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**Resources Regulator**

Department of Regional NSW



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**January 2023 to December 2023**

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# 1. Introduction

## 1.1. Background

The NSW Resources Regulator's compliance and enforcement framework is designed to ensure a consistent and responsive regulatory approach and to provide increased transparency and community confidence in relation to its regulatory activities.

Compliance and enforcement actions are driven by a risk-based approach and a flexible and robust intervention framework is applied so that the Regulator can apply a variety of escalating enforcement actions to target specific risks or misconduct.

Low risk non-compliances are managed through a collaborative process with industry involving education through advisory services and publications. Moderate and higher risk non-compliances are dealt with in an escalating manner with increasingly severe enforcement action taken based on the level of risk and the potential for harm.

The Regulator promotes voluntary compliance and good practice across the industry. Lease and licence holders are encouraged to demonstrate best practice by actively adopting measures and practices over and above legislative requirements to further minimise potential harms and risks.

The compliance audit program forms a key part of the compliance and enforcement framework. Audits completed under the program will identify non-compliance as well as educate lease and licence holders and in doing so raise awareness of compliance obligations. This should enable lease and licence holders to adopt a more pro-active approach to managing their compliance obligations.

## 1.2. Compliance audit program objectives

The objectives of the Regulator's compliance audit program are to:

- assess the level of compliance with the regulatory instruments
- provide internal feedback to improve title conditions, policies or general regulatory framework (protecting and improving system integrity)
- assess auditee performance and provide feedback to them on how they may be able to improve their performance
- increase stakeholder confidence in regulatory system
- increase the level to which titleholders are actively managing their own compliance.

The compliance audit strategy highlighted that the audit schedule and focus for each year would be developed using a risk review process. A risk assessment methodology (broadly based on AS ISO 31000:2018 Risk management – Guidelines) was used to develop a broad risk profile for each title (or group of titles) to facilitate the development of the annual audit program. Risk factors used included:

- whether the Regulator had primary regulatory responsibility (e.g. for exploration)
- the type, size and complexity of operations and activities

- the location of activities (environmental sensitivity of surrounding area and proximity of residents)
- results of previous audits and titleholder compliance history
- stakeholder concerns.

The compliance audit strategy and program included a requirement for annual review of the audit programs against the identified objectives. This report provided the review of the compliance audits commenced by the Regulator between 1 January 2023 and 31 December 2023.

In 2023, the exploration compliance audit program was identified as a key compliance priority for the Regulator forming part of the proactive assessment programs documented in our published Compliance Priorities reports.

### 1.3. Focus of the 2023 program

In the exploration sector, the 2023 audit program included exploration compliance audits of 15 significant exploration programs, 6 of which had received funding under Round 5 of the NSW Government New Frontiers Co-operative Drilling grants program. Individual audit reports were written and published on the Regulator's website for each of these 15 audits (hyperlinks are provided in Table 1).

Community consultation in exploration was the subject of a targeted audit program in 2023, where 14 exploration programs were subject to a desktop audit against the mandatory requirements of the Exploration code of practice: Community consultation (community consultation code). Audit findings letters were sent to each licence holder at the completion of each audit. Given the small scope and targeted nature of these audits, the audit findings letters were not published on the Regulator's website. The findings from the targeted audit program are discussed in this annual report.

Risk assessment in exploration was the subject of a targeted audit program in 2023, where 10 exploration programs were subject to a desktop audit against the mandatory requirements for risk assessment in the Exploration code of practice: Environmental management (environmental management code), the Exploration code of practice: Rehabilitation (rehabilitation code) and the Community Consultation Code. Audit findings letters were sent to each licence holder at the completion of each audit. Given the small scope and targeted nature of these audits, the audit findings letters were not published on the Regulator's website. The findings from the targeted audit program are discussed in this annual report.

In the mining sector, the 2023 audit program was limited in scope, and only one mining lease audit was completed. An audit report was completed and published on the Regulator's website for the one mining audit completed (hyperlink is provided in Table 1).

For existing mines, the implementation of new conditions of mining leases documented in Schedule 8A of the Mining Regulation 2016 started in June 2022. Mining lease holders were given a period of time to transition to the new conditions. As a result, mining lease audits were put on hold to give lease holders time to transition. Audits of mining leases will be included in the 2024 compliance audit program.

Details of the sites audited in the 2023 compliance audit program are summarised in Table 1.

Table 1 Summary of audits undertaken under the 2023 compliance audit program

Mine/Project	Titleholder	Title/s	Audit scope
<u>Northparkes exploration project</u>	CMOC Mining Pty Ltd	EL8377 and EL5801	Exploration compliance
<u>Meringo exploration project</u>	Australian Consolidated Gold Holdings Pty Ltd	EL8699	Exploration compliance
<u>Bourke Gold exploration project</u>	Nimrod Resources Ltd	EL8957	Exploration compliance
<u>Five Ways and Warrah exploration projects</u>	Oxley Exploration Pty Ltd	EL7439 and EL9345	Exploration compliance
<u>Tallebung Tin project</u>	Stannum Pty Ltd	EL6699	Exploration compliance
<u>Boona exploration project</u>	Haverford Holdings Pty Ltd	EL8547	Exploration compliance
<u>Yeoval exploration project</u>	Godolphin Tenements Pty Ltd	EL8538	Exploration compliance
<u>Bauloora Mine and Mee Mar exploration projects</u>	Legacy Minerals Pty Ltd	EL8994	Exploration compliance
<u>Mt Adrah exploration project</u>	Wildcat Gold Pty Ltd	EL6372 and EL7844	Exploration compliance
<u>Illabo exploration project</u>	Newmont Exploration Holdings Pty Ltd	EL8867	Exploration compliance
<u>Bowdens project</u>	Bowdens Silver Pty Ltd	EL8268	Exploration compliance
<u>Wattle Flat exploration project</u>	Wattle Resources Pty Ltd	EL7974	Exploration compliance
<u>Caloola Marble exploration project</u>	United Stone Industries Pty Ltd	EL8820	Exploration compliance
North Broken Hill project	AU Exploration Pty Ltd	EL8296	Exploration compliance
North Broken Hill project	NBH Resources Pty Ltd	EL8905	Exploration compliance
<u>Pineleigh Quarry</u>	Tastex Pty Ltd	ML1773 and ML1825	Mining compliance
Copi exploration project	RZ Resources Pty Ltd	EL8312 and EL8385	Exploration community consultation
Kempfield exploration project	Argent (Kempfield) Pty Ltd	EL5748	Exploration community consultation
Adelong Gold project	Challenger Mines Pty Ltd	EL5728	Exploration community consultation

Mine/Project	Titleholder	Title/s	Audit scope
Moolarben exploration project	Moolarben Coal Mines Pty Ltd	EL6288	Exploration community consultation
Nyngan exploration project	Tritton Resources Pty Ltd	EL6126	Exploration community consultation
Junee exploration project	Gilmore Metals Pty Ltd	EL8470	Exploration community consultation
Kingswood exploration project	Modeling Resources Pty Ltd	EL6913	Exploration community consultation
Wirlong exploration project	Peel (CSP) Pty Ltd	EL8126	Exploration community consultation
Fairholme exploration project	Kincora Copper Australia Pty Ltd	EL6915	Exploration community consultation
Campaspe exploration project	Murray Basin Titanium Pty Ltd	EL5359	Exploration community consultation
Ulan exploration project	Ulan Coal Mines Pty Ltd	EL7542	Exploration community consultation
Bulla Park exploration project	Bulla Park Metals Pty Ltd	EL8642	Exploration community consultation
Euston exploration project	Iluka Resources Limited	EL9530	Exploration risk assessment
Ulan exploration project	Ulan Coal Mines Pty Ltd	EL7542	Exploration risk assessment
Nundle project	Angel Jade Pty Ltd	EL9529	Exploration risk assessment
Willow Glen exploration project	Magnet Exploration Pty Ltd	EL9166	Exploration risk assessment
Metropolitan exploration project	Metropolitan Collieries Pty Ltd	EL9364	Exploration risk assessment
Moby East exploration project	FMG Resources Pty Ltd	EL9309	Exploration risk assessment
Boona Gap exploration project	SRL Ops Pty Ltd	EL8833	Exploration risk assessment
Cobar exploration project	PGM Management Pty Ltd	EL8802	Exploration risk assessment
Taronga exploration project	Taronga Mines Pty Ltd	EL8407	Exploration risk assessment

Mine/Project	Titleholder	Title/s	Audit scope
Hawsons Iron exploration project	Hawsons Iron Pty Ltd	EL7208	Exploration risk assessment

## 1.4. Audit scopes

As noted in Table 1, the audit scopes varied across the programs. A description of each audit scope is provided in Table 2.

Table 2 Description of audit scopes

Audit scope	Description
Mining compliance	This audit scope included a compliance assessment against the requirements of the <i>Mining Act 1992</i> and regulation and the mining leases issued for the operations. The scope included an assessment of compliance against the requirements of Schedule 8A of the Mining Regulation 2016, and an assessment of the progress of rehabilitation.
Exploration compliance	This audit scope included a compliance assessment against the requirements of the <i>Mining Act 1992</i> and regulation and the exploration licences issued for the projects. The scope included an assessment of compliance against the requirements of any exploration activity approvals granted for the projects, and the relevant exploration codes of practice, including assessment against the titleholder's commitments in exploration activity approval documentation.
Exploration community consultation	This audit scope included a targeted compliance assessment against the mandatory requirements of the Community Consultation Code.
Exploration risk assessment	This audit scope included a targeted compliance assessment against the mandatory requirements for risk assessment under the exploration codes of practice: <ul style="list-style-type: none"> <li>environmental management code</li> <li>rehabilitation code</li> <li>community consultation code</li> </ul>

## 1.5. Publishing and disclosure of information

This report was published on the Regulator's website consistent with:

- Section 365 of the *Mining Act 1992*
- Resources Regulator's [Public comment policy](#)
- *Government Information (Public Access) Act 2009*.



## 2. Summary of audit findings

The findings of the 2023 compliance audit program are summarised in Table 3.

There were 22 non-compliances, 27 observations of concern and 71 suggestions for improvement identified across the 38 audits included in the 2023 audit program.

The non-compliances generally related to:

- mining (3)
  - failure to nominate a contact person (1)
  - failure to submit annual reports (2).
- exploration (19)
  - failure to undertake a community consultation risk assessment (6)
  - failure to prepare a documented community consultation strategy (3)
  - failure to prepare a documented environmental management risk assessment (3)
  - failure to prepare a documented rehabilitation risk assessment (3)
  - failure to maintain core and samples from exploration operations (2)
  - failure to conduct exploration operations in accordance with assessable prospecting operation approvals (2)

The non-compliances resulted in the issuing of 6 official cautions and further investigation of non-compliances for 3 audits.

Observations of concern were identified during the audits that required further management action by the licence holders to avoid becoming non-compliant in the future. These included:

- mining
  - inadequate identification and/or management of rehabilitation risks (1)
  - inadequate identification and management of compliance obligations (1)
- exploration
  - inadequate community consultation risk assessment (13)
  - inadequate community consultation strategy (4)
  - inadequate rehabilitation risk assessment (1)
  - inadequate rehabilitation monitoring (2)
  - issues with chemical management (2)
  - issues with waste management (1)
  - issues with maintaining mandatory records (1)

Generally, the suggestions for improvement identified during the audits related to the implementation of some form of compliance management system which would assist titleholders to

better identify and manage their compliance obligations. Suggestions for improvement included recommendations for improvement of:

- risk assessment and management processes (16)
- community consultation reporting (12)
- community consultation risk assessment (11)
- community consultation strategies (8)
- rehabilitation risk assessment (9)
- the identification and management of compliance requirements (7)
- record keeping and annual reporting (5)
- environmental management of chemicals in exploration (1).

Mine/Project	Titleholder	Title	Non-compliances	Observations of concern	Suggestions for improvement
<b>Mining compliance</b>					
Pineleigh Quarry	Tastex Pty Ltd	ML1773 and ML1825	3	2	2
<b>Mining total</b>			<b>3</b>	<b>2</b>	<b>2</b>
<b>Exploration compliance</b>					
Northparkes exploration project	CMOC Mining Pty Ltd	EL8377 and EL5801	0	2	4
Meringo exploration project	Australian Consolidated Gold Holdings Pty Ltd	EL8699	0	1	2
Bourke Gold exploration project	Nimrod Resources Ltd	EL8957	0	0	2
Five Ways and Warrah exploration projects	Oxley Exploration Pty Ltd	EL7439 and EL9345	2	0	1
Tallebung Tin project	Stannum Pty Ltd	EL6699	0	1	2
Boona exploration project	Haverford Holdings Pty Ltd	EL8547	0	0	0
Yeoval exploration project	Godolphin Tenements Pty Ltd	EL8538	0	0	2
Bauloora Mine and Mee Mar exploration projects	Legacy Minerals Pty Ltd	EL8994	0	1	2
Mt Adrah exploration project	Wildcat Gold Pty Ltd	EL6372 and EL7844	0	2	2
Illabo exploration project	Newmont Exploration Holdings Pty Ltd	EL8867	0	0	4
Bowdens project	Bowdens Silver Pty Ltd	EL8268	0	1	2

Mine/Project	Titleholder	Title	Non-compliances	Observations of concern	Suggestions for improvement
Wattle Flat exploration project	Wattle Resources Pty Ltd	EL7974	4	1	2
Caloola Marble exploration project	United Stone Industries Pty Ltd	EL8820	2	0	3
North Broken Hill project	AU Exploration Pty Ltd	EL8296	1	0	5
North Broken Hill project	NBH Resources Pty Ltd	EL8905	6	2	4
<b>Exploration - community consultation</b>					
Copi exploration project	RZ Resources Pty Ltd	EL8312 and EL8385	0	1	1
Kempfield exploration project	Argent (Kempfield) Pty Ltd	EL5748	1	1	0
Adelong Gold project	Challenger Mines Pty Ltd	EL5728	1	1	1
Moolarben exploration project	Moolarben Coal Mines Pty Ltd	EL6288	0	0	1
Nyngan exploration project	Tritton Resources Pty Ltd	EL6126	0	1	2
Junee exploration project	Gilmore Metals Pty Ltd	EL8470	0	1	1
Kingswood exploration project	Modeling Resources Pty Ltd	EL6913	0	1	2
Wirlong exploration project	Peel (CSP) Pty Ltd	EL8126	0	1	3
Fairholme exploration project	Kincora Copper Australia Pty Ltd	EL6915	0	1	2
Campaspe exploration project	Murray Basin Titanium Pty Ltd	EL5359	1	1	1
Ulan exploration project	Ulan Coal Mines Pty Ltd	EL7542	0	0	2

Mine/Project	Titleholder	Title	Non-compliances	Observations of concern	Suggestions for improvement
Bulla Park exploration project	Bulla Park Metals Pty Ltd	EL8642	0	2	1
<b>Exploration – risk assessment</b>					
Euston exploration project	Iluka Resources Limited	EL9530	0	1	1
Ulan exploration project	Ulan Coal Mines Pty Ltd	EL7542	0	0	1
Nundle project	Angel Jade Pty Ltd	EL9529	1	0	1
Willow Glen exploration project	Magnet Exploration Pty Ltd	EL9166	0	0	1
Metropolitan exploration project	Metropolitan Collieries Pty Ltd	EL9364	0	1	1
Moby East exploration project	FMG Resources Pty Ltd	EL9309	0	0	2
Boona Gap exploration project	SRL Ops Pty Ltd	EL8833	0	1	2
Cobar exploration project	PGM Management Pty Ltd	EL8802	0	0	2
Taronga exploration project	Taronga Mines Pty Ltd	EL8407	0	0	2
Hawsons Iron exploration project	Hawsons Iron Pty Ltd	EL7208	0	0	2
<b>Exploration totals</b>			<b>20</b>	<b>25</b>	<b>69</b>
<b>Total</b>			<b>22</b>	<b>27</b>	<b>71</b>

## 3. Audit findings – Exploration sector

It was noted that over 70% of the non-compliances and observations of concern identified during the exploration audits were related to the mandatory requirements of the exploration codes of practice. Typically, exploration licence holders were aware of their compliance obligations related to the conditions of their exploration licences, but it was noted that there was much less of an awareness of the mandatory requirements of the exploration codes of practice.

The non-compliances, observations of concern and the suggestions for improvements identified during the 37 exploration audits conducted can generally be broadly grouped into several key areas including:

- risk assessment
  - community consultation
  - rehabilitation
  - environmental management
- community consultation
  - consultation strategies
  - community consultation reporting
- environmental management
  - management of chemicals, fuels and oils
  - waste management
- rehabilitation
  - monitoring of rehabilitation progress
- other issues
  - collection of core and samples
  - records management

These issues will be discussed in the following sections.

### 3.1. Risk assessment and management

Risk identification and assessment involves identifying hazards, assessing risks, controlling risks, and reviewing control measures. A risk assessment can be used to work out:

- the severity of a risk
- what action should be taken to control the risk
- how urgently action is needed.

Risk assessments are a mandatory requirement of three of the exploration codes of practice as follows:

- Environmental management code – mandatory requirement 12.1
- Rehabilitation code – mandatory requirement 1
- Community consultation code – mandatory requirement 1.

Failure to undertake a mandatory risk assessment, or risk assessments that were inadequate, were a common issue for explorers.

### 3.1.1. Community consultation risk assessment

Before commencing any activity authorised by a prospecting title, mandatory requirement 1 of the community consultation code requires the licence holder to conduct a risk assessment to identify and consider the range of opportunities and potential threats associated with community consultation and engagement.

The guidance material in appendix 1 of the community consultation code includes a tool for assessing the activity impact level. It should be noted that the activity impact assessment is not a risk assessment. It is a tool to guide the minimum level of engagement expected to support each stakeholder group.

Each exploration licence area will have specific issues relevant to the communities within which exploration is undertaken. These issues will not be identified or addressed using only the standard activity impact level assessment. A risk assessment is required to identify and consider the range of opportunities and potential threats associated with community consultation and engagement for each exploration program. For a community consultation risk assessment to be effective, it is necessary for the licence holder to have a good understanding of the characteristics of the community in which it is operating.

Exploration operations can be a sensitive issue for some communities. Misinformation and a lack of understanding and awareness of exploration activities can lead to unwanted impacts for licence holders, such as land holders failing to negotiate a land access agreement. This can seriously impact a licence holders' ability to effectively explore its licence area. An effective and inclusive community consultation and engagement strategy is paramount to maintaining good community relations for the explorer.

Understanding the community in which exploration will be undertaken, and identifying and managing any threats or opportunities for consultation and engagement are key elements for all exploration licence holders. For example, if exploration operations were planned in an agricultural area where harvest season was during the period from October to December, it would be a risk to conduct major community consultation events during that period when land holders are likely to be busy and unable to attend.

Community consultation risk assessment continues to be a significant issue for licence holders. Of the audits conducted in 2023, 6 licence holders had failed to undertake a community consultation risk assessment. There were a further 13 licence holders who had only undertaken the activity impact level assessment and had not done any further community consultation risk assessment, or whose consultation risk assessment was inadequate to support an effective and inclusive consultation program. For 11 licence holders who had completed community consultation risk assessments, suggestions for improvement were made to improve the effectiveness of the consultation risk assessment.

For licence holders that had undertaken a community consultation risk assessment, it was found most of these risk assessments concentrated on the impacts of the exploration activities on the community, rather than the risks associated with community consultation and engagement. The focus of the community consultation risk assessment needs to be on identifying and managing risks that would prevent a successful consultation program.

There were some licence holders that had developed comprehensive community consultation risk assessments. These assessments included risks such as:

- Contrasting messages in the community – third party groups spreading incorrect information
- Community consultation strategy becomes inappropriate due to change in proposed exploration program – failure to inform community of changes in exploration program
- Failure to gain social licence to operate - inadequate information provided to the community and landholders.

Focusing on risks to consultation and engagement will allow a licence holder to develop a community consultation strategy to manage the identified risks. This is a requirement of mandatory requirement 2 of the community consultation code. As part of the development of the community consultation strategy, it is necessary to establish the objectives for consultation (ie what is the consultation strategy trying to achieve).

The key recommendation and suggestion for improvement for community consultation risk assessment arising from the audits completed during 2023 was for the community consultation risk assessment to be completed with reference to the objectives for consultation (i.e. the risk assessment needs to focus on what risks and/or opportunities need to be managed in order for effective and inclusive consultation to take place to achieve the objectives for consultation).

### 3.1.2. Rehabilitation risk assessment

The rehabilitation code includes mandatory requirements for rehabilitation of exploration activities. Compliance with the mandatory requirements of the rehabilitation code is a condition of all exploration licences.

Mandatory requirement 1 of the rehabilitation code requires the licence holder to conduct a risk assessment to evaluate the range of potential threats and opportunities associated with rehabilitating disturbed areas to a condition that could support the intended final land use.

During the 2023 compliance audit program, it was found 3 licence holders had failed to undertake a documented rehabilitation risk assessment for their exploration activities. All 3 licence holders had undertaken surface disturbing activities requiring rehabilitation. There were 2 licence holders where the documented rehabilitation risk assessment was found to be inadequate, and a further 9 licence holders where a suggestion for improvement was made to improve the quality and scope of the rehabilitation risk assessment.

The quality of the rehabilitation risk assessments varied among licence holders. There were some very good examples of comprehensive risk assessments completed for exploration activities. One of the good practices observed, which may benefit other licence holders, related to linking the rehabilitation risk assessment to the rehabilitation objectives and completion criteria.



Mandatory requirement 2 of the rehabilitation code requires the licence holder to provide a copy of clear, specific, achievable and measurable rehabilitation objectives and completion criteria (ROCC) before starting any exploration activities. Linking the rehabilitation risk assessment to the rehabilitation objectives and completion criteria will allow better identification and management of the risks that may prevent or delay successfully achieving the objectives and completion criteria, and subsequently, the final land use. This provides a more robust framework for managing rehabilitation risks.

### 3.1.3. Environmental risk assessment

Condition 4 of an exploration licence requires the licence holder to prevent or minimise so far as is reasonably practicable, any harm to the environment arising from the activities carried out under the licence. Condition 2 of an exploration activity approval requires the licence holder to carry out the activity in compliance with Part B of the environmental management code.

Mandatory requirement 12 of the environmental management code requires the exploration licence holder to monitor the risks associated with those activities and, if the risk associated with an activity changes, implement revised environmental management controls.

Mandatory requirement 13 specifies the mandatory records that must be maintained by exploration licence holders. This includes records of risks assessments, and updates to those risk assessments, that result in a significant change to controls required to mitigate impacts to the environment.

Most licence holders had reasonably well-developed environmental risk assessments, typically based on the mandatory requirements of the environmental management code. There were 3 licence holders who could not provide evidence an environmental risk assessment was conducted for the exploration operations completed. It was noted these 3 licence holders did implement some environmental controls for their exploration activities, and no evidence of environmental harm was observed at the sites inspected. However, a risk assessment is required under the environmental management code.

Where environmental risk assessments were completed, they were often generic risk assessments for exploration activities. It was noted that these were rarely reviewed for any site-specific risks. Where generic risk assessments are used by exploration licence holders, these must be reviewed for each exploration program to confirm that the risk profile has not changed, and there are no additional site-specific risks that need to be managed. Failure to adequately identify and manage risk can result in non-compliance.

### 3.1.4. Monitoring and evaluation of risk controls

Risk assessment is not a set and forget exercise. It is important that risk controls are monitored, not only to confirm that those controls are implemented, but also to assess the effectiveness of those controls in managing the risk identified. Where monitoring results show risk controls are ineffective in managing the identified risk, changes to risk controls are required to better manage the risk. Monitoring and evaluation will allow licence holders to adopt an adaptive management approach to exploration operations.

As noted in the 2021-2022 compliance audit program, very few licence holders had developed processes to monitor the implementation or the effectiveness of the controls. The key suggestion for improvement for 16 licence holders was to consider the development of a process to evaluate

the effectiveness of the risk controls implemented, with revised controls identified where those risks changed, or controls were identified as being ineffective.

## 3.2. Community consultation

Community consultation is a condition of all exploration licences. Consultation must be undertaken in accordance with the community consultation code.

All the exploration licence titleholders audited during the 2023 compliance audit program had undertaken community consultation generally appropriate to the nature and scale of the exploration activities. Licence holders were also observed to have maintained some records of the community consultation undertaken. However, there were two key areas of concern identified during audits relating to community consultation as outlined in the following sections.

### 3.2.1. Community consultation strategies

Mandatory requirement 2 of the community consultation code requires the preparation of a community consultation strategy to manage the risks identified in the risk assessment. Mandatory requirement 3 of the community consultation code sets out the requirements for preparation of the community consultation strategy. Mandatory requirement 5 of the community consultation code identifies the community consultation strategy as a mandatory record.

During 2023, there were 3 licence holders that could not provide evidence of a documented community consultation strategy for exploration operations. The lack of a documented strategy was identified as a non-compliance against condition 3 of the exploration licence. Enforcement action was taken with the issuing of an official caution to each licence holder.

There were a further 4 licence holders where the community consultation strategy was raised as an observation of concern because the strategy did not adequately address the requirements for a community consultation strategy documented in mandatory requirement 3 of the community consultation code. The audit program identified 8 suggestions for improvement in relation to the content of community consultation strategies.

The issues identified in 2023 were generally the same as those identified in 2020-2021 and 2021-2022 reports and included:

- no clearly defined objectives for the consultation strategy
- lack of a detailed analysis of stakeholders
- lack of a defined process and identification of mechanisms for consultation with different stakeholder groups
- no defined process or mechanisms for analysing consultation outcomes or revising the consultation strategy to ensure it remains relevant and effective.

In almost all cases where the community consultation strategy was identified as deficient, it was noted the licence holder had used the guidance material in the community consultation code as the consultation strategy itself.

As noted in 2021-2022, it was not the Regulator's intention that the guidance material would form a template for a consultation strategy. The guidance material was provided to identify considerations for the development of a consultation strategy.

The mandatory requirements for the consultation strategy are clearly identified in the community consultation code. Licence holders must ensure that the consultation strategy is prepared to address each of the mandatory requirements. The strategy should also reflect the risks, opportunities and threats identified in the risk assessment prepared under mandatory requirement 1 of the community consultation code.

The guidance material in the community consultation code identifies that community consultation needs to be undertaken in a way that ensures:

- open and honest dialogue to facilitate a sound working relationship between the titleholder, landholders and community with all participants acting in a spirit of co-operation and good faith.
- that the community consultation strategy is appropriate and adequate to inform the community and manage potential risks associated with conflict with community and other stakeholders.

Setting objectives for consultation is the first step in the development of an effective consultation strategy. As described in section 3.1.1, the community consultation risk assessment should focus on what risks and/or opportunities need to be managed for effective and inclusive consultation to take place to achieve the objectives for consultation. The consultation strategy should be developed to provide detail on how the identified risks would be managed to facilitate a sound working relationship between the titleholder, landholders and community.

Most licence holders had identified several stakeholders, generally using Table 3 in the guidance material in Appendix 1 of the community consultation code. In some cases, the minimum list from Table 3 did not adequately reflect the range of stakeholders that may be affected by, or have an interest in, the exploration operations. Licence holders should consider a broad range of stakeholders and not confine themselves to the minimum stakeholder list identified in the guidance material.

Having identified a list of the key stakeholders, many licence holders did not do any assessment of the likely issues of concern for each stakeholder group or identify any specific requirements for consultation with each group. A one-size-fits-all approach to consultation may not be appropriate in addressing the needs of the different stakeholder groups. Licence holders should undertake analysis of the requirements for each stakeholder group so that appropriate consultation strategies can be put in place to ensure adequate consultation.

### 3.2.2. Community consultation reporting

Mandatory requirement 4 of the community consultation code requires the licence holder to implement, monitor, and report annually on the community consultation strategy. For all exploration audits, the licence holders were able to provide evidence that consultation was occurring. All licence holders had prepared and submitted annual community consultation reports up until the change to reporting requirements in October 2022. It was noted that the information provided in many reports was lacking in detail and did not provide any assessment of performance against the documented strategy, or any identification of common issues and action taken to address these.

To be effective, community consultation reporting must be more than just a list of who was consulted and when. Licence holders need to analyse and assess the methods and outcomes of consultation to:

- check that consultation mechanisms are appropriate and effective
- determine whether any changes need to be made to the consultation approach or the exploration activities because of the outcomes of the consultation activities
- identify any emerging issues so that actions can be implemented (where practicable) to address community concerns.

Since October 2022, the annual community consultation reports required by mandatory requirement 4 of the community consultation code are no longer submitted to the Regulator but are to be made available to the community by either publishing on the licence holders website, or upon request. Reporting back to the community in which exploration operations are conducted is part of the process of ensuring transparency and access to information on community consultation is available to the public through community consultation processes and methods.

This necessitated a change to the focus of reporting. Being publicly available, the report cannot focus on the who, what and where of previous reports. Licence holders need to use an analysis of the outcomes of community consultation activities to demonstrate to the community that they have heard any concerns raised, understood the issues and are acting (where possible) to address any concerns or enquiries raised.

Suggestions for improvement for community consultation reporting were raised for 12 licence holders. It was recommended that licence holders consider undertaking an analysis of all community consultation outcomes and complaints to identify any common issues or emerging trends, and document this in the annual reports.

There were several licence holders who had analysed consultation outcomes and documented actions taken to address issues raised. For example, one licence holder documented changes to its exploration community awareness procedure and ground disturbance permitting process because of issues raised during consultation with land holders. An exploration scope of works was prepared for each exploration project which included consultation with land holders on specific locations of work, any tracks or clearing required, and details of the drilling works. This was a good practice for ensuring land holders are provided with adequate information on the exploration activities conducted on their properties.

### **3.3. Environmental management**

Standard condition 4 of an exploration licence requires the licence holder to prevent or minimise so far as is reasonably practicable, any harm to the environment arising from the activities carried out under the licence. Condition 2 of an exploration activity approval requires the licence holder to carry out the activity in compliance with Part B of the environmental management code.

For each exploration audit undertaken, an assessment of compliance was made against the mandatory requirements of the environmental management code. There was no significant harm to the environment observed at any of the sites audited but there were some areas of concern as outlined in the following sections.

### 3.3.1. Chemical management

Mandatory requirements 1.1 to 1.4 of the environmental management code outline the requirements for the use, handling and storage of chemicals, fuels and lubricants. Most exploration companies and contract drillers had controls in place to provide secondary containment to chemicals on site, and the means to manage spills should any occur.

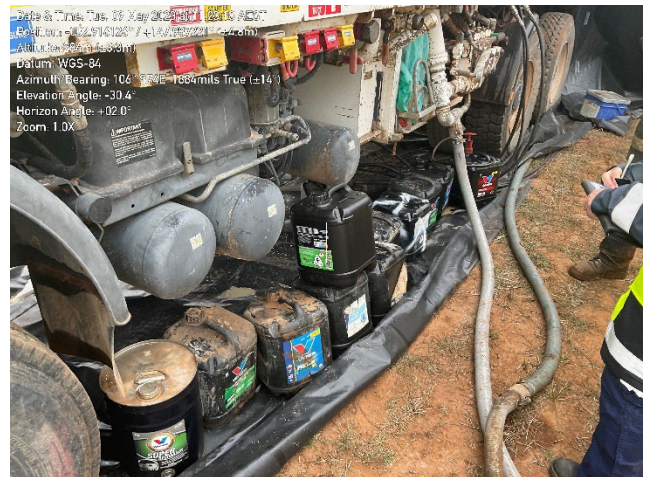
It was noted there was only one site where observations of concern were identified with chemical management. These issues included:

- A small oil stain under a lighting plant – a rig nappy was observed to be in place under the drill rig but similar controls were not in place for the lighting plant (Figure 1).
- Minor quantities of oils, coolants, drilling chemicals and other substances were observed to be stored on the black plastic rig nappy under the drill rig. Given the plastic did not have adequate sides and may not provide appropriate secondary containment, there was potential for spills to escape the rig nappy (Figure 2).

Figure 1 Lighting plant with no spill protection underneath



Figure 2 Poor storage of oils, coolants and drilling chemicals



Exploration licence holders are reminded that although they may pass responsibility to the driller for chemical and spill management, it is the licence holder that remains accountable. It is recommended that exploration licence holders implement inspections and monitoring of the activities of the drilling operators to ensure that chemicals, fuels and lubricants are managed appropriately in accordance with the requirements of the environmental management code. This should include checking:

- adequate bunding is in place and all chemicals, fuels and lubricants are stored within the bunded area
- safety data sheets are readily available on site
- spill kits are available, readily accessible, and used to clean up any spills that occur
- the driller is reporting any spills or issues to the licence holder who can decide whether further notification to the Regulator and/or EPA is required.

### 3.3.2. Waste management

Mandatory requirement 5.1 of the environmental management code requires licence holders to manage all wastes in a manner which does not, so far as is reasonably practicable, cause harm to the environment.

It was noted that all exploration licence holders had identified the key waste streams resulting from their exploration activities. Waste management measures were generally observed to be implemented on the sites inspected and no significant waste issues were identified.

There was one site where waste management was raised as an observation of concern. After drilling, testing and waste classification of drill cuttings by the licence holder identified that the cuttings did not meet the requirements for landfill as was proposed in the application. Drill cuttings were temporarily stored on a hard stand area while suitable alternative disposal options were identified. Any change to the waste management arrangements approved as part of the application for assessable prospecting operations would require a change to the activity approval.

## 3.4. Rehabilitation

All the exploration licence holders audited during the 2023 program had progressed rehabilitation of their exploration activities. There were 3 non-compliances identified in relation to the mandatory requirements of the rehabilitation code, relating to a failure to provide evidence a rehabilitation risk assessment was conducted.

In an improvement from 2021-2022, there were no non-compliances or observations of concern related to rehabilitation objectives and completion criteria (ROCC). All licence holders audited in the exploration compliance program had submitted ROCCs as required. There were some issues of concern and suggestions for improvement related to the development, implementation and completion of a rehabilitation program as discussed in the following section.

### 3.4.1. Monitoring of rehabilitation progress

A significant issue identified during the exploration audits in the 2023 period was the failure to assess rehabilitation progress against the ROCC. It was noted that the same issue was prevalent on most exploration licences audited during the 2021-2022 period.

Mandatory requirement 3 of the rehabilitation code requires the licence holder to develop, implement and complete a rehabilitation program (which includes a monitoring program) to rehabilitate disturbed areas to a condition that can support the intended final land use. The ROCCs are developed based on the intended final land use, so the rehabilitation monitoring program should be framed around tracking progress towards achieving the completion criteria.

It was noted that very few licence holders had systematic monitoring programs in place for monitoring and recording the progress of rehabilitation over time. This has not changed from the 2021-2022 audit program.

For most of the exploration licences audited, licence holders were generally using photographic records to monitor rehabilitation progress. A photograph alone may not always be sufficient to monitor the progress of rehabilitation. Where corrective actions may be required when rehabilitation progress is not on track to meet the completion criteria, there is a need to have a documented

process to record, action, track and close out those corrective actions. It is recommended that licence holders consider the development of a more robust rehabilitation monitoring program that documents rehabilitation inspections and tracks corrective actions where required. The rehabilitation monitoring program should also provide a tool for assessing rehabilitation progress against the rehabilitation objectives and completion criteria for the site. This would assist licence holders in identifying sites that are ready for rehabilitation sign-off.

### 3.4.2. Achieving final land use

There were several licence holders who could demonstrate achievement of both the rehabilitation completion criteria and the final land use. A sign of successful rehabilitation is when a land holder can use their land for its intended purpose with no issues arising from the exploration activities.

Figure 3 and Figure 4 show examples of rehabilitated areas of agricultural land where the land holder has been able to successfully use the land for grazing or cropping following exploration drilling and rehabilitation.

Figure 3 The site of the Forest Hill air core drilling program is now under canola crop after successful rehabilitation



Figure 4 Rehabilitation of an RC drill hole back to grazing land



## 3.5. Other issues

### 3.5.1.1. Collection of core and samples

Clause 65 of the Mining Regulation 2016 required the holder of an authority to, so far as is reasonably practicable, collect, retain and preserve:

- all drill cores remaining after sampling
- characteristic samples of the rock or strata encountered in any drill holes.

All core and samples collected were required to be labelled, stored and managed in a manner that preserved the integrity of the core or samples.

Most licence holders had well managed core and sample storage. Core was typically stored in plastic core trays, palletised by hole number. Chip samples were typically stored in plastic chip

trays. Figures 5, 6, 7 and 8 show examples of good practices observed in the management of core and samples from drilling operations.

Figure 5 Palletised and covered core storage



Figure 6 Typical core sample layout in plastic core trays



Figure 7 Well organised chip sample storage by hole number



Figure 8 Typical chip sample storage in plastic chip trays with labelling



There were 2 licence holders who had not collected or maintained chip samples from their RC drilling programs. Licence holders are reminded of their obligations under Clause 65 of the Mining Regulation to keep characteristic samples of the rock or strata encountered in any drill holes.

### 3.5.1.2. Record keeping

Sections 163D and 163E of the *Mining Act 1992* related to the creation and maintenance of records required under the Act, the regulations, or a condition of title. Clause 17 of Schedule 8A of the Mining Regulation 2016 required the holder of a mining lease to create and maintain records of all actions taken that demonstrate compliance with the requirements of Schedule 8A conditions. Records must be kept in a legible form for production to any inspector and must be maintained for a period of 4 years after the expiry or cancellation of the title.



Specific requirements for the types of records to be maintained for exploration activities were detailed in the mandatory requirements of the exploration codes of practice as follows:

- mandatory requirement 6 of the rehabilitation code
- mandatory requirement 13.1 of the environmental management code
- mandatory requirement 5 of the community consultation code.

All lease and licence holders were creating and maintaining records in some form. There were no non-compliances identified in relation to record keeping but one observation of concern was raised related to the requirements to keep mandatory records under the exploration codes of practice. Suggestions for improvement were made for 4 licence holders in relation to management of records.

It was observed that some records were being collected and maintained to demonstrate compliance with the mandatory records required by mandatory requirement 6 of the rehabilitation code. However, these records were typically in the form of photos, with very few licence holders maintaining records of actual rehabilitation methodologies or rehabilitation monitoring activities.

Lease and licence holders need to make themselves aware of the records required to be created and maintained during their operations. Any records created must be readily retrievable upon request from an inspector, so it is important that documents are well organised and maintained.

## 4. Compliance management

The audits of exploration licences and mining leases have generally found that higher levels of compliance are achieved if licence or lease holders have identified and are actively managing their compliance obligations within some form of compliance management system. This may take the form of a simple excel spreadsheet or database with hyperlinks to documents and records, or a sophisticated software package that can track and escalate compliance issues.

It is recommended that all licence and lease holders consider the development of compliance management tools to assist them to be able to actively manage their compliance obligations. For example, as a starting point, the Regulator has developed self-audit checklists for miners and explorers which are available on the Regulator's website for lease and licence holders to use to assess their own level of compliance. ([www.resourcesregulator.nsw.gov.au/rehabilitation/auditing](http://www.resourcesregulator.nsw.gov.au/rehabilitation/auditing)).

### 4.1.1. Identifying compliance obligations

When undertaking exploration, extraction or production of minerals, licence and lease holders are required to operate in accordance with certain standards and obligations. Identifying compliance obligations is a critical step in the development of an effective compliance management system. Compliance obligations can include:

- regulatory requirements (for example, the *Mining Act 1992* or Mining Regulation 2016)
- conditions imposed on the grant, renewal, or transfer of mining leases and exploration licences
- exploration activity approvals
- exploration codes of practice
- specific commitments made by the organisation (for example, commitments made in approved exploration activity applications, or commitments made in a rehabilitation management plan prepared under the Schedule 8A requirements).

Once identified, compliance obligations should be reviewed periodically to identify any changes in those obligations (for example, changes in legislation).

Generally, most lease and licence holders had a good grasp of their compliance requirements related to the conditions of title. Compliance obligations under the Mining Act and Mining Regulation were less understood. In exploration, most of the observations of concern and suggestions for improvement were related to the mandatory requirements of the exploration codes of practice.

This indicated that there was a need for lease and licence holders to identify and familiarise themselves with all their compliance obligations. Once compliance obligations are identified, it is recommended that lease and licence holders develop, implement and document the actions required to achieve and verify compliance with those obligations.

### 4.1.2. Compliance risk assessment

Achieving and maintaining compliance should not be left to good luck – it should be based on good management. Licence holders that have identified and are actively managing their compliance obligations generally have a much reduced incidence of non-compliance.

All compliance obligations carry some degree of risk associated with non-compliance. These risks can include financial penalties for non-compliance (fines, etc), loss of company reputation, and in some cases, continued non-compliance could affect the continuation of exploration opportunities (suspension or cancellation of the exploration title).

Although not a compliance requirement, undertaking a risk assessment of the compliance obligations is good practice. A compliance risk assessment will assist licence holders to identify the controls required to manage their compliance obligations and avoid the penalties associated with non-compliance.

### 4.1.3. Subcontractor management

Contractors are often used to undertake specialist tasks, for example, exploration drilling. Whilst the responsibility for compliance or the implementation of environmental controls is often passed to the contractor, the licence holder will retain accountability for compliance with its lease or licence conditions and other compliance obligations. It is important that the lease or licence holder exercises management control of its contractors; for example, by specifying contract requirements, providing oversight of contracted works, and evaluating the performance of the contractor during the contracted works.

There have been examples in audits undertaken during the 2023 program where a contractor has done something that adversely affected the licence holder's ability to meet their compliance obligations. An exploration drilling program in central-west NSW was planned to avoid areas of terrestrial biodiversity by offsetting holes from the terrestrial biodiversity areas. The contract driller was not aware of the need to move several holes and drilled the holes in line with the remainder of the drill pattern. In this case, there was no actual harm to terrestrial biodiversity, but it highlights the need for licence holders to monitor the contract drilling works to ensure that works are carried out in accordance with the approval.

### 4.1.4. Inspections, monitoring and evaluation

An effective inspection, monitoring and evaluation process is required to:

- monitor the implementation of the risk controls
- evaluate the effectiveness of those controls based on an assessment of inspection and monitoring data
- implement an adaptive management approach if monitoring shows that controls may be ineffective.

Most lease and licence holders had established some basic inspection and monitoring processes, but further development would be beneficial to establish robust and comprehensive inspection and monitoring programs.

There were some good examples of inspection and monitoring observed during audits undertaken. For example, one licence holder had established an inspection and monitoring process that aligned with the lifecycle of each drill hole. The drill site environmental monitoring sheet was observed to have three sections:

- general and statutory approvals – generally pre-drilling

- site and water management – during drilling
- rehabilitation and site monitoring – generally post drilling.

The monitoring sheet was completed for each drill hole, providing a record of inspection and monitoring activities.

The key thing missing from most inspection and monitoring processes was a collation and analysis of results over time to evaluate the effectiveness of risk controls, rehabilitation methodologies etc. It is important for lease and licence holders to be evaluating their performance and adapting their management strategies if that evaluation shows that current management is not as effective as it could be.

## 5. Summary and recommendations

The 2023 compliance audit program completed 38 audits across the mining and exploration sectors. Where non-compliances were identified, enforcement action was undertaken which resulted in 6 official cautions being issued to lease or licence holders. A further 3 compliance matters were under consideration by the Regulator.

The audits identified several key issues of concern. Of most concern was about 75% of the non-compliances and observations of concern in the exploration sector were related to the mandatory requirements of the exploration codes of practice. This is an improvement from the 90% of all non-compliances and observations of concerns identified in the 2021-2022 program but highlights that further improvement is required.

There is a need for all lease and licence holders to identify and understand their compliance obligations and be actively managing those obligations to prevent non-compliances occurring. Where lease and licence holders had identified and were actively managing their compliance obligations, the auditors generally reported much lower levels of non-compliance or observations of concern.

Key recommendations for lease and licence holders to consider arising from the 2023 compliance audit program are similar to those identified for 2021-2022. These include:

- General recommendations
  - Lease and licence holders should review their compliance obligations and develop some form of compliance management tool to assist in managing those obligations.
  - Where contractors are used in operations, lease and licence holders need to be managing those contractors to ensure that contract operations do not compromise the ability of the lease or licence holder to meet their compliance obligations.
  - Risk assessments should not be static documents. All risk assessments should be reviewed regularly to monitor for changes to the risk profile. Similarly, all risk controls should be monitored to confirm implementation, and the effectiveness of the control in mitigating the identified risk.
- Exploration
  - Environmental risk assessments must be completed to identify and manage any environmental impacts arising from exploration operations. Failure to adequately identify and manage environmental risk can result in the potential for environmental harm.
  - Rehabilitation risk assessments must be completed to evaluate the range of potential threats and opportunities associated with rehabilitating disturbed areas to a condition that could support the intended final land use. Linking the rehabilitation risk assessment to the rehabilitation objectives and completion criteria will allow better identification and management of the risks that may prevent or delay successfully achieving the objectives and completion criteria, and subsequently, the final land use. This provides a more robust framework for managing rehabilitation risks.

- Community consultation risk assessments must be completed to identify and consider the range of opportunities and potential threats associated with community consultation and engagement. It is good practice to align the risk assessment with the objectives for consultation to focus on what risks and/or opportunities need to be managed in order for effective and inclusive consultation to take place to achieve the objectives for consultation.
- Consultation strategies need to be developed to address the mandatory requirements of the exploration codes of practice and reflect the threats and opportunities identified in the risk assessment.
- Licence holders should consider the development of a more robust rehabilitation monitoring program that documents rehabilitation inspections, actions and tracks corrective actions where required, and provides a tool for assessing rehabilitation progress against the rehabilitation objectives and completion criteria for the site.
- Licence holders must be collecting, storing and maintaining core and samples from exploration drilling programs.
- Licence holders must be collecting and retaining mandatory records required by the codes of practice to demonstrate compliance.