

# Feedback Form

\* Required field

## Contact details

Name*				<u>Andrew Butler</u>			
Email address*				[REDACTED]			
Street address				[REDACTED]			
Suburb	[REDACTED]	State	[REDACTED]	Postcode	[REDACTED]		
Postal address (if different from above)				[REDACTED]			
Suburb	[REDACTED]	State	[REDACTED]	Postcode	[REDACTED]		

## Organisation

Are you an individual representing at organisation?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, please provide the organisation's name:	<u>Eco Logical Australia (ELA)</u>	

## Privacy

<input checked="" type="checkbox"/> * In making this submission I acknowledge the submission will be published by the Resources Regulator, including my identity.	
(If applicable) I provide the following reason/s to request my identity be <b>excluded</b> when the submission is published:	

## Feedback

### DO YOU HAVE ANY COMMENTS ON THE QUESTIONS BELOW?

<p>Do you have any specific comments on Clauses 31A-31C of Schedule 1 to the Mining Amendment (Standard Conditions of Mining Leases - Rehabilitation) Regulation 2020?</p>	<p>———<u>The comments are provided below in relation to the clauses referenced by these Sections</u></p>
<p>Do you have any specific comments on Part 1 of Schedule 8A to the Mining Amendment Regulation 2020?</p>	<p>———<u>No comment</u></p>
<p>Do you have any specific comments on Part 2 of Schedule 8A to the Mining Amendment Regulation 2020?</p>	<p>———<u>No comment</u></p>
<p>Do you have any specific comments on</p>	<p>———<u>No comment</u></p>

<p>Part 3 of Schedule 8A to the Mining Amendment Regulation 2020?</p>	
<p>Do you have any specific comments on Part 4 of Schedule 8A to the Mining Amendment Regulation 2020?</p>	<p>———<u>ELA strongly supports the use of a Rehabilitation Risk Assessment to specifically inform the approach to be developed through the Rehabilitation Management Plan. This will assist with integrating mine rehabilitation into early mine planning and ensure significant risks are addressed from the outset.</u></p> <p><u>ELA has the following comments on Part 4:</u></p> <ol style="list-style-type: none"> <li><u>1. If the Rehabilitation Risk Assessment only needs to be 'prepared' and does not need to be submitted to or approved by the Secretary, on what basis / under what circumstances would the Secretary be able to direct a leaseholder to amend a Rehabilitation Risk Assessment?</u></li> <li><u>2. If neither the Rehabilitation Risk Assessment nor the Rehabilitation Management Plan on which it is based are submitted and reviewed, how can the community be assured that appropriate risks have been considered and the rehabilitation strategies being implemented are appropriate? How will compliance be assessed? Some form of internal (Resource Regulator) or external (third party) review should be considered.</u></li> <li><u>3. If the Rehabilitation Management Plan, and therefore the rehabilitation strategy/methods and the rehabilitation monitoring methods described in it, is not approved or endorsed, but the Rehabilitation Completion Criteria contained within the Plan are approved, this could lead to perverse outcomes that do not encourage or reward lease-holders who, in good faith, develop strategies that align best management practice. The move to drive a risk based approach to rehabilitation planning through the change to the regulations is supported, but unless there is a clear incentive for lease-holders to implement rehabilitation strategies that address the outcomes of the risk assessment (such as securing long-term certainty that rehabilitation methods are endorsed by the Secretary), the true benefit of the risk based approach may not be realised. It is well recognised that planning for mine closure needs to be incorporated into the early stages of mine development. Rehabilitation outcomes cannot be assured and legacies avoided if the end point is approved while the correct strategy that needs to be implemented from the outset to achieve the end point is not validated and endorsed. Progressive rehabilitation of sorts may be achieved but if the strategy is flawed, it might not be possible to attain the agreed end point. This may not be apparent for many years; increasing the risk of creating legacy issues. We also have the following comments / clarifications:</u></li> </ol>

- a. If rehabilitation methods are not approved, will Inspectors be able to question the acceptability of a rehabilitation strategy or approach and seek corrective action as a result of site inspections / audits? What would be the basis of this action and how will “expected standards” be transparently applied?
- b. If only the Completion Criteria are approved, but the proposed rehabilitation monitoring methods used by the lease-holder to validate achievement of rehabilitation completion are not, there is an unacceptable level of uncertainty for the leaseholder whether the approach they commit to will be able to secure rehabilitation completion sign off at a later date. We would recommend that the Resources Regulator also approve / endorse a validation method (what data will be collected and how it will be used for validate achievement of the criteria) proposed by the lease-holder.
4. ELA urges that care be taken in the development of the guidelines that will inform the development of rehabilitation objectives, indicators and completion criteria. There is a risk that completion criteria presented as examples in the guideline become “standards” adopted by operations. Proponents should have the flexibility to present completion criteria that are customised and site specific to their operations. Ideally the guideline should provide a framework similar to the approach adopted in WA ([http://www.dmp.wa.gov.au/Documents/Environment/Framework\\_developing\\_min\\_e-site\\_completion\\_criteria\\_WA.pdf](http://www.dmp.wa.gov.au/Documents/Environment/Framework_developing_min_e-site_completion_criteria_WA.pdf)), but that draws on local knowledge and reflects the range of mining operations in NSW.
5. The requirements for when Completion Criteria should be submitted for approval are not clear. This was evident to us when, based on the information reviewed, different consultants within ELA interpreted the requirements differently. Several questions arise that require clarification either in the wording of the regulation or in the supporting guidance material yet to be developed.
- a. Do Completion Criteria need to be submitted for approval at the outset and be amended according to changes in site risks and hazards up to a period of three years before imminent surrender (i.e., remain fixed for the that period) or can they be developed in the Rehabilitation Management Plan and remain “proposed” Completion Criteria (i.e., not submitted for approval) but be submitted for approval at any time, as long as it is not less than 3 years in advance of planned surrender?
- b. Will there still a requirement to develop, and submit for approval, completion criteria for each rehabilitation phase (as currently required in the MOP)?
- c. How will rehabilitation progress be assessed in the Annual Rehabilitation Report if Completion Criteria are not approved? Can leaseholders use the “proposed” Completion Criteria to assess annual performance?
- d. If rehabilitation methods (as detailed in the Rehabilitation Management Plan) are not approved or endorsed by the Resources Regulator and lease-holders are not

	<p><u>required to submit Completion Criteria until three years before surrender, what certainty do they have that constructed landforms and rehabilitation will be judged to be acceptable when it comes time to plan for surrender? At that time, it may be too late to address fundamental issues and this could result more legacies rather than improving rehabilitation outcomes.</u></p> <p><u>6. What process is proposed for assessing rehabilitation outcomes for rehabilitated areas that have been constructed and revegetated to meet previously approved completion criteria (i.e., completion criteria contained in an approved MOP or an approved Rehabilitation Management Plan prepared as a condition of approval)? Will lease-holders have the option to either retain or amend those 'approved' completion criteria for those areas or will they be required to re-submit then for approval? How will such areas be affected by the outcomes of the Rehabilitation Risk Assessment?</u></p> <p><u>7. Will the revised Regulation still allow lease holders to progressively apply for formal confirmation from the Department that rehabilitation has been successful over portions of MLs and would this include those older areas with previously approved completion criteria?</u></p> <p><u>8. The nomenclature for the different documents and outcomes that must be submitted is confusing. For large mines, a Rehabilitation Management Plan is required but does not have to be submitted for approval while a Final Landform and Rehabilitation Plan (very similar wording) is required for approval. Clearer separation in the naming of these documents and what they contain is recommended.</u></p>
<p>Do you have any specific comments on Part 5 of Schedule 8A to the Mining Amendment Regulation 2020?</p>	<p><u>Although we agree that progressive rehabilitation is an important aim, ELA would like to see flexibility in how long rehabilitation areas can stay in any given rehabilitation phase. The time required to progress through the various phases will depend on the final land use outcome and site-specific circumstances (climate, geology, legacy issues). The completion criteria can be worded so that they include a requirement for trends or trajectories to be established to demonstrate progression (backed up by appropriate triggers in the Trigger and Response Plan) as an alternative to the imposition of fixed phase timeframes.</u></p> <p><u>In terms of the lease holder requirement to rehabilitate as soon as reasonably practicable after disturbance, will the Regulation or associated guidelines provide example circumstances for when land is taken to be unavailable for rehabilitation (as in the Qld Mineral and Energy Resources (Financial Provisioning) Act 2018)? Without this formal guidance, how can lease-holders be certain that the reasons they may put forward for not conducting progressive rehabilitation on a parcel of land will be assessed in a transparent and equitable manner?</u></p> <p><u>ELA understands the benefits of standardising data formats and the collation of data through the Mine Rehabilitation Portal. Appropriate support (such as through</u></p>

	<p><u>training workshops or webinars and web-/phone- based support) needs to be given to operators to assist them to use the Mine Rehabilitation Portal.</u></p> <p>_____</p>
<p>Do you have any specific comments on Part 6 of Schedule 8A to the Mining Amendment Regulation 2020?</p>	<p>_____ <u>No comment</u></p>
<p>Do you have any specific comments on Part 7 of Schedule 8A to the Mining Amendment Regulation 2020?</p>	<p><u>ELA supports any move to improve the good record keepign and rehabilitation quality control processes. This will assist leaseholders in the long-run by assisting with adaptive management and provision of evidence for completion and closure.</u></p> <p>_____</p>
<p>Do you have any specific comments on Part 8 of Schedule 8A to the Mining Amendment Regulation 2020?</p>	<p>_____ <u>No comment</u></p>
<p>Do you have any specific comments on Part 9 of Schedule 8A to the Mining Amendment Regulation 2020?</p>	<p>_____ <u>No comment</u></p>

<p>Do you have any general comments?</p>	<p><u>EELA applauds the attempt to reduce regulatory burden and clarifying the path to lease surrender. We would like to see the Resources Regulator sufficiently resourced for it be able to review rehabilitation planning documents as well as engage in on-site inspections and auditing of performance outcomes. This would serve the interest of the mining sector and the community.</u>————</p>
--	---

## Submitting the form

**Email:** [rr.feedback@planning.nsw.gov.au](mailto:rr.feedback@planning.nsw.gov.au)

**Post:** Operational Rehabilitation Reforms

NSW Resources Regulator – Regulatory Programs

PO Box 344 Hunter Regional Mail Centre 2310 NSW

This form may not be submitted to other offices of NSW Planning, Industry and Environment or Regional NSW.

© State of New South Wales through Regional NSW 2020. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute Regional NSW as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (September 2020) and may not be accurate, current or complete. The State of New South Wales (including Regional NSW), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

DOC19/974781