

OPERATIONAL REHABILITATION REFORMS

Frequently Asked Questions

September 2020

What are the operational rehabilitation reforms?

The NSW Resources Regulator, with support from Mining, Exploration and Geoscience (MEG), is making operational and regulatory improvements to rehabilitation planning and management on mine sites across NSW.

The key components of the reforms are:

1. New standard **mining lease conditions** for rehabilitation will replace rehabilitation conditions on existing mining leases and will be added to all new mining leases. These will require progressive rehabilitation, rehabilitation risk assessment, annual reporting and detailed rehabilitation management planning. The conditions will be implemented through amendments to the Mining Regulation 2016.
2. **Form and way** documents will identify the mandatory requirements for the preparation of rehabilitation management plans, rehabilitation objectives, rehabilitation completion criteria, final landform and rehabilitation plans, annual rehabilitation reports and forward programs.
3. **Guides** on risk assessments, records and rehabilitation controls will help lease holders comply with mining lease conditions.
4. **The [mine rehabilitation portal](#)** will collect rehabilitation GIS spatial data for large mining projects. This online portal will help mining companies and the Regulator to accurately record and track areas of disturbance and rehabilitation progress across individual sites.

The reforms will introduce robust regulatory mechanisms to ensure that progressive rehabilitation occurs and that sustainable post-mining land use outcomes are achieved.

Why are the reforms needed?

Although progressive rehabilitation is already an obligation in mining lease conditions, and increasingly in development consents, there is a need for stronger obligations for progressive rehabilitation of mine sites, starting early in a mine's life cycle.

The reforms include strong regulatory tools and set clear requirements for progressive rehabilitation, from the mine design stage to closure. The reforms also allow for rehabilitation strategies and measures to demonstrate continuous improvement, as rehabilitation data and capabilities increase over time.

The new conditions will standardise rehabilitation requirements across the mining industry, increase the transparency of rehabilitation planning and progress, improve our ability to monitor how rehabilitation is progressing over time, and increase our ability to take enforcement action against non-compliances.

The reforms will also make it easier for lease holders in NSW to comply with rehabilitation obligations on mining leases that have multiple, often complex and outdated conditions. The reforms will improve the industry's ability to monitor against, and comply with, their rehabilitation requirements by introducing rigorous and focused rehabilitation conditions on a mining lease.

Introducing the conditions by regulation will ensure that all mining leases have the same rehabilitation conditions across larger mine sites where multiple leases are held. Furthermore, all mines in NSW will have the same rehabilitation conditions, making the operating environment for industry fair and equitable across the state.

How is mine rehabilitation regulated?

Rehabilitation is a critical element of mining operations in NSW. Before mining operations start, development consent is required from the relevant consent authority under the *Environmental Planning and Assessment Act 1979*. The mine design and final land use, which includes the final landforms and rehabilitation requirements, is assessed and approved as part of the development consent.

After a development consent has been issued, a mining lease (which provides the right to mine) may be granted under the *Mining Act 1992*. Rehabilitation conditions consistent with the development consent are attached to all mining leases.

The Regulator is responsible for the regulation of mine rehabilitation under a mining lease.

Why are the mining lease conditions changing?

Mining lease conditions are our main tool for regulating rehabilitation under the *Mining Act 1992*.

Changes to the conditions of mining leases are needed to:

- achieve better quality progressive rehabilitation throughout the life of mining operations
- improve clarity and enforceability for:
 - progressive rehabilitation
 - rehabilitation risk assessment and risk management
 - rehabilitation record keeping.
- improve monitoring and increase the achievement of final rehabilitation outcomes.

One of the main changes is to replace the existing mining operations plan (MOP) with a targeted rehabilitation management plan (RMP) for large mines. The lease holder will provide the annual reporting and scheduling of rehabilitation in an annual rehabilitation report and forward program. This will replace the annual environmental management report.

Why is a condition for progressive rehabilitation needed?

One key aim of the reforms is to ensure the site is rehabilitated progressively throughout the life of a mine. Progressive rehabilitation demonstrates that the lease holder is on the trajectory to achieving the final land use. It also reduces the overall liability for rehabilitation works, enables the lease holder to test and improve rehabilitation practices and increases the likelihood of achieving successful and timely rehabilitation outcomes.

Applying the new conditions to all mining leases means there is an explicit obligation to progressively rehabilitate in all NSW mining operations. This is important because older mining leases do not currently have an explicit condition requiring progressive rehabilitation.

We will monitor the mine's progressive rehabilitation annually, verifying progress using the submitted annual rehabilitation report and forward program.

The reforms enable us to review whether a lease holder is progressively rehabilitating their mining operations in accordance with the commitments made within the rehabilitation management plan and forward program.

The framework also provides flexibility for mining operations that have been affected by unforeseen circumstances, such as drought, which may cause delays in the planned rehabilitation schedule and/or rehabilitation success. The reforms require lease holders to submit a three-year forward program for rehabilitation, which must be updated each year. This will let lease holders adjust their rehabilitation program and methodology, in response to advances in rehabilitation techniques, outcomes from monitoring and trials and unfavourable conditions, as well as address areas that may require follow-up work, such as reseeded or fertilising.

How will the reforms be implemented?

Each mining lease for a mining operation may have different rehabilitation and environmental management conditions. For consistency, the new conditions will be introduced through amendments to the Mining Regulation 2016, so the new requirements apply to all mining leases. The changes aim to simplify, reform and modernise the existing regulatory approach for mining lease conditions in NSW, which reflects the NSW Government's commitment to good practice regulation.

When will the new conditions apply?

Transitional arrangements for existing mines will allow time for lease holders to prepare for the new requirements. The conditions and new requirements in the Regulation will apply to all mining leases:

- for existing large mines - 12 months from the date that the regulation is made
- for small existing mines - 24 months from the date that the regulation is made
- for any other mining lease on the date the lease is granted.

Will a new mining lease instrument be issued?

A mining lease under the *Mining Act 1992* is required for all mines in NSW. Like development consents, mining leases are granted subject to conditions which set out obligations on the titleholder in respect of the mine's operation. For older mining leases, the conditions imposed on the lease may be outdated, duplicative or vague. These reforms provide an opportunity to remove or update such conditions, and provide industry with a streamlined mining lease, ensuring conditions are consistent across NSW.

Following the commencement of the amended Regulation, the Department will review the conditions on every mining lease and re-issue mining lease instruments for approximately 1000 mining leases. The reforms will introduce a streamlined set of standard conditions for all mining leases. The imposition of

standard, streamlined mining lease conditions in the Regulation ensures a transparent and consistent approach for the whole of the NSW mining industry.

What is the variation process?

To create a streamlined instrument, MEG will vary existing mining leases through the process outlined by Schedule 1B Clause 12 of the Mining Act 1992.

For each mining lease in NSW, MEG will:

- Review the conditions and identify those no longer required and any “special conditions” that must remain.
- Prepare a draft revised instrument.
- Provide the draft revised instrument to the leaseholder and invite them to make a submission to the decision-maker about the proposed variation within a specified deadline of at least 28 days.
- Consider any submission received and provide a final recommendation to the decision-maker, who would then approve or refuse the proposed variation.

If the decision-maker approves the variation, MEG will issue the new, streamlined instrument to the lease holder. The varied conditions will commence on the day that the new conditions in the amended Regulation become effective.

What is form and way?

The new mining lease conditions require certain documents to be provided in the form and way approved by the Secretary. The form and way documents outline the mandatory requirements for the structure, format and content of:

- a **rehabilitation management plan** (for large mines)
- an **annual rehabilitation report and forward program** (for large mines)
- an **annual rehabilitation report and forward program** (for small mines)
- **rehabilitation objectives, rehabilitation completion criteria and final landform and rehabilitation plan** (for large mines)
- **rehabilitation objectives, rehabilitation completion criteria** (for small mines).

Certain requirements apply to large mines only and form and way documents are specific to either large mines or small mines. This ensures that lease holders provide appropriate levels of rehabilitation information, based on the size and complexity of the operation, as well as the risks to rehabilitation.

Large mines are required to provide more information, proportionate with the higher level of planning required for rehabilitation activities in these mines. Detailed rehabilitation planning information, aligned with spatial information provided through the mine rehabilitation portal, will enable us to monitor the progress of rehabilitation and planning for future rehabilitation activities to achieve the final land use.

Small mines require targeted information to prompt lease holders to consider rehabilitation planning throughout the life cycle of their operations.

We will release guidance material to help lease holders to understand their obligations to progressively rehabilitate.

What is the difference between a large mine and a small mine?

The reforms classify mines as follows:

- a large mine is a mine the subject of one or more mining leases which require an environment protection licence under the *Protection of the Environment Operations Act 1997* for activities on the lease
- small mines are mines where no leases require an environment protection licence under the *Protection of the Environment Operations Act 1997* for activities.

We recognise that rehabilitation activities and the level of rehabilitation planning varies between large and small mine operations. Lease holders of small mines will have an additional 12 months to prepare for the new requirements.

What is required in a rehabilitation management plan?

A rehabilitation management plan, prepared in the approved form and way, will define the objective target levels and standards that, when achieved, will demonstrate success of rehabilitation and the final land use. It will identify how areas on the mine site will progress through the phases of rehabilitation. In addition, the rehabilitation management plan allows for monitoring and corrective action by the lease holder, if performance outcomes are not being achieved. A rehabilitation management plan is only required for large mines.

The RMP is made up of the following components:

1. Rehabilitation objectives and rehabilitation completion criteria approved by the Secretary of the Department.
2. Final landform and rehabilitation plan, approved by the Secretary of the Department.
3. Rehabilitation planning information that demonstrates how the rehabilitation objectives and completion criteria will be met.

What are the risk assessment requirements?

The reforms require the lease holder to conduct a rehabilitation risk assessment. The lease holder must identify and evaluate all potential risks to achieving the rehabilitation objectives, rehabilitation completion criteria and, for large mines, a final landform and rehabilitation plan. The lease holder must also outline the specific measures that will be implemented to minimise and mitigate those risks. For all mines, the rehabilitation risk assessment will inform the forward program. For large mines, the results of the rehabilitation risk assessment will also inform the rehabilitation management plan.

If a risk assessment has not been conducted or is found to be lacking, regulatory action using enforcement powers would be taken to ensure that the risk assessment is amended to address the issues we have identified.

Lease holders do not need to submit the rehabilitation risk assessment to the Secretary for approval. However, lease holders must keep appropriate records that document the rehabilitation risk assessment, including how it has been reviewed and updated over the life of the operation. Guidance will be prepared to assist lease holders to comply with their rehabilitation risk assessments obligations.

What is the purpose of the annual rehabilitation report and forward program?

The annual rehabilitation report and forward program consists of two components: the annual rehabilitation report and a forward program. These documents are submitted to us and enable us to review whether a lease holder is progressively rehabilitating their mining operations in accordance with the commitments made within the rehabilitation management plan and forward program.

The annual rehabilitation report must:

- report the rehabilitation carried out on the land during the previous 12-month period

- provide data and information on rehabilitation, to allow us to assess whether the land is being progressively rehabilitated and is on a path towards meeting the approved rehabilitation objectives, completion criteria and final land use.

The forward program must:

- specify all rehabilitation, monitoring and related activities to be carried out on the land for the next three years
- detail the spatial progression of rehabilitation (rehabilitation phase) in the next three-year term.

Separate form and way requirements for annual rehabilitation report and forward program will apply to large mines and small mines.

How will the new reporting requirements relate to reporting requirements for state-significant mines?

Mines that are state significant are required by their development consent to submit a compliance and performance report, called an annual review, every year.

The annual rehabilitation report and forward program has been designed so a state-significant mine can choose to submit it as an appendix to the annual review. This aims to avoid duplicating reporting requirements under the mining lease and the development consent. Lease holders will continue to be able to apply to the Secretary to align the reporting date of the annual rehabilitation report and forward program, with the annual reporting requirements of its consent and other regulators. Lease holders seeking to align these separate reporting requirements must ensure that all relevant regulators are satisfied with the adequacy and scope of information provided in the annual rehabilitation report and forward program.

What documents will I need to lodge?

Lease holders will be required to prepare and submit to the Secretary the following for approval:

- rehabilitation objectives
- rehabilitation completion criteria
- final landform and rehabilitation plan (for large mines only).

Lease holders will also be required to prepare and submit to the Secretary an annual rehabilitation report and forward program. We will use this to determine whether the mine is being progressively rehabilitated and is on a path towards meeting the approved rehabilitation objectives, completion criteria and final land use.

Lease holders will not be required to submit the rehabilitation management plan to the Secretary, however, will be required to make this plan readily available, to both us and the community, by publishing on their website or making a copy available upon written request.

When does a rehabilitation cost estimate need to be submitted?

We use the rehabilitation cost estimate to help determine the amount of security deposit. Under the regulation, the rehabilitation cost estimate is an estimate of the rehabilitation costs in relation to any land or water, prepared and calculated in accordance with guidelines approved by the Secretary.

A rehabilitation cost estimate is required under the regulation as prescribed information in the following circumstances:

- renewal of exploration licence
- renewal of assessment leases
- renewal of mining leases
- transfer of authorities.

In addition to the existing regulatory requirements set out above, under the new arrangements, lease holders will be required to:

- submit a rehabilitation cost estimate when the security deposit required under the mining lease is more than the prescribed minimum deposit
- validate the security amount annually, as part of the annual rehabilitation report and forward program
- resubmit a rehabilitation cost estimate when the cost of rehabilitation exceeds the security amount and when a potential change in rehabilitation liability occurs
- resubmit a rehabilitation cost estimate as directed by the Secretary.

Following an assessment, if the rehabilitation cost estimate is determined to be inadequate, it will be rejected and either the lease holder will be asked to submit a revised rehabilitation cost estimate, or the Department will determine the security amount.

The *ESG1 Rehabilitation cost estimate guidelines* will be updated to reflect this new approach.

What guidance is available to help comply with the new requirements?

New guidelines will be prepared to help industry in relation to rehabilitation risk assessments, rehabilitation records and rehabilitation controls. These guidelines were the subject of consultation with the mining industry in 2018 and will be finalised prior to the commencement of the regulation and published on our website.

What is the new mine rehabilitation portal?

The mine rehabilitation portal is an online tool that helps collect rehabilitation spatial data into a centralised geo-database. The portal will help the NSW Government to monitor and regulate rehabilitation requirements for mining activities.

Lease holders will be able to use the portal to accurately record and track areas of disturbance and check rehabilitation progress across individual sites.

Lease holders will be required to submit rehabilitation spatial information associated with existing mining operations plans and annual environmental management reports (and future rehabilitation management plans and annual rehabilitation report and forward programs under the new mining lease conditions).

When will the new mine rehabilitation portal be available?

The mine rehabilitation portal is available for lease holders to submit spatial data however submission requirements will be linked to the transition arrangements and implementation of the reforms. More information will be made available to Industry following consultation on the draft Regulation.

Is there any guidance about the mine rehabilitation portal?

Guidance will be prepared to assist industry in relation to the mine rehabilitation portal, including information about the mine rehabilitation portal and account registration and our requirements for the format of spatial data to be submitted via the portal.

How often does spatial data need to be submitted?

Spatial themes will be submitted as part of the following documents:

- Rehabilitation management plan
- Annual rehabilitation program and forward program.

Table 1: Submission requirements for each spatial data theme

Theme name	SUBMISSION REQUIREMENTS
<ul style="list-style-type: none"> ■ Rehabilitation ■ Disturbance ■ Forecast data year 1 ■ Forecast data year 2 ■ Forecast data year 3 ■ Current landform contours 	Annually - aligned with annual rehabilitation report and forward program reporting requirements
<ul style="list-style-type: none"> ■ Final land use ■ Final landform features ■ Final landform contours ■ Project approval boundary 	Required with rehabilitation management plan submission

Will rehabilitation data be made public?

Yes. The NSW Government is committed to ensuring the community has access to reliable information about the environment. Making this data public will inform the community about rehabilitation progress on mine sites and future final land use and landform for the mines.

Individuals will be able to view data on a mine operator’s rehabilitation progress via the NSW Government’s Sharing and Enabling Environmental Data Portal (SEED) portal.

Table 2: Data themes, symbology and attribute information available for viewing in SEED

THEME NAME	SYMBOLGY	ATTIBUTE INFORMATION SHARED
Rehabilitation	Rehabilitation phase: decommissioning, landform establishment, growth media development, ecosystem and land use establishment, ecosystem and land use development and relinquishment.	All mandatory attribute fields
Disturbance	Mining domain type: infrastructure area, tailings storage facility, water management area, overburden emplacement area, active mining area (open cut void), underground mining area (SMP), beneficiation facility, other.	All mandatory attribute fields
Final land use	Final land use domain type: native ecosystem, agricultural – grazing, agricultural – cropping, rehabilitation biodiversity offset area, industrial, water management areas, water storage (excluding final void), heritage area, infrastructure, final void, other.	All mandatory attribute fields
Final landform contours	Contour height (metres Australian Height Datum).	All mandatory attribute fields

How do the new requirements relate to a mine’s development consent?

The development consent sets out the mine design and the end goal for rehabilitation, including the rehabilitation objectives, rehabilitation scheduling, final land use and final landforms. The rehabilitation management plan required under the mining lease conditions must be consistent with the relevant development consent. To ensure consistency, the rehabilitation management plan must reference and incorporate all rehabilitation requirements set out in the development consent, and any rehabilitation objectives and completion criteria, landform design and land capability requirements.

Where there is an inconsistency between the rehabilitation management plan and the development consent, the lease holder will be required to amend the rehabilitation management plan to be consistent with the development consent.

Should the lease holder wish to modify an aspect of the relevant development consent, the lease holder must approach the relevant consent authority with this request. Any modification to the development consent will require assessment and approval under the *Environmental Planning and Assessment Act 1979*. The lease holder will be required to notify the Secretary if an application is made for a development consent that related to the mining area or if an application for modification is made that relates to rehabilitation of the mining area.

Consultation

As the amendments to the Mining Regulation 2016 introduce new conditions for mining leases, we invite stakeholders to review the proposed amendments to the Mining Regulation and make any comments or submissions. We will consult on the content of the draft regulation only, as extensive consultation on the guidelines has already taken place.

You are invited to submit your comments or submissions on the draft regulation at the [‘Have Your Say’ website](#).

Previous consultation

We consulted with key government agencies in 2017 and 2018. Stakeholder consultation with mining lease holders, agents, industry groups and not-for-profit community groups on the proposed reforms occurred between August and October 2018. The stakeholder feedback received was taken into consideration when finalising the proposed key components of the reforms to:

- present a framework for achieving improvements in rehabilitation compliance and outcomes under the *Mining Act 1992*
- produce conditions that set clear, achievable and enforceable requirements for rehabilitation
- reduce barriers to industry being able to adopt and implement the new approach.

Will further information be provided?

Yes. To explain the new requirements and to discuss the transitional arrangements, we will offer a webinar for lease holders. Further details will be posted on our [website](#). For further information contact us at rr.feedback@planning.nsw.gov.au or 1300 814 609.

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