

# Frequently asked questions

## New standard rehabilitation conditions on mining leases – implementation for small mines

August 2024

### New standard rehabilitation conditions on mining leases

The NSW Government has introduced new standard rehabilitation and reporting conditions on mining leases to set clear, achievable and enforceable requirements for rehabilitation across mine sites in NSW. These conditions are set out in [Schedule 8A of the Mining Regulation 2016](#).

The new conditions applied to **small mines** from 2 July 2023.

A small mine is defined as one which does not require an environment protection licence under the *Protection of the Environment Operations Act 1997*.

The purpose of these Frequently Asked Questions is to assist small mines to navigate the implementation process.

Further details and guidance on the new standard rehabilitation conditions on mining leases can be found on the Resources Regulator's [website](#).

### What are the changes and why?

The new standard conditions on mining leases are set out in [Schedule 8A of the Mining Regulation 2016](#). The changes introduce regulatory tools and set clear requirements for rehabilitation throughout a mine's life, from the mine design stage through to closure.

Holders of mining leases are required to:

- prevent or minimise harm to the environment
- rehabilitate land and water as soon as reasonably practicable after disturbance occurs
- achieve the approved final land use for the mining area as set out in the:
  - rehabilitation objectives statement
  - rehabilitation completion criteria statement
- undertake a rehabilitation risk assessment and implement measures to eliminate, minimise or mitigate risks to achieving the final land use
- prepare an annual rehabilitation report which describes the progress of rehabilitation over the annual reporting period

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- prepare a forward program (including a rehabilitation cost estimate) which includes the schedule of mining and rehabilitation activities for the next three years demonstrating how rehabilitation will occur as soon as reasonably practicable after disturbance.

The changes aim to simplify, reform and improve regulatory mechanisms for mining leases in NSW to ensure that progressive rehabilitation occurs and that sustainable post-mining land use outcomes are achieved in line with the NSW governments commitment to good practice.

### When did the new conditions apply?

The new standard conditions outlined in Schedule 8A of the Mining Regulation 2016 were applied to existing **small mines** from 2 July 2023 (24 months from the date the Regulation commenced).

In addition, to create a streamlined mining lease instrument, the department varied existing mining leases through the process outlined by Schedule 1B, Clause 12 of the *Mining Act 1992*. Each small mine should now have received a streamlined mining lease instrument(s). These varied conditions commenced on the date specified in the varied mining lease instrument(s). The number of conditions on most mining leases has been reduced substantially as part of the variation process.

### What documents and notifications do I need to submit?

All documents and notifications are lodged online via the [Resources Regulator Portal](#). Lease holders are required to prepare and submit the following to the Secretary (*Note: the abbreviation in brackets next to each item relates to the name of the online form in the Resources Regulator Portal*).

- register the mine/mining lease(s) that make up the mine (TICON)
- nominated contact person (NCP)
- amend reporting/submission dates/extension requests (ARD)<sup>1</sup>
- rehabilitation objectives statement (ROBJ)
- rehabilitation completion criteria statement (RCC)
- forward program (FWP) and rehabilitation cost estimate (RCE)
- annual rehabilitation report (ARR).

The rehabilitation objectives statement and the rehabilitation criteria statement are the only documents that are assessed and approved/refused by the Secretary.

The forward program and annual rehabilitation report are not approved by the Secretary.

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<sup>1</sup> All mines should lodge an ARD. This will ensure that the annual reporting period and the annual submission date of the forward program and annual rehabilitation report are accurately recorded for both the mine and the Regulator.

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### How and when do I need to lodge documents and notifications?

All documents and notifications must be lodged online via the [Resources Regulator Portal](#).

**The following documents and notifications need to be submitted prior to 31 July 2023<sup>2</sup>**

- register the mine/mining lease(s) that make up the mine (TICON)
- nominated contact person (NCP)
- amend reporting/submission dates/extension requests (ARD).

**The following documents and notifications need to be submitted prior to 1 March 2024<sup>3</sup>.**

- rehabilitation objectives statement (ROBJ)
- rehabilitation completion criteria statement (RCC)<sup>4</sup> – can only be lodged once the ROBJ is approved.
- forward program (FWP) and rehabilitation cost estimate (RCE)

#### What about the annual rehabilitation report (ARR)?

The annual rehabilitation report is only due no later than 60 days after the last day of each annual reporting period. The ‘annual reporting period’ means each period of 12 months commencing on:

- the date on which the mining lease is granted, or
- another date approved by the Secretary (Note: applications to amend this date must be made using the ‘Amend reporting/submission dates/extension requests’ (ARD) online form in the Resources Regulator Portal).

#### Holders of mining leases need to register within the Resources Regulator Portal

To enable compliance with the new standard conditions in relation to the submission of documents and notifications, holders of mining leases must complete the following steps:

- If you are not already registered as a mine operator/title holder in the Resources Regulator Portal please send an email to [nswresourcesregulator@service-now.com](mailto:nswresourcesregulator@service-now.com) and request to register as an authorised user in the Resources Regulator Portal. If you are not the holder of the mining lease(s), you will need to attach a letter of authorisation from the mining lease holder (e.g., the company Director).

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<sup>2</sup> Refer to clause 19(2) of Schedule 8A of the Mining Regulation 2016.

<sup>3</sup> The Secretary has written to holders of small mine leases and extended the end of the initial period to 1 March 2024 [clause 15(8)(a) of Schedule 8A of the Mining Regulation 2016].

<sup>4</sup> Note that pursuant to clause 15(3) of the Mining Regulation 2016, final rehabilitation completion criteria are only required to be submitted no later than the due date of the forward program that covers a period which includes completion of rehabilitation.

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- register your mine and all the mining leases that make up the mine (TICON)
- nominate a contact person (NCP)
- confirm your reporting and submission dates (use the ARD form to do this).

The Portal requires each holder of a mining lease to nominate one or more individuals to have access to the online portal. These users will be authorised to make submissions and applications on behalf of the titleholder – and are required to register using the titleholder’s unique QR Code. Registered users will only be given access to *Mining Act 1992* related matters. Registered users will be taken to be an Authorised Representative of the titleholder. Consultants will require an email from the titleholder representative to enable the approval process.

### Troubleshooting issues with online forms within the Resources Regulator Portal

- If you do not have your titleholder’s QR code or require assistance, please contact us by emailing [nswresourcesregulator@service-now.com](mailto:nswresourcesregulator@service-now.com) or calling 1300 814 609 (option 2, then 5).
- Titleholders should note that the application to ‘Register a Mine/Treat one or more mining leases as a single lease’ (TICON) will be assessed by the Resources Regulator before approval. Once approved, the applicant will be notified by email and the registered mine will be available in the drop-down list for all subsequent forms relating to the Rehabilitation Reforms. Please wait until you have received this approval email before preparing subsequent forms.
- If in attempting to complete the application ‘Register a Mine/Treat one or more mining leases as a single lease’ it is found that a mine name or title number is not appearing in the drop-down fields please email the Resources Regulator at [nswresourcesregulator@service-now.com](mailto:nswresourcesregulator@service-now.com). In the email we ask that you include the mine name and information that is missing so that we can assist in determining what is the cause of this error.
- If you are proposing to lodge an ARD application to amend your reporting period, you will need to select a reporting **commencement** date for the 12 months period in 2023 to ensure that the system identifies that the first annual rehabilitation report will be due in 2024<sup>5</sup> (i.e. within the annual reporting period in which the first Forward Program was submitted before the end of the initial period, being 1 March 2024).

### What is ‘form and way’?

The term ‘form and way’ is used in various parts in Schedule 8A of the Mining Regulation 2016. The term ‘form’ relates to the mandatory requirements for the structure, format and content of a document. The term ‘way’ refers to how that document is submitted to the Secretary.

The new mining lease conditions require the following documents to be provided in the ‘form and way’ approved by the Secretary:

- rehabilitation objectives statement
- rehabilitation completion criteria statement

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<sup>5</sup> The due date of some annual rehabilitation reports may be in early 2025. For example if the end of the reporting period is 20 November 2024, then the due date will be 60 days after the last day of the annual reporting period (i.e. 19 January 2025) – refer to clause 15(2)(a) in Schedule 8A.

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- forward program (including a rehabilitation cost estimate)
- annual rehabilitation report

Preparing and submitting the relevant documents online via the Resources Regulator Portal satisfies both the ‘form and way’ requirements.

### When do I need to have documents published?

Mines are required to publish the following documents on their website:

- forward program (including the rehabilitation cost estimate summary report lodged with the forward program) – within 14 days after it is submitted to the Regulator or amended, noting that it must be submitted before the end of the initial period (1 March 2024)
- annual rehabilitation report – within 14 days after it is submitted to the Regulator or amended.

If the mine does not have a website, then they will be required to provide a copy within 14 days to any person who requests a copy.

Once you have submitted your forward program or annual rehabilitation report via the Resources Regulator Portal, you will be provided with a PDF copy suitable for publication<sup>6</sup>.

### When does a rehabilitation cost estimate need to be submitted?

Lease holders are required to:

- submit a rehabilitation cost estimate as part of the forward program - including the first forward program to be submitted before the end of the initial period (1 March 2024)
- resubmit a rehabilitation cost estimate when directed by the Secretary.

The rehabilitation cost estimate is lodged online via the [Resources Regulator Portal](#).

The department uses the rehabilitation cost estimate to help determine the amount of the security deposit held for each mine. The rehabilitation cost estimate is an estimate of the rehabilitation costs in relation to any land or water, prepared and calculated in accordance with [Guideline: Rehabilitation Cost Estimate](#).

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 Secretary will determine the security amount.

### What about the rehabilitation risk assessment?

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<sup>6</sup> This will not include the rehabilitation cost estimate submitted with the forward program. Lease holders will be required to also publish a summary of the rehabilitation cost estimate. Lease holders can use the ‘Summary Report’ tab in the Rehabilitation Cost Estimation Tool for this purpose.

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Clause 7 in Schedule 8A requires all lease holders to prepare a rehabilitation risk assessment and implement the identified risk control measures. Lease holders must:

- conduct a rehabilitation risk assessment pursuant to the provisions of clause 7 in Schedule 8A of the Regulation
- use Guideline: Rehabilitation risk assessment (NSW Resources Regulator, July 2021) to identify and evaluate the potential risks to achieving the final land use
- use Guideline: Rehabilitation controls (NSW Resources Regulator, July 2021) to identify and evaluate the rehabilitation risk control measures that should be considered and implemented to eliminate, minimise or mitigate the risks to achieving the final land use
- keep appropriate records that document the rehabilitation risk assessment and risk control measures, including how it has been reviewed and updated (where relevant) – refer to Guideline: Rehabilitation records (NSW Resources Regulator, July 2021)
- implement a process for the rehabilitation risk assessment to be evaluated over the term of the mining lease to ensure the continued effectiveness of the risk control measures.

Lease holders do not need to submit the rehabilitation risk assessment to the department.

### What guidance is there?

There is a range of guidance material and fact sheets on our [website](#) including:

- Guideline: Rehabilitation risk assessment
- Guideline: Rehabilitation records
- Guideline: Rehabilitation controls
- Guideline: Rehabilitation objectives and rehabilitation completion criteria
- Guideline: Achieving rehabilitation completion (sign-off).

### When is my first forward program due and what period does it cover?

The first forward program is due to be submitted to the Secretary (Regulator) before the end of the initial period as per clause 15(1)(c) – being **before** 1 March 2024<sup>7</sup>.

As an example, if the first forward program is submitted to the Secretary on the 15 February 2024 then the first forward program will represent a 3 year period commencing on 15 February 2024.

- Year 1 (15 February 2024 – 14 February 2025)
- Year 2 (15 February 2025 – 14 February 2026)

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<sup>7</sup> The Secretary has written to holders of small mine leases and extended the end of the initial period to 1 March 2024 [clause 15(8)(a) of Schedule 8A of the Mining Regulation 2016].

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- Year 3 (15 February 2026 – 14 February 2027).

### What is my annual rehabilitation report period and date and how will this align with the forward program period?

Clause 13(5) defines the annual reporting period as the period commencing on the date on which the mining lease is granted, or as otherwise approved by the Secretary.

As per clause 15(2)(a), the first annual rehabilitation report is to be submitted to the Secretary prior to 60 days, after the last day of the annual reporting period (as defined by clause 13(5) of the regulation), commencing with the annual reporting period in which the forward program was given to the Secretary under subclause 15(1)(c).

The subsequent forward program that is submitted with the annual rehabilitation report in accordance with clause 15(2) will be representative of the next 3 years aligned to the annual reporting period as per clause 13(5) of the regulation.

#### **EXAMPLE 1:**

The grant anniversary date of a lease is 31 January (i.e. a date that is ‘before’ the end of the 1 March 2024 initial period) then:

- the first forward program will be due sometime prior to the end of the initial period (i.e. before 1 March 2024).
- the first annual rehabilitation report will be due no later than 30 March 2025 (i.e. before 60 days after the last day of the annual reporting period as being set from the grant anniversary date). As such the first annual rehabilitation report will be representative of the period from 31 January 2024 to 30 January 2025.
- the accompanying forward program (being the second forward program submitted under the new Regulation) will also be due not later than 30 March 2025. The forward program will realign with the annual reporting and will represent a 3 year period commencing on 31 January 2025:
  - Year 1 (31 January 2025 – 30 January 2026)
  - Year 2 (31 January 2026 – 30 January 2027)
  - Year 3 (31 January 2027 – 30 January 2028).

#### **EXAMPLE 2:**

The grant anniversary date of a lease is 15 April (i.e. a date that is ‘after’ the end of the 1 March 2024 initial period) then:

- the first forward program will be due sometime prior to the end of the initial period (i.e. before 1 March 2024).
- the first annual rehabilitation report will be due no later than 14 June 2024 (i.e. before 60 days after the last day of the annual reporting period as being set from the grant anniversary date). As such the first annual rehabilitation report will be representative of the period from the 15 April 2023 to 14 April 2024



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- the accompanying forward program (being the second forward program submitted under the new Regulation) will also be due not later than 14 June 2024. The forward program will realign with the annual reporting and will represent a 3 year period commencing on 15 April 2024:
  - Year 1 (15 April 2024 – 14 April 2025)
  - Year 2 (15 April 2025 – 14 April 2026)
  - Year 3 (15 April 2026 – 14 April 2027).

**Important Note for Example 2:** To avoid having to lodge the first forward program sometime before 1 March 2024 (i.e. before the ‘initial period’) and then having to lodge a second forward program (and annual rehabilitation report) shortly after (i.e. prior to 14 June 2024), a lease holder may wish to:

- lodge an application to extend the initial period to beyond 1 March 2024 (e.g. an extension until 15 April 2024) - [Note: Applications to amend these dates and reporting periods are made online via the Resources Regulator Portal using the Amend Reporting/Submission Dates and Extension Request form (ARD)].
- only lodge one forward program in 2024 (i.e. on or before 14 June 2024 - being before 60 days after the last day of the annual reporting period as being set from the grant anniversary date). The forward program will realign with the annual reporting and will represent a 3 year period commencing on 15 April 2024:
  - Year 1 (15 April 2024 – 14 April 2025)
  - Year 2 (15 April 2025 – 14 April 2026)
  - Year 3 (15 April 2026 – 14 April 2027).
- lodge the first annual rehabilitation report on or before 14 June 2025 - being before 60 days after the last day of the annual reporting period as being set from the grant anniversary date). As such the first annual rehabilitation report will be representative of the period from the 15 April 2024 to 14 April 2025

**(Note: The Regulator will not approve an extension to the initial period beyond 30 June 2024, except under exceptional circumstances).**

## Can reporting and submission dates be changed and under what circumstances?

Clause 15 in Schedule 8A to the Mining Regulation 2016 sets out the times at which holders of mining leases must prepare and give to the Secretary a range of rehabilitation documents. However, holders are able to apply to the Secretary to amend these dates and the relevant reporting periods as summarised below:

- extend the initial period when the holder is required to do the following pursuant to clause 15(8):
  - prepare a rehabilitation objectives statement and give these to the Secretary for approval.
  - prepare a forward program and give it to the Secretary.
- amend the annual reporting period - clause 13(5),



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- amend the submission date of the forward program and annual rehabilitation report – clause 15(2).
- amend the submission date of providing updated rehabilitation outcome documents to the Secretary after a non-State significant development consent is modified - clause 15(4).

Applications to amend these dates and reporting periods are made online via the Resources Regulator Portal using the Amend Reporting/Submission Dates and Extension Request form (ARD).

Applications to amending dates/reporting periods are generally acceptable where titleholders seek to align their annual reporting period and submission dates associated with business reporting requirements.

**The Regulator will not approve an extension to the initial period beyond 30 June 2024, except under exceptional circumstances.**

## What if I do not have forecast data to submit for a particular year(s) required as part of the initial forward program submission?

There may be instances depending on the type of mining operation where there will be no forecast data in terms of disturbance and or rehabilitation for a part of, or entire, 3 year forward program period.

The titleholder will be required to provide details in the forward program on-line form to justify why there are no disturbance or rehabilitation activities proposed.

Please note that title holders will not be able to utilise the above process to delay rehabilitation. The Regulator will continue to assess a titleholder's rehabilitation obligations against Schedule 8A of the Mining Regulation 2016.

## How can I view a recording of the small mine workshop held by the Regulator?

The Resources Regulator held an online workshop for small mines in November 2023 which detailed the Resources Regulator Portal process and learn how the various documents can be lodged.

A Recording of this workshop can be viewed [here](#).

## How can I book an engagement session?

If you would like to organise a one-on-one briefing session for your team, please email [nswresourcesregulator@service-now.com](mailto:nswresourcesregulator@service-now.com) and a member of our unit will be in contact to arrange this.

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## Further information

Please visit our [website](#) for additional information.

Alternatively contact us at [nswresourcesregulator@service-now.com](mailto:nswresourcesregulator@service-now.com) or 1300 814 609 (option 2, then 5).

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