenement for the prevention and reduction of injury to land (sections 52(1a); 60(1a); 70F(2) and 84A(2)). Section 126 of the Mining Act provides for the administration of the amount, method and discharge of mining securities.

Context

Prior to the commencement of the Mining Rehabilitation Fund (MRF) in 2013, the principal means of ensuring tenement holders' compliance with environmental conditions was through imposing mining securities pursuant to the Mining Act. Most mines in Western

Australia were required to have lodged mining securities in the form of an Unconditional Performance Bond (UPB) prior to the commencement of mining. The majority of these UPBs were retired when these tenements entered into the MRF.

The *Mining Rehabilitation Fund Act 2012* does not limit the Minister's ability to impose mining securities under the Mining Act on tenement holders for each mining tenement for obligations to meet their agreed environmental commitments. However, it is intended that additional mining securities will not be required in the majority of cases provided that the wider industry performs in an acceptable manner.

PROCEDURE

1. Procedure to review mining securities requirement (including DMIRS initiated reviews)

The application of a mining security will be considered on a case-by-case basis and managed to ensure a fair and transparent decision-making process. Where considered appropriate by the Executive Director of the Resource and Environmental Compliance (REC) Division, applications will be considered by the Resource and Environmental Compliance Enforcement Panel (RECEP) chaired by the Executive Director of the REC Division.

1. When DMIRS initiates a mining security review, tenement holders will be notified and invited to provide information to assist in the review.
2. The RECEP will review the information provided by the tenement holders and REC Division and will provide a mining security recommendation to the Executive Director REC Division (as the Minister's delegate).
3. 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 is made to the Executive Director REC Division.
4. If additional information is then provided by a tenement holder, the Executive Director of the REC Division will review that information to determine whether a revised recommendation is supported.
5. If the Executive Director REC Division determines that a new or replacement mining security should be imposed, the security will be required in the form of a UPB. The tenement holder will be notified that a new mining security is required and provided with a timeframe in which to comply.
6. Failure to lodge the required security in the required form and manner will render the tenement(s) liable to forfeiture.

2. Requesting the discharge of existing mining securities

A UPB is currently the only form of mining security accepted. A UPB is a contract between the Minister and a third party of financial standing. This contract must provide for the third party to unconditionally pay an agreed sum to the Minister upon his or her request and must be acceptable to the Minister.

The UPB must be in a form pre-approved by the department and guaranteed by a financial institution approved by the Minister and must show the name(s) of the current holder(s) of the mining tenement. A copy of the pre-approved form is available on the DMIRS website.

1. A tenement holder who is required to maintain a mining security may submit a written request that the mining security be discharged pursuant to regulation 112A of the Mining Regulations 1981. The request must provide evidence that indicates and substantiates that the relevant risk factors have now been mitigated or eliminated.

An application to remove a mining security must also be accompanied by the following information in accordance with regulation 112A of the Mining Regulations 1981:

- a) a statutory declaration stating the extent that the person making the statutory declaration has complied with the conditions imposed on the tenement, and with the provisions of the Act and regulations and include details of the nature of that compliance; and
- b) a map showing
 - (i) the location of the workings of the person making the statutory declaration;
 - (ii) the boundaries of the workings; and
 - (iii) the access routes to the workings.
2. The Executive Director REC Division (as the Minister's delegate) will consider any request made by the affected tenement holder and determine if there are sufficient grounds for triggering a review of the mining security (as outlined above).
3. The tenement holder will be notified if a mining security review is initiated, or provided with feedback if insufficient information has been provided.

GLOSSARY

Delegate

An officer of the department who has been delegated powers and/or functions of the Minister through a written instrument executed by the Minister and is presently authorised to exercise these powers and/or functions.

Discharge

The Minister's (or their delegate's) decision to remove the requirement for a tenement holder to provide a security.

Enforcement of a mining security

Where the Minister determines, in writing, that a mining security is to be used for the environmental conditions as set out in sections 46A, 63AA, 70I and 84 of the *Mining Act 1978*.

Environmental condition

Conditions which may be imposed upon the grant of a mining tenement or at any subsequent time for the purpose of preventing or reducing, or making good, injury to the land in respect of which the tenement was granted, or injury to anything on or below the natural surface of that land or consequential damage to other land.

Impose

The Minister's (or their delegate's) decision to require a tenement holder to provide a mining security for individual tenements.

Mine Closure Plan

A document defined under section 700(1) of the *Mining Act 1978* and containing the information required by the relevant statutory guidelines about the rehabilitation and closure of a mine.

Mining Security

A legislated security obligation imposed by the Government on *Mining Act 1978* tenement holders that is specific to individual tenements for compliance with environmental conditions. The department requires mining securities to be in the form of unconditional performance bonds.

Retain

The decision to not discharge a mining security on a mining tenement.

Unconditional Performance Bond

The form of mining security required by the Minister (or their delegate) which must be specific to individual tenements. An Unconditional Performance Bond is a guarantee issued by a financial institution in favour of the Minister which may be called in on by the Minister at will. The Minister is not obligated to discharge an unconditional performance bond.

Workings

A general term referring to the activities undertaken on a tenement.

Document Hierarchy

Legislation	<i>Mining Act 1978</i> Mining Regulations 1981
Policy	Mining Securities Policy – July 2019
Procedures	This document

Version History

Version	Date	Changes
1.0	May 2014	Initial Publication
2.0	July 2019	Document restructuring and Machinery of Government updates

Government of Western Australia

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