

Operational Rehabilitation – Compliance and reporting reforms – Key Components

1. What is the existing regulatory framework for mine site rehabilitation?

Rehabilitation is a critical element of mining operations in NSW and is principally regulated under the *Environmental Planning and Assessment Act 1979* and the *Mining Act 1992*.

Before commencing mining operations, development consent is required from the relevant consent authority under the *Environmental Planning and Assessment Act 1979*. The final land use post mining (which includes the final landforms and rehabilitation requirements) is assessed and approved as part of the development consent. These requirements of the development consent are regulated by either the local council (for non-State significant development) or the Planning Services Division within the Department (for State significant development).

Following the grant of development consent, a mining lease, which provides the right to mine, may be granted under the *Mining Act 1992*. Rehabilitation conditions, which are consistent with the development consent, are attached to all mining leases. The Resources Regulator within the Department is responsible for the regulation of mining operations (including rehabilitation) carried out under a mining lease granted under the *Mining Act 1992*.

2. What are the operational reforms?

The implementation of best-practice mine site rehabilitation is critical to ensuring NSW has a sustainable minerals industry. As the lead regulator for mine rehabilitation activities under the *Mining Act 1992*, the Resources Regulator within the Department of Planning and Environment is making a series of operational improvements (the Reforms).

The overall objective is to improve the regulatory mechanism for achieving best practice rehabilitation by improving the clarity and enforceability of mining lease conditions, and the quality of technical standards and guidance. These operational improvements apply throughout the mine life, reflecting the importance of rehabilitation from the mine design stage through to closure. The Reforms also recognise that rehabilitation strategies and management measures need to be dynamic with robust mechanisms that provide for continuous improvement as data and capability grow over time.

3. Why change the existing rehabilitation conditions of mining leases?

The conditions imposed on a mining lease are the primary mechanism used by the Resources Regulator for regulating rehabilitation under the *Mining Act 1992*.

Changes to the conditions of mining leases are required to support:

- better quality progressive rehabilitation throughout the life of mining operations; and
- improved monitoring and achievement of final rehabilitation outcomes.

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In addition to making the obligations contained in mining lease conditions clearer and more focused, one of the key proposed changes is the replacement of the Mining Operations Plan (MOP) with a Rehabilitation Management Plan (RMP).

The Resources Regulator has found that the prescriptive nature of the current MOP, has often required amendments to be made to authorise changes that do not affect rehabilitation outcomes. To allow for continuous improvement, the replacement of this requirement with the proposed RMP seeks to improve adaptive management as rehabilitation data and capabilities grow over time.

4. What is the purpose of Industry consultation?

Following initial consultation with key government agencies in 2017-18, the Resources Regulator now seeks feedback from Industry on the proposed Reforms. The Resources Regulator is providing a three month consultation period so that mining lease holders, agents and Industry groups have the time to review documents and provide feedback. Two face-to-face workshops throughout this period are also proposed.

The feedback will be used by the Resources Regulator to review and finalise the key components of the Reforms with the aim of:

- presenting a framework for achieving improvements in rehabilitation compliance and outcomes under the *Mining Act 1992*;
- producing Mining Lease conditions and Codes of Practice which set clear, achievable and enforceable requirements for rehabilitation; and
- reducing barriers/impediments to industry being able to adopt and implement the new approach.

The key components of the Reform are described in more detail below.

5. What are the new mining lease conditions relating to rehabilitation?

The mining lease conditions relating to environmental management and rehabilitation have been reviewed to improve clarity and enforceability in relation to the following requirements:

- progressive rehabilitation
- rehabilitation risk assessment and risk management
- annual reporting and scheduling of rehabilitation in the form of an Annual Rehabilitation Report and Forward Program (to replace the current Annual Environmental Management Report)
- Rehabilitation Management Plan (to replace the mining lease requirement for a current Mining Operations Plan) which builds upon the development consent requirements related to Rehabilitation Objectives and Completion Criteria and a Final Landform and Rehabilitation Plan
- rehabilitation records.

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6. What are the new Codes of Practice?

The following proposed Codes of Practices are now subject to consultation:

- *Draft Code of Practice: Rehabilitation Management Plan for Large Mines*
- *Draft Code of Practice: Rehabilitation Management Plan for Small Mines*
- *Draft Code of Practice: Annual Rehabilitation Report and Forward Program for Large Mines*
- *Draft Code of Practice: Annual Rehabilitation Report and Forward Program for Small Mines*

The proposed Codes of Practice are referred to in the conditions of the mining lease and provide the mandatory requirements regarding:

- a. structure, format and content requirements for a Rehabilitation Management Plan required under mining lease conditions (to replace the current Mining Operations Plan); and
- b. structure, format and content requirements for an Annual Rehabilitation Report and Forward Program required under mining lease conditions (to replace the current Annual Environmental Management Plan).

Further detail on the purpose of these Codes of Practice and how they are intended to apply is set out below.

7. What are the new Guidelines for Rehabilitation Risk Assessment, Record Keeping and Rehabilitation Controls?

Three new guidelines have been prepared to assist Industry in relation to Rehabilitation Risk Assessments, Rehabilitation Records and Rehabilitation Controls.

Guideline 1: Rehabilitation Risk Assessment

The purpose of a *Guideline 1: Rehabilitation Risk Assessment* is to assist lease holders to:

- identify and evaluate the potential risks to achieving the Final Land Use
- identify the specific measures to be implemented to mitigate those risks
- incorporate the results of the risk assessment into rehabilitation planning and management for the site.

The Rehabilitation Risk Assessment is required by the new conditions of the mining lease.

Guideline 2: Rehabilitation Records

The purpose of the *Guideline 2: Rehabilitation Records* is to provide guidance on keeping and maintaining records relating to rehabilitation, which is required by the new conditions of the mining lease.

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Guideline 3: Rehabilitation Controls

The purpose of *Guideline 3: Rehabilitation Controls* is to provide an example of rehabilitation controls which can be considered and applied by a lease holder when implementing rehabilitation and developing a Forward Program. The Annual Rehabilitation Report and Forward Program is required by the new conditions of the mining lease.

8. What is the new Rehabilitation GIS Portal?

The **Rehabilitation GIS Portal** is an online portal which allows for the collection of rehabilitation spatial data into a centralised geodatabase. The Rehabilitation GIS Portal will assist the NSW Government in monitoring and regulating rehabilitation requirements for mining activities. Mining companies will be able to use the Rehabilitation GIS Portal to accurately record and track areas of disturbance and check rehabilitation progress across individual sites.

From late 2018, the Rehabilitation GIS Portal will be available for titleholders 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 new mining lease conditions). Spatial information submitted to the Rehabilitation GIS Portal will eventually replace the requirement to supply this information in hardcopy formats which accompany rehabilitation plans or reports required by the Department.

Guideline 4: Rehabilitation GIS Portal

The purpose of *Guideline 4: Rehabilitation GIS Portal – Overview and Access* is to provide an overview of the Rehabilitation GIS Portal and information to facilitate account registration and access.

Guideline 5: Rehabilitation GIS Portal – Spatial Data (GIS) Guidelines

The purpose of *Guideline 5: Rehabilitation GIS Portal - Spatial Data (GIS) Guidelines* is to set out the Department's requirements for the format of spatial data required to be submitted via the Rehabilitation GIS Portal.

9. When will the new conditions apply?

The conditions are intended to apply to all mining leases granted, renewed or transferred from early 2019 (date to be determined). From the commencement of the Reforms, any lease holder may also request that the new conditions apply to one or more leases, replacing existing conditions. Under the *Mining Act 1992* (Schedule 1B, clause 12), the holder of a mining lease may apply to vary the lease at any time. This provides lease holders with the opportunity to update existing mining lease conditions with new conditions so that the streamlined requirements apply to their operations.

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The Resources Regulator is also proposing to transition the new conditions on existing mining leases which do not require renewal as soon as possible so that the whole of the industry is subject to consistent obligations. This is likely to involve imposing new conditions as part of a phased approach following the commencement of the Reforms as described below:

Phase 1 – larger scale operations such as coal and metalliferous mines within three months;

Phase 2 – the remaining large mines¹ within six months; and

Phase 3 – the small mines² within 12 months.

It is recognised that industry will require adequate time to implement systems as well as prepare and submit the required documents such as a Rehabilitation Management Plan and an Annual Rehabilitation Report and Forward Program. As such, a 12-month transitional period is proposed to be provided to industry from the date the new conditions are applied in order to fully comply with the Reforms.

The Resources Regulator welcomes feedback from industry in regards to the proposed transition strategy to implement the new Reforms.

10. What is the purpose of the Code of Practice: Rehabilitation Management Plan (for small and large mines)?

The purpose of the Code of Practice is to set out the mandatory requirements for the preparation of a Rehabilitation Management Plan (RMP). A Code of Practice has been prepared for both small mines¹ and large mines².

The RMP will evolve throughout the mine life, through to mine closure. A RMP prepared in accordance with the Code of Practice will define the rehabilitation outcomes that must be achieved by the lease holder. In addition, the RMP will present the case to government and the community regarding a lease holder will:

¹ A small mine is a mine which does not require an Environment Protection Licence under the *Protection of the Environment Operations Act 1997*.

² A large mine is a mine which requires an Environment Protection Licence under the *Protection of the Environment Operations Act 1997*.

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- achieve compliance with mining lease conditions related to environmental management, protection, rehabilitation planning and outcomes
- commit to measurable performance outcomes
- adopt innovative solutions and best practice techniques to meet performance outcomes
- monitor performance and take corrective action if these outcomes are not being achieved.

A RMP is broken up into the following components:

1. Rehabilitation Planning information (mandatory information provided as essential context for assessing the Rehabilitation Objectives and Completion Criteria, and the Final Landform and Rehabilitation Plan (for large mines only), to the satisfaction of the Minister);
2. the Rehabilitation Objectives and Completion Criteria (must be approved by the Minister); and
3. in the case of a Large Mine only, the Final Land Landform and Rehabilitation Plan (must be approved by the Minister).

The proposed Code of Practice supports the Resources Regulator's risk-based regulatory model for rehabilitation where the key focus is regulating a lease holder's on-the-ground performance. The lease holder must address the structure, form and content requirements as specified within each section of the Code.

11. When does the Code of Practice: Rehabilitation Management Plan apply?

The Department recognises that the proposed *Code of Practice: Rehabilitation Management Plan* represents a shift in thinking from the current Mining Operations Plan requirements (refer to *ESG3: Mining Operations Plan Guidelines, September 2013*).

The Department also recognises that Industry may have already started preparing plans pursuant to the replaced guidelines. Whilst lease holders are encouraged to transition to the new requirements as soon as possible, and must do so as soon as they are subject to the mining lease conditions that reference this Code of Practice, a transition period applies as outlined below:

1. Mining leases granted after commencement – the *Code of Practice: Rehabilitation Management Plan* applies in accordance with the lease conditions.
2. Mining leases renewed or transferred after commencement – the *Code of Practice: Rehabilitation Management Plan* applies no later than 12 months following the conditions being imposed.
3. Mining leases where the new conditions are imposed through either the opt-in process or by the Resources Regulator through a variation of title – the *Code of Practice: Rehabilitation Management Plan* applies no later than 12 months following the conditions being imposed.
4. Any Mining Operations Plans (MOP) (or other rehabilitation plan required by the mining lease conditions) currently approved by the Minister/Secretary will be considered by the Resources Regulator

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to be a Rehabilitation Management Plan (RMP) up until 12 months of the new conditions being applied and will continue to take effect until this time.

12. What is the purpose of the Code of Practice: Annual Rehabilitation Report and Forward Program (for small and large mines)?

The purpose of the *Code of Practice: Annual Rehabilitation Report and Forward Program* is to set out the mandatory requirements for the preparation of an Annual Rehabilitation Report and Forward Program (ARRFP) required under the mining lease conditions. A proposed Code of Practice has been prepared for both small and large mines.

The ARRFP consists of two components, the **Annual Rehabilitation Report** and a **Forward Program**.

The purpose of the **Annual Rehabilitation Report** component is to report on the rehabilitation carried out on the Land in the previous 12-month period. The data and information from the report will be used by the Minister to assess whether the Land is being progressively rehabilitated in accordance with the requirements of the mining lease and is on a trajectory towards meeting the approved Rehabilitation Objectives and Completion Criteria.

The purpose of the **Forward Program** component is to:

- specify all rehabilitation, monitoring and related activities to be carried out on the Land for the next 3 years; and
- detail the spatial progression of rehabilitation (rehabilitation phase) in the next 3-year term.

13. When does the Code of Practice: Annual Rehabilitation Report and Forward Program (for small and large mines) apply?

Like the *Code of Practice: Rehabilitation Management Plan*, the *Code of Practice: Annual Rehabilitation Report and Forward Program (for small and large mines)* also represents a shift in thinking from the current annual reporting requirements for lease holders (refer to *Guidelines and Format for Preparation of an Annual Environmental Management Report, January 2006*).

As these Codes have been designed to work together, the *Code of Practice: Annual Rehabilitation Report and Forward Program (for small and large mines)* will apply in line with the commencement of the *Code of Practice: Rehabilitation Management Plan* (refer to section 11).

14. What is the Relationship of the Annual Rehabilitation Report and Forward Program to the Annual Review?

Where an Annual Review is required to be submitted to the Department as a condition of a State Significant Development consent, an application can be made to the Minister to align the reporting date of the ARRFP with the annual reporting requirements of other regulators.

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The ARRFP has been designed with the intention that it could form an appendix to the Annual Review, thereby reducing the duplication of information required to be provided to regulators. Any lease holder 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 ARRFP.

15. Are there any changes to Rehabilitation Security Deposits and the requirement to submit a Rehabilitation Cost Estimate?

Yes. When the *Code of Practice: Annual Rehabilitation Report and Forward Program (for small and large mines)* applies, the need to submit a Rehabilitation Cost Estimate (RCE) will be aligned with the three-year Forward Program and calculations are to be based on rehabilitating the maximum level of disturbance within that period.

On an annual basis, lease holders will also be required to “review/check” their RCE and confirm (within the Forward Program) whether the security deposit held by the Department still appropriately covers the cost to rehabilitate the liabilities of mining operations proposed in the next three-year term. Where the existing RCE is not sufficient, a new RCE will need to be submitted by a lease holder.

At a minimum a full RCE will be required to be submitted every three years. The Rehabilitation Cost Estimate Guideline (*ESG1 Rehabilitation Cost Estimate Guidelines*) will be updated to reflect this.

16. How do I obtain the new conditions for my mining lease? (The “opt-in” process)

Refer to Question 9 above. The *Mining Act 1992* (Schedule 1B, Clause 12) allows for a mining lease to be varied on application by the holder. This may be done at any time during its currency, including on it being transferred to another person/s. This provides lease holders with the option to apply for the updated Mining Lease conditions at any time following commencement (expected early 2019) so that the streamlined regulatory requirements apply to their operations.

17. Related reforms proposed by the Department

The Department is seeking to set a comprehensive, clear policy that identifies the NSW Government's expectations for the rehabilitation of major mining projects. The Discussion Paper *Improving mine rehabilitation in NSW* was exhibited from November 2017 to 16 February 2018. The Discussion Paper proposes to ensure rehabilitation and post mining land uses are properly considered early in mine planning, including the assessment of any final voids. The proposals also seek to improve regulatory coordination across the different stages of the mine life cycle.

Submissions have now closed and feedback is being considered by the Department. For more information please go to the [Department of Planning and Environment website](#).

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Recognising that the NSW Government is currently reviewing and developing a policy position on the regulation of mine rehabilitation in NSW, the Resources Regulator has developed the Reforms to focus on operational improvements, that are intended to complement any outcomes of the Department's broader policy work.

18. What are the consultation timeframes?

Consultation is an important part of these Reforms. As such, the Resources Regulator is currently seeking feedback from mining lease holders, titles agents and industry groups following consultation with key Government agencies in 2017-18. **The consultation period commences on 30 July 2018 and closes on Wednesday 31 October 2018.**

19. Will there be workshops?

The Resources Regulator will be offering workshops to gather feedback, outline the changes, discuss transitional arrangements and to keep you informed about the implementation of the Reforms. Further details on the time and location of these workshops will be posted on the Resource Regulator's website: <https://www.resourcesregulator.nsw.gov.au/>

Your comments and participation will help us to ensure that Industry has contributed to the operational measures introduced to improve rehabilitation management, compliance and outcomes.

20. Where can I access the documents and find out more?

[Click here](#) to access the consultation documents

For further information contact the Resources Regulator:

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