



SUBMISSION to the

**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENT**

on their

**DISCUSSION PAPER ON REHABILITATION BONDS
APRIL 2002**

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EXECUTIVE SUMMARY

The Council is supportive of the need to review the current rehabilitation bond system. Our fundamental objective is to ensure that mine sites are effectively rehabilitated and that the community is not left with a liability.

We are not aware of financial instruments other than bonds that would provide the security that the Government requires and also encourage good environmental performance and progressive rehabilitation. Bonds usually take the form of bank guarantees, insurance bonds or other instruments that provide financial security.

We do not support the idea of an industry based insurance scheme or insurance fund to cover the aggregate liabilities of the industry. However, we have no particular difficulties with the use of insurance bonds secured by individual companies.

We do not believe that a levy system applied to mine or quarry operators to establish a rehabilitation fund is appropriate. The VMEC is most definitely not interested in administering such a fund for the minerals industry.

Members of the VMEC are supportive of the bank guarantee system as the most appropriate financial instrument for rehabilitation bonds. The ability to acquire the appropriate bank guarantee rests with the company. It is noted that bank guarantees are a commercial arrangement that is common in a very wide range of business activity.

The use of cash deposited in a bank to cover the rehabilitation bond can work for small operators. However, a system is required to ensure that the cash remains available to cover the bond until released.

We believe that rehabilitation bonds should:

- be applied in a consistent manner across all sites, irrespective of size or ability to pay;
- be sufficient to cover the cost of rehabilitation to the agreed standard at any point in time;
- be assessed on a site-by-site basis;
- encourage progressive rehabilitation;
- allow for unforeseen phenomena on a probabilistic basis; and
- be a secure financial instrument.

It is possible that more than one bond setting method is applied in Victoria. However, the above principles including those of consistency and the ability to cover the current liability should apply.

We believe that one of the fundamental principles used by DNRE to set a bond is flawed and a revision is required. This is, the administrative policy that requires bonds to be set by calculating the cost of the works required to cover the maximum exposure case in the approved work plan. This is inappropriate, as it overstates the actual liability at all but the maximum exposure stage; makes little allowance for progressive rehabilitation; and does not accommodate early closure scenarios. The rehabilitation bond setting process should be staged to accurately reflect the cost of

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meeting a staged rehabilitation plan that is both practical and realistic and flexible enough to accommodate early project completion or termination. We believe that the current bond setting policy is a gross disincentive to mining in Victoria. It is inappropriate to set the bond in accordance with the maximum exposure, as this could be 30 years or more hence.

1 INTRODUCTION

The Victorian Minerals & Energy Council (VMEC) welcomes the opportunity to formally comment on the Discussion Paper prepared by the Department of Natural Resources and Environment (DNRE) on Rehabilitation Bonds dated April 2002.

The VMEC is an industry association that represents the corporate minerals and energy industry of Victoria. The members of the Council are engaged in mineral processing, mining, exploration, or the provision of services to the industry.

The mission of the Council is to create the best possible environment for the continued sustainable development of the minerals and energy industry in Victoria by:

- Working with all levels of Government to ensure an effective legal and regulatory framework that supports and governs the industry;
- Encouraging members to achieve best practice in all aspects of their business through networking and exchanging of ideas;
- Communicating with Victorians on the nature, effects and benefits of the minerals industry including the environmental and social programs, along with economic benefits; and
- Working in partnership with educators and students to enhance teaching and learning about the minerals industry.

The Council is supportive of the need to review the current bond system. The system is in need of change to ensure that it appropriately delivers the security the community requires and solves the numerous problems miners have. We congratulate DNRE on the initiative to review the rehabilitation bond arrangements.

Some of the problems that our members have had with the current bond system include the following:

1. Poor records that have resulted in the incorrect release of bonds to people other than the current owners of the project.
2. A process that encourages small miners to walk away at the conclusion of a project and leave it to DNRE to use the bond money to hire a contractor to do the rehabilitation.
3. Inability of miners to access cash held to cover the bank guarantee when mining is completed and final rehabilitation work is required. That is, cash required to cover the bond is not available to be used by the miner to undertake the rehabilitation.
4. Problems between DNRE and miners in resolving appropriate rehabilitation expenditure priorities for the funds available.

5. Perceptions of inconsistent decisions by DNRE on bonds, manifest as requirements for impractical or unrealistic rehabilitation objectives whilst at other times there have been examples of inadequate rehabilitation objectives and inadequate bonds.
6. Lengthy delays between bond forfeiture and undertaking of rehabilitation work by DNRE. We note that DNRE are able to take their time whereas reputable companies can't.
7. The inability of some large, long life mines to secure 'open-ended' back guarantees secured by assets.
8. The current method of setting bonds to cover the maximum disturbance projected for the approved stage of the mine grossly overstates the actual liability at all but the maximum exposure stage of the mine.

2 POLICY POSITIONS

The Council adopted the ANZMEC/MCA Strategic Framework for Mine Closure as VMEC policy in 2001. The financial provisions section of this policy is:

Objective

To ensure the cost of closure is adequately represented in company accounts and that the community is not left with a liability.

Principles

1. A **cost estimate** for closure should be developed from the mine development and closure plan.
2. Closure cost estimates should be **reviewed regularly** to reflect changing circumstances.
3. The **financial provision** for closure should reflect the residual cost.
4. **Accepted accounting standards** should be the basis for the financial provision.
5. **Adequate securities** should protect the community from closure liabilities.

Risk management techniques based on probability and consequences are to be employed to ensure that unforeseen environmental degradation to the land is effectively managed.

As mentioned in the Discussion Paper the Government's Policy on Bonds as presented by the Minister Energy and Resources in her Ministerial Statement of 2000 is as follows:

“The Government is committed to ensuring that all new or expanding mining and extractive sites have a rehabilitation bond which properly covers the maximum potential rehabilitation liability of any operation, based on the currently approved work plan; and

For existing mining and extractive sites, the Government is committed to reviewing all rehabilitation bonds every three to five years, based upon the assessed site risks. For sites that are genuinely unable to afford a revised bond level, a specific plan is to be developed over an appropriate time period and for progressive site rehabilitation.”

The stated DNRE bond policy in the Discussion Paper is: “The objective of the policy is to minimise the cost to industry and government while still guaranteeing the rehabilitation of mines and quarries.”

The Discussion Paper also presents the current DNRE bond administration policies as:

Purpose of Bonds

The overall objective is to rehabilitate the land to an acceptable post-mining or extraction level at nil (or negligible) cost to Government and the community. In order for this to occur, the Department's regulatory framework for the setting and review of rehabilitation bonds must ensure that rehabilitation

bonds cover the total rehabilitation liability. For this reason, the size of a rehabilitation bond is dependent on rehabilitation works required in the approved work plan.

Rehabilitation bonds are intended only for rehabilitation and do not offer “insurance” against other site risks and off-site impacts such as spills and collapses.

Type of Bond

The only form of financial security currently acceptable to DNRE for rehabilitation bonds is a bank guarantee. The licensee must demonstrate adequate cash or liquidity to the bank in order to obtain a guarantee.

Bond Setting

Bonds are based on the current liability of the site, and are determined by the works required in the approved work plan including rehabilitation plan. Bonds are calculated using the DNRE “Guidelines for the Establishment of Rehabilitation Bonds for Mining and Extractive Industry”. They are calculated on an individual, site-by-site basis in order to assess the rehabilitation liability for each site.

The initial rehabilitation bond is based on the forecast disturbance as outlined in the work plan for the first stage of the operation.

Bond Reviews

Rehabilitation bonds are reviewed on a site-by-site basis, using the same method of calculation as for the initial bond setting. The frequency of review is based on assessed site risks but generally speaking, all sites are reviewed every three to five years and/or when there is a major change in the operation, indicated by a variation to the work plan.

The position of VMEC regarding many of these administrative policies is discussed in the following sections of this submission. However, we raise our concerns with one of the fundamental policies of DNRE below.

It is a DNRE stated position that “a rehabilitation bond, assessed regularly against current liability, is a powerful incentive for operators to minimise their impacts, undertake progressive rehabilitation and to finally rehabilitate the land once work has been completed.” However, we believe that the DNRE current policy for bond setting does not necessarily enable this position to be achieved.

We refer to the administrative policy that bonds are to cover the “total rehabilitation liability” associated with the approved work plan. Whilst this may be deemed to satisfy the policy position of the Government we believe that it leads to a gross over statement of the actual liability at all but the maximum exposure stage; makes little allowance for progressive rehabilitation; and does not accommodate early closure scenarios.

It is our contention that:

1. Any bond requirement should be satisfied on a staged basis, with progressive increment or decrement, which reflects the actual project rehabilitation liability.
2. The initial determination of the bond requirements within the work plan approval process must be such as to reflect the progressive liability, and not the estimated future maximum.

The rehabilitation bond setting process should be staged to accurately reflect the cost of meeting a staged rehabilitation plan that is both practical and realistic and flexible enough to accommodate early project completion or termination. We believe that the current bond setting policy is a gross disincentive to mining in Victoria. It is inappropriate to set the bond in accordance with the maximum exposure, as this could be 30 years or more hence.

3 REHABILITATION BOND ISSUES

3.1 *Quarry versus Mining*

Issue

- **Should there be a different bond approach to mining compared to extractive operations, and why / why not?**

The public do not differentiate between mines and quarries when they view un-rehabilitated sites, they note them all as generic mining. Therefore we believe strongly that there should not be a fundamentally different bond system for mines and quarries. It is acknowledged that quarries cannot be backfilled and that they usually have a much longer operating life than mines. However, the principle remains, the bond should be sufficient to cover the cost of rehabilitation to the agreed plan.

3.2 *Exploration*

Issue

- **Is there a need to change how bonds are set or the standard bond amount for exploration licences?**

Exploration has minimal impacts and the bond in this situation is really a nominal guarantee against adverse outcomes.

Low impact exploration should have little or no impact. Drilling on the other hand can have a small, localised impact that requires rehabilitation.

We are comfortable with exploration bonds being set at a standardised minimum amount.

3.3 *Private Land versus Crown Land*

Issue

- **Should different bond strategies apply depending on land status, and why / why not?**

We do not believe that there should be different bonds related to different land status or classification. Again the principle of the bond being sufficient to cover the liability must apply. Both private and Crown land must be rehabilitated in accordance with the agreed rehabilitation plan. The whole industry suffers from the impacts of poor rehabilitation practice. If the industry is to continue to receive a 'licence to operate' then all involved in the industry must meet contemporary standards of rehabilitation.

The Department should be mindful that when finalising the agreed rehabilitation plan that the land owner may wish to preserve some of the attributes created by the mining process for other purposes and not require complete removal of all traces of mining.

3.4 *Environmental Performance Discounts*

The Council does not support bond discounts for good environmental performance. Again the principle that the bond must be sufficient to cover the rehabilitation liability must apply. We believe that if financial advantage can be gained from good environmental performance that this will be gained from the financial institution that provides the bank guarantee through a recognition of lower risk.

However, we do support the principle of good environmental performance carrying some weight in terms of licence conditions and expenditure requirements when new licences and works approvals from the company concerned are being considered by DNRE.

4 BOND ALTERNATIVES

4.1 *Current Bond Process*

Issue

- **Is the current bond process appropriate to ensure that rehabilitation is always achieved?**

The experience of DNRE and mining companies clearly suggests that the current bond system does not always ensure that sound rehabilitation outcomes are achieved. Many of these problems have arisen because the bonds were set too low in the past or were not reviewed regularly enough to ensure they kept up with the liability. However, there are also structural issues that do not ensure sound outcomes. As mentioned in the Introduction, some of these system issues include the following:

A process that encourages small miners to walk away at the conclusion of a project and leave it to DNRE to use the bond money to hire a contractor to do the rehabilitation.

Inability of miners to access cash held to cover the bank guarantee when mining is completed and final rehabilitation work is required. That is, cash required to cover the bond is not available to be used by the miner to undertake the rehabilitation.

Problems between DNRE and miners in resolving appropriate rehabilitation expenditure priorities for the funds available.

The current method of setting bonds to cover the maximum disturbance projected for the approved stage of the mine grossly overstates the actual liability at all but the maximum exposure stage of the mine.

In order to avoid the situation where inadequate bonds are set by Inspectors it is understood that, in some States, internal guidelines have been set to ensure equity in bond setting. This is coupled with accountability at the Inspector level for failure to set bonds to the internal standard.

4.2 *Mechanism other than Bonds*

Issue

- **Are there mechanisms other than bonds that the Department should consider for assurance of rehabilitation?**

We are not aware of financial instruments other than bonds that would provide the security that the Government requires and also encourage good environmental performance and progressive rehabilitation. Bonds are a normal commercial instrument used in many businesses, including the mining industry. Bonds usually take the form of bank guarantees, insurance bonds or other instruments that provide financial security such as letters of credit, collateral bonds, and surety bonds.

However, bonds are a balance sheet provision that restricts borrowing capacity. They are a specific charge on the project and limit the ability to build a rehabilitation fund.

4.3 Administrative Systems

Issues

- **Are there any alternatives that the Department should consider to ensure a more flexible and speedy administrative system to access bond funds?**
- **If administrative systems allowed operators easier access to bond funds for rehabilitation, would this be of significant assistance to operators, or would it cause problems / complications?**

We are aware that, there are problems at times with companies gaining a release of the bond when the rehabilitation works are completed. These are more related to satisfying the Inspectors and here clear reference to an agreed set of completion criteria is required. In setting agreed completion criteria both the operator and the Inspectorate have a clearly agreed set of conditions to be met for bond relinquishment and arguably, where requested, MIN relinquishment. Completion criteria typically range from outcome based key performance indicators to prescribed landscapes.

The problem of gaining access to the funds required to complete the rehabilitation is an issue that requires careful consideration. As mentioned earlier, the current system encourages mine operators who use cash to secure the bond to walk away from the project and leave DNRE to call in the bond and employ a contractor to undertake the rehabilitation work. This is far from a satisfactory situation and one that is of no use to a reputable operator who does not wish to become insolvent but wishes to have the benefit of a successful rehabilitation outcome.

A carefully managed process is required to enable companies to ramp down the size of the bond after progressive stages of the work are completed thereby enabling them to access the cash released from the security deposit with the Bank.

Nevertheless, it is clear that DNRE requires a robust but affordable administrative system to ensure effective administration of bonds.

4.4 Insurance Scheme

Issue

- **Would an insurance scheme or industry fund be feasible and/or effective?**

We do not support the idea of an industry based insurance scheme or insurance fund to cover the aggregate liabilities of the industry. However, we have no particular difficulties with the use of insurance bonds secured by individual companies provided that they can be shown to be a secure financial instrument that ensures the funds are readily accessible to DNRE if there is default by the miner and that the funds remain available after a company ceases to pay the premiums.

4.5 Government or Industry Levy

Issues

- **Would a levy system (government or industry run) be a useful alternative to a bond? Would the benefits outweigh the disadvantages? Why / why not?**
- **Would a government or industry run levy system be acceptable? Why / why not?**

We do not believe that a levy system applied to mine or quarry operators to establish a fund either administered by the Government or the industry is appropriate. Companies should be able to cover the cost of rehabilitating the current liability they have created.

The problems with levy schemes are that they:

- pool all operators into one environmental performance class;
- encourages lowest common denominator rehabilitation performance;
- do not encourage progressive rehabilitation to minimise the liability;
- are not site or industry sector specific;
- removes accountability for rehabilitation from the specific company to the 'group';
- possibly exposes the Government or industry body to liabilities that cannot be covered by the accumulated fund; and
- it is difficult to agree a universal production unit for the minerals industry.

The VMEC is most definitely not interested in administering such a fund for the minerals industry.

5 TYPES OF BOND

5.1 *Bank Guarantee*

Issue

- **Are bank guarantees the most appropriate form of bond, and if so, are there any changes that would improve them further?**

Members of the VMEC are supportive of the bank guarantee system as the most appropriate financial instrument for rehabilitation bonds. The ability to acquire the appropriate bank guarantee rests with the company. It is noted that bank guarantees are a commercial arrangement that is common in a very wide range of business activity.

The bank guarantee system does not require change that could be initiated by Government. The system is flexible enough to allow companies with good commercial credentials to gain a competitive rate whilst at the same time enabling groups of small operators to join together and leverage to gain a better rate than if they operated individually. The issue becomes one of commerce not Government regulation.

However, some problems do arise with bank guarantees held on large mines with very long lives that have the bond secured by assets. In these instances some bankers are unwilling to provide 'open-ended' bank guarantees. Having an end date gives the bank the opportunity to revisit the credit of the mine at the end of each term. In such cases we contend that it would be appropriate for DNRE to introduce a system that would accept consecutive bank guarantees over the life of the project, each with a finite time period attached. Renewal of the bank guarantee would then become a licence condition.

5.2 *Cash and others*

Issue

- **Are there other forms of bonds that could be applied to the mining and extractive industries other than bank guarantees? If so, what types of bond need to be considered? Please explain in detail.**

The use of cash deposited in a bank to cover the rehabilitation bond can work for small operators. However, a system is required to ensure that the cash remains available to cover the bond until released. It is acknowledged that this security is not always achieved. It should also be pointed out that the use of cash is an unproductive use of company funds.

Bonds in the form of bank guarantees are a normal commercial instrument used in many businesses, including mining. However, we believe that guarantees by insurance companies could also provide the security that the Government requires and will similarly encourage good environmental performance and progressive rehabilitation. We have no difficulties with the use of insurance bonds provided that

they can be shown to be a secure financial instrument that ensures the funds are readily accessible to DNRE if there is default by the miner and that the funds remain available after a company ceases to pay the premiums.

Also, we believe that consideration should be given to the use of Company Guarantees. These would be suitable for large mining houses with investment grade credit ratings. They could also include letters of credit, surety bonds or collateral bonds.

6 METHODS OF CALCULATION

6.1 *Case-by-case Costing*

The assessment of rehabilitation liabilities on a case-by-case basis at each review period is the most appropriate method. It ensures accuracy and accountability as well as encouraging progressive work to minimise the liability. However, it is acknowledged that this also requires extensive Inspectorate resources if they are to do all of the reviews.

6.2 *Predetermined Unit Costs*

The application of predetermined unit costs for rehabilitation can save considerable time but do not account for specific site conditions that can vary due to the type of mining operation, the competence of the mine operator, the topography, climate and soil types, and the mine rehabilitation plan. Other environmental risk factors including off-site issues may also need to be considered.

We do not support the application of predetermined unit costs unless they are specifically determined for the site in question or applied to relatively simple situations such as a diamond drill hole site. It may, however, be appropriate that for the purposes of Inspectorate auditing of bonds, that a standard set of predetermined costs be employed for simple validation of bond calculations submitted for approval by proponents.

6.3 *Licensee Supplies Detailed Costing*

Arrangements that require the licensee to provide the estimate of rehabilitation liability recognise that all competent mine operators will do this anyway as part of their financial management arrangements. If such an arrangement were introduced those that do not calculate their own liability would very quickly become aware of it when audited.

However, it is acknowledged that not all companies will possess the expertise to undertake this assessment accurately and that a consultant would be required. The creation of regulatory processes that enshrine the need for expensive consultants is one that the minerals industry universally avoids. A system that could work, however, is the use of peer reviewers to prepare a report to DNRE on behalf of the company.

Auditing of the estimate by DNRE Inspectors would ensure sound outcomes and reduce the workload required of the Department. Another alternative is for the DNRE Inspectors to be supplemented by using the EPA Accredited Environmental Auditors.

6.4 *Minimum Bond Amount*

Issue

- **Should a minimum bond for new operations be imposed?**

The minimum bond applied to exploration work is supported by the VMEC but not for mining sites. We believe that where mining is conducted the level of the bond should reflect the rehabilitation liability on a case-by-case basis.

6.5 *Other Methods*

Issues

- **Is there a need for more than one bond setting method? If so, why?**
- **Which of these bond setting methods are most suitable for mines and quarries in Victoria, and why?**
- **Are there other bond setting methods that could be applied for mines and quarries in Victoria? Please explain in detail.**

In determining the bond setting method we believe that rehabilitation bonds should:

- be applied in a consistent manner across all sites, irrespective of size or ability to pay;
- be sufficient to cover the cost of rehabilitation to the agreed plan at any point in time;
- be assessed on a site-by-site basis;
- encourage progressive rehabilitation;
- allow for unforeseen phenomena on a probabilistic basis; and
- be a secure financial instrument.

It is possible that more than one bond setting method is applied in Victoria. However, the above principles including those of consistency and the ability to cover the liability should apply.

Other bond setting methods include the appointment of accredited private assessors and auditors such as applies to contaminated sites under the EPA in Victoria. If the above principles can be achieved then methods other than a case-by-case analysis by the Inspectorate or an estimate supplied by the licensee and audited by the Inspectorate would be appropriate.

7 BOND REVIEWS

Issues

- **Is there a need to change the current triggers or timing for the undertaking of a bond review?**
- **What additional triggers or other situations should be considered?**

The VMEC believes that there is a need to be flexible with the timing of bond reviews. The current system of 3 to 5 yearly reviews does not accommodate the need to cover changing circumstances and liabilities. We draw the similarity with the Corporations Act requirement to continuously disclose all relevant information.

We believe that a review should be called if the liability increases beyond the agreed plan or if progressive rehabilitation is done to dramatically reduce the liability. DNRE or the licensee should be permitted to initiate a review.

This matter is particularly important at start up when the liability is growing and so too should the bond (rather than be set at the maximum level from the start); and at project completion when access to the cash supporting the bond is required to enable the final rehabilitation work to be undertaken.

For larger, longer term mines progressive bond reductions to reflect rehabilitation already completed to the agreed standard will act to encourage further early rehabilitation.

8 BOND ASSESSMENTS

Issues

- **Should the responsibility for carrying out bond assessments lie with the Department, industry or any other party, and why?**
- **Which of the above options are most suitable for Victoria, and why?**
- **Are there other options that need to be considered? Please explain in detail.**

As mentioned above it is appropriate for licensees to provide an estimate of the rehabilitation liability and for the Inspectorate to audit this estimate. This is the system favoured by the members of VMEC.

Whilst not favoured, it is acknowledged that it would be possible to use accredited auditors to assess and review rehabilitation bonds. In such a situation it would be appropriate for company personnel as well as consultants to be trained and accredited by the Inspectorate to undertake the task. If this approach were taken we would also insist that DNRE Inspectors were also similarly trained and accredited.

On another but related matter we make the point that if a company were to fail and DNRE were to assume responsibility for the rehabilitation of the site we would expect the bond money to be used to rehabilitate the site to the plan agreed with the company, not a lesser or variation to the plan.

9 CONCLUSION

The Council is supportive of the need to review the current bond system. The system is in need of change to ensure that it appropriately delivers the security the community requires and solves the numerous problems miners have. We congratulate DNRE on the initiative to review the rehabilitation bond arrangements.

Some of the problems that our members have had with the current bond system include the following:

1. Poor records that have resulted in the incorrect release of bonds to people other than the current owners of the project.
2. A process that encourages small miners to walk away at the conclusion of a project and leave it to DNRE to use the bond money to hire a contractor to do the rehabilitation.
3. Inability of miners to access cash held to cover the bank guarantee when mining is completed and final rehabilitation work is required. That is, cash required to cover the bond is not available to be used by the miner to undertake the rehabilitation.
4. Problems between DNRE and miners in resolving appropriate rehabilitation expenditure priorities for the funds available.
5. Perceptions of inconsistent decisions by DNRE on bonds, manifest as requirements for impractical or unrealistic rehabilitation objectives whilst at other times there have been examples of inadequate rehabilitation objectives and inadequate bonds.
6. Lengthy delays between bond forfeiture and undertaking of rehabilitation work by DNRE. We note that DNRE are able to take their time whereas reputable companies can't.
7. The inability of some large, long life mines to secure 'open-ended' bank guarantees secured by assets.
8. The current method of setting bonds to cover the maximum disturbance projected for the approved stage of the mine grossly overstates the actual liability at all but the maximum exposure stage.

The Council's objective on the financial provisions for mine closure is to ensure the cost of closure, including rehabilitation, is adequately represented in company accounts and that the community is not left with a liability. The Council's principles for the financial provisions for mine closure are as follows:

1. A **cost estimate** for closure should be developed from the mine development and closure plan.
2. Closure cost estimates should be **reviewed regularly** to reflect changing circumstances.
3. The **financial provision** for closure should reflect the residual cost.
4. **Accepted accounting standards** should be the basis for the financial provision.
5. **Adequate securities** should protect the community from closure liabilities.

The members of VMEC believe strongly that there should not be a fundamentally different bond system for mines and quarries. In all cases the bond should be sufficient to cover the cost of rehabilitation to the agreed plan.

Also, we do not believe that there should be different bonds related to different land status such as private land and Crown land. Again the principle of the bond being sufficient to cover the liability must apply.

We are not aware of financial instruments other than bonds that would provide the security that the Government requires and also encourage good environmental performance and progressive rehabilitation. Bonds usually take the form of bank guarantees, insurance bonds or other instruments that provide financial security.

We believe that an agreed set of completion criteria is required for all projects to satisfy the rehabilitation obligations and release of bonds. Such criteria would provide assurance to both the Inspectorate and the miner.

We do not support the idea of an industry based insurance scheme or insurance fund to cover the aggregate liabilities of the industry. However, we have no particular difficulties with the use of insurance bonds secured by individual companies.

We do not believe that a levy system applied to mine or quarry operators to establish a rehabilitation fund is appropriate. The VMEC is most definitely not interested in administering such a fund for the minerals industry.

Members of the VMEC are supportive of the bank guarantee system as the most appropriate financial instrument for rehabilitation bonds. The ability to acquire the appropriate bank guarantee rests with the company. It is noted that bank guarantees are a commercial arrangement that is common in many business activities.

The use of cash deposited in a bank to cover the rehabilitation bond can work for small operators. However, a system is required to ensure that the cash remains available to cover the bond until released.

We believe that rehabilitation bonds should:

- be applied in a consistent manner across all sites, irrespective of size or ability to pay;
- be sufficient to cover the cost of rehabilitation to the agreed standard at any point in time;
- be assessed on a site-by-site basis;
- encourage progressive rehabilitation;
- allow for unforeseen phenomena on a probabilistic basis; and
- be a secure financial instrument.

It is possible that more than one bond setting method is applied in Victoria. However, the above principles including those of consistency and the ability to cover the liability should apply.

We believe that one of the fundamental principles used by DNRE to set a bond is flawed and a revision is required. This is, the administrative policy that requires

bonds to be set by calculating the cost of the works required to cover the maximum exposure case in the approved work plan. This is inappropriate, as it overstates the actual liability at all but the maximum exposure stage; makes little allowance for progressive rehabilitation; and does not accommodate early closure scenarios. The rehabilitation bond setting process should be staged to accurately reflect the cost of meeting a staged rehabilitation plan that is both practical and realistic and flexible enough to accommodate early project completion or termination. We believe that the current bond setting policy is a gross disincentive to mining in Victoria. It is inappropriate to set the bond in accordance with the maximum exposure, as this could be 30 years or more hence.

VMEC believes that there is a need to be flexible with the timing of bond reviews. The current system of 3 to 5 yearly reviews does not accommodate the need to cover changing circumstances and liabilities. A review should be called if the liability increases beyond the agreed plan or if progressive rehabilitation is done to dramatically reduce the liability.