

TRANSITIONING TO THE NEW REHABILITATION CONDITIONS ON MINING LEASES

What should the mining industry do to prepare?

Summary of the changes

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.

The conditions will be implemented through the Mining Amendment (Standard Conditions of Mining Leases – Rehabilitation) Regulation 2021 (the Regulation), which commenced on 2 July 2021. There is a transitional period in place for existing mining leases.

The details of the changes are provided on the NSW Resources Regulator's website at:

<https://www.resourcesregulator.nsw.gov.au/environment/rehabilitation/rehabilitation-and-compliance-reforms>

The key components are:

- new standard mining lease conditions for rehabilitation which will replace rehabilitation conditions on existing mining leases and will be added to all new mining leases. These require progressive rehabilitation, rehabilitation risk assessment, annual reporting and detailed rehabilitation management planning
- 'form and way' documents which 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
- guidelines on risk assessments, records and rehabilitation controls which will help lease holders comply with mining lease conditions

- the [mine rehabilitation portal](#) which will collect rehabilitation spatial data for large mines and spatially depict the approved final land use. This online portal will help mining companies and the NSW Resources Regulator to accurately record and track areas of disturbance and rehabilitation progress across individual sites.

When will the new conditions apply?

The Mining Amendment (Standard Conditions of Mining Leases-Rehabilitation) Regulation 2021 commenced on 2 July 2021. The new conditions apply to all new mining leases granted from that date. Transitional arrangements for existing mines are in place to 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 mines¹ – 2 July 2022 (12 months from the date the Regulation commenced)
- for small existing mines² – 2 July 2023 (24 months from the date the Regulation commenced)
- for any other mining lease granted from 2 July 2021, on the date the lease is granted.

Until the new conditions apply, lease holders will need to undertake mining operations in accordance with the conditions of their current mining leases.

Issuing of a new mining lease instrument to existing mines

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

For each current mining lease in NSW, the department will:

- review the existing conditions and identify those no longer required (e.g. conditions that duplicate or are inconsistent with the prescribed conditions in the Regulation) and any “special conditions” that must remain
- prepare a draft revised instrument

¹ a large mine is a mine the subject of one or more mining leases, the carrying out of activities under at least one of which require an environment protection licence under the *Protection of the Environment Operations Act 1997*

² a small mine is any mine other than a large mine.

- provide the draft revised instrument to the lease holder 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, the department will issue the new, streamlined instrument to the lease holder. The varied conditions will commence on the day that the new conditions in the Regulation become effective. The number of conditions on most mining leases will be reduced substantially as part of the variation process.

Lease holders will receive a new streamlined mining lease instrument prior to the commencement of the Regulation (i.e. prior to 2 July 2022 for large mines and prior to 2 July 2023 for small mines).

What about my existing mining lease conditions, particularly the requirement for mining operation plans (MOPs) and annual reports?

Until the new conditions apply, lease holders will need to undertake mining operations in accordance with their current mining lease conditions. This generally includes:

- ensuring mining operations are carried out in accordance with an approved mining operations plan (MOP) that has been prepared in accordance with the departmental guidelines; and
- submitting an annual rehabilitation report in accordance with the departmental guidelines that provides a review of the progress of rehabilitation against the performance measures and criteria established in the approved MOP.

When the new conditions apply, there will no longer be a requirement for a MOP, and current MOPs will no longer have effect. However, the department understands that during the transition period, mines may have approved MOPs that are due to expire or may be planning amendments to MOPs to cater for changes to mining operations. The scenarios below provide examples of how mines will be able to comply with their legislative obligations and departmental expectations during the transition period.

Scenario 1

The mine has an approved MOP that covers the operations and does not expire during the transition period. In these circumstances the lease holder should:

- ensure mining operations, ancillary mining activities and prospecting are carried out in accordance with the approved MOP
- submit the required annual rehabilitation report by the due date (provided this date falls within the transition period)
- only lodge a MOP amendment application if it is proposed to alter the approved operations
- continue to comply with the requirements of the *Mining Act 1992* and existing conditions of the mining lease (e.g. reporting non-compliances and environmental incidents, provide a security deposit to the department, etc)
- prepare the new documents and plans required by the Regulation to ensure compliance with the new standard mining lease conditions at the relevant commencement date.

Scenario 2

The mine has an approved MOP that is due to expire during the transition period and before the Regulation commences. In these circumstances the lease holder should:

- seek an extension of the current MOP from the department. The extension sought should be up until the transition period ends (i.e. 2 July 2022 for large mines and 2 July 2023 for small mines).
- submit the required annual rehabilitation report by the due date (provided this date falls within the transition period)
- only lodge a MOP amendment application if it is proposed to alter the approved operations
- continue to comply with the requirements of the *Mining Act 1992* and existing conditions of the mining lease (e.g. reporting non-compliances and environmental incidents, provide a security deposit to the department, etc)
- prepare the new documents and plans required by the Regulation to ensure compliance with the new standard mining lease conditions at the relevant commencement date.

Scenario 3

The mine does not have an approved MOP in place, which may constitute a breach of the mining lease conditions. In these circumstances the lease holder should:

- send written notification of the potential non-compliance to the NSW Resources Regulator via email to nswresourcesregulator@service-now.com
- continue to comply with the requirements of the *Mining Act 1992* and the other existing conditions of the mining lease (e.g. reporting non-compliances and environmental incidents, provide a security deposit to the department, etc)
- ensure that progressive rehabilitation of disturbance areas continues to occur and is consistent with the provisions of the relevant development consent (including any approved rehabilitation objectives and completion criteria) and any directions or correspondence issued by the Regulator
- prepare the new documents and plans required by the Regulation to ensure compliance with the new standard mining lease conditions at the relevant commencement date.

The Resources Regulator will review the circumstances of the case and will take a risk based approach³ to dealing with any non-compliances, noting that the Regulator is encouraging lease holders to focus their efforts on preparing the new documents to get ready for the commencement of the Regulations.

The Regulator will continue to focus on improving rehabilitation performance across NSW through our targeted assessment programs⁴ (TAPs). Where required to address a risk or to rehabilitate land, the Regulator will issue directions to lease holders pursuant to the provisions of section 240 of the *Mining Act 1992*.

What should large mines do right now to prepare?

Prepare and submit rehabilitation spatial data themes

During the transition period lease holders for large mines should:

- register for and attend one of the 'mine rehabilitation portal workshops' being run by the NSW Resources Regulator. Further information is provided on our website at

³ This is outlined in the NSW Resources Regulator's [Compliance and Enforcement Approach](#) (July 2017).

⁴ Further details regarding TAPs are provided at <https://www.resourcesregulator.nsw.gov.au/environment/compliance>

<https://www.resourcesregulator.nsw.gov.au/environment/rehabilitation/rehabilitation-and-compliance-reforms>

- review [Guideline: Mine Rehabilitation Portal](#) (NSW Resources Regulator, July 2021) and create a user account within the portal
- submit all required spatial data themes to the mine rehabilitation portal as set out in [Form and way: Rehabilitation objectives, rehabilitation completion criteria and final landform and rehabilitation plan for large mines](#) (NSW Resources Regulator, July 2021) and [Form and way: Annual rehabilitation report and forward program \(large mines\)](#) (NSW Resources Regulator, July 2021).
- generate an electronic copy (PDF) of the final landform and rehabilitation plan to include in the rehabilitation management plan. This will be able to be produced once all the spatial data themes have been successfully submitted to the mine rehabilitation portal. The PDF version of the final landform and rehabilitation must be presented as sub-plans as detailed in section 5 of [Form and way: Rehabilitation management plan for large mines](#) (NSW Resources Regulator, July 2021).
- generate electronic copies (PDF) of Plan 2 sub-plans for Years 1 to 3 to include in the inaugural forward program. This will be able to be produced once all the spatial data themes have been successfully submitted to the mine rehabilitation portal. The PDF versions of Plan 2 must be presented as sub-plans as detailed in section 2.3.2 of [Form and way: Annual rehabilitation report and forward program \(large mines\)](#) (NSW Resources Regulator, July 2021).

Mine rehabilitation portal

The mine rehabilitation portal is an online tool that helps collect rehabilitation spatial data into a centralised geo-database. The portal can be accessed via our website at the link below:

<https://www.resourcesregulator.nsw.gov.au/environment/rehabilitation/Mine-Rehabilitation-Portal>

The final landform and rehabilitation plan, as well as rehabilitation data included in the annual rehabilitation report and forward program, will be required to be submitted to us using the mine rehabilitation portal.

The portal will help the NSW Government 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. The portal will also generate rehabilitation key performance indicators for use in the annual rehabilitation report and forward program.

Prepare and publish a rehabilitation management plan

Upon commencement of the Regulation, the requirement for a mining operations plan (MOP) will be replaced by the requirement for a rehabilitation management plan (large mines only). During the transition period lease holders for large mines should:

- prepare a rehabilitation management plan in the 'form and way' specified in [Form and way: Rehabilitation management plan for large mines](#) (NSW Resources Regulator, July 2021)
- ensure the rehabilitation management plan includes the specific matters outlined in clause 10(1) in Schedule 8A of the Regulation
- ensure that the rehabilitation management plan includes rehabilitation objectives and rehabilitation completion criteria, having regard to [Guideline: Rehabilitation objectives and rehabilitation completion criteria](#) (NSW Resources Regulator, July 2021)
- ensure that the rehabilitation management plan includes a PDF copy of the final landform and rehabilitation plan, following submission of the spatial data themes into the mine rehabilitation portal
- make the rehabilitation management plan publicly available by publishing it on its website in a prominent position⁵ (refer clause 16 in Schedule 8A of the Regulation).

⁵ If the lease holder does not have a website then clause 16 requires the holder to provide a copy of the rehabilitation management plan to a person within 14 days upon receipt of a written request.

What should all mines do right now to prepare?

Prepare a rehabilitation risk assessment and implement the risk control measures identified

The Regulation requires the lease holder to conduct a rehabilitation risk assessment and to implement the identified risk control measures. During the transition period, lease holders should:

- conduct a rehabilitation risk assessment pursuant to the provisions of clause 7 in Schedule 8A of the Regulation
- utilise [Guideline: Rehabilitation risk assessment](#) (NSW Resources Regulator, July 2021) to identify and evaluate the potential risks to achieving the final land use
- utilise [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)
- 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.

Prepare rehabilitation documents

There are a number of other rehabilitation documents that are required to be prepared and submitted to the department under the Regulation. Although these documents will not be able to be lodged with the department until upgrades to the Regulator Portal are finalised (see below) mines should start preparing documents now to facilitate submission prior to the due date. In this regard, lease holders should:

- prepare a rehabilitation objectives statement and a rehabilitation completion criteria statement utilising [Guideline: Rehabilitation objectives and rehabilitation completion criteria](#) (NSW Resources Regulator, July 2021) and in the 'form and way' specified in (as relevant):

- [Form and way: Rehabilitation objectives, rehabilitation completion criteria and final landform and rehabilitation plan for large mines](#) (NSW Resources Regulator, July 2021)
- [Form and way: Rehabilitation objectives and rehabilitation completion criteria for small mines](#) (NSW Resources Regulator, July 2021)
- prepare a forward program in the ‘form and way’ specified in (as relevant):
 - [Form and way: Annual rehabilitation report and forward program for large mines](#) (NSW Resources Regulator, July 2021)
 - [Form and way: Annual rehabilitation report and forward program for small mines](#) (NSW Resources Regulator, July 2021)

What can mines do once the Regulator Portal has been updated?

The existing Resources Regulator Portal⁶ is in the process of being upgraded to assist lease holders with meeting their obligations pursuant to the *Mining Act 1992* and the Regulation. This upgrade will be completed prior to the commencement of the Regulation and will enable lease holders to:

- make an application to the department to approve multiple mining leases relating to the same mine being treated as a single lease for the purposes of compliance with the Regulations (e.g. preparing risk assessments, rehabilitation management plans, annual reports and forward programs) – see clause 3 in Schedule 8A of the Regulation
- make an application (if required) to the department to change the annual reporting period (e.g. to align with other jurisdictional reporting periods such as the Annual Review required by development consent) - see clause 13(5) in Schedule 8A of the Regulation
- make an application (if required) to the department to change the date for the submission of an annual rehabilitation report and forward program (e.g. to align with other reporting dates (e.g. the submission of the Annual Review required by development consent) - see clause 15(2)(b) in Schedule 8A of the Regulation

⁶ The Regulator Portal can be accessed at <https://nswresourcesregulator.service-now.com/regulator>

- submit the rehabilitation objectives statement to the department for approval – see clauses 12(1), 15(1) and 15(6) in Schedule 8A of the Regulation
- submit the rehabilitation completion criteria statement to the department for approval – see clauses 12(1), 15(3) and 15(6) in Schedule 8A of the Regulation
- submit a forward program to the department – see clauses 13(4), 15(1), 15(2) and 15(6) in Schedule 8A of the Regulation
- submit an annual rehabilitation report to the department – see clauses 13(4), 15(2) and 15(6) in Schedule 8A of the Regulation
- lodge any amendments to rehabilitation outcome documents⁷ and forward program – see clauses 14, 15(4) and 15(5) in Schedule 8A of the Regulation
- report non-compliances – see clause 18 in Schedule 8A of the Regulation
- nominate a person to be the contact whom the department can communicate with in relation to the mining lease – see clause 19 in Schedule 8A of the Regulation
- give notice to the department of applications for non-State significant development consents that relate to the mining area (including modifications to development consents) – see clause 20 in Schedule 8A of the Regulation
- lodge applications to undertake exploration activities on a mining lease in circumstances where:
 - the exploration activities are not exempt development pursuant to clause 10 of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, or
 - have not already been approved pursuant to a development consent.

Exploration activities on a mining lease

Approval to undertake exploration activities on a mining lease was previously required as part of an approval for the mining operations plan (MOP). These approvals were granted following an

⁷ The rehabilitation outcome documents comprise the rehabilitation objectives statement, the rehabilitation completion criteria statement and, for large mines, the final landform and rehabilitation plan – see clause 12(1) in Schedule 8A of the Regulation.

environmental assessment by the department pursuant to the provisions of Part 5 of the *Environmental Planning and Assessment Act 1979*. As the MOP condition is being removed from mining leases as part of the Regulation, the requirement to obtain approval for exploration will be included as a special condition on the mining lease and is not a standard condition under the Regulation. You will need to get approval from the department to undertake exploration activities on a mining lease unless:

- the exploration activities are defined as exempt development pursuant to clause 10 of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, or
- the exploration activities have already been approved pursuant to a development consent under the *Environmental Planning and Assessment Act 1979*.

In many cases, development consents contemplate that exploration activities ancillary to mining, and directly related to the mining project, will take place (e.g. exploration within the approved disturbance zones to assist define the mining operations). Development consents for underground mining operations may have included exploration on the surface of the land as ancillary operations to the mining project. If exploration is directly related to the mining project (e.g. exploration activities are being carried out help define the approved mining operation), then it is most likely to be ancillary to the approved mining development. Whether or not this is the case will always depend on a careful consideration of the development consent.

Exploration activity approvals that were granted as part of the MOP that have not been completed, will lapse once the Regulations commence. Lease holders should contact the NSW Resources Regulator if they intend to undertake previously approved exploration activities on a mining lease after the expiry of the relevant transition period. The department will work with lease holders to facilitate the completion of these exploration activities using a new approval pathway.

Further information

Please visit our [website](#) for further information. For further information contact us at nswresourcesregulator@service-now.com or 1300 814 609 (option 2, then 5). To be kept up to date, [subscribe to Mine Rehabilitation News](#).

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