

NEW STANDARD REHABILITATION CONDITIONS ON MINING LEASES

Frequently Asked Questions on implementation for Large Mines

July 2022

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. A transitional period for existing large mines ended on the 2 July 2022 and as such the new conditions now apply. The purpose of these *Frequently Asked Questions* is to assist large mines navigate the implementation process.

In regard to small mines (those mines that are not subject to environment protection licence under the *Protection of the Environment Operations Act 1997*), the transitional arrangements for compliance with the new standard conditions continue to apply until 2 July 2023 (24 months from the date the Regulation commenced).

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

What are the changes?

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 changes introduce regulatory tools and set clear requirements for rehabilitation throughout a mine's life, from the mine design stage through to closure.

The key components are:

1. New standard mining lease conditions for rehabilitation 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. 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.

2. Form and way documents 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.
3. Guidelines on risk assessments, records and rehabilitation controls will help lease holders comply with mining lease conditions.
4. The [mine rehabilitation portal](#) will collect rehabilitation GIS spatial data for large mines. 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.

The changes will improve regulatory mechanisms to ensure that progressive rehabilitation occurs and that sustainable post-mining land use outcomes are achieved.

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

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

- register as a user within the Resources Regulator Portal via the following [link](#)
- register your mine and all the mining leases that make up the mine
- nominate a contact person
- confirm your reporting and submission dates
- register authorised representatives.

The Portal requires each holder of an exploration or mining title (titleholder) to nominate one or more individuals to have access to the online portal. These users will be authorised to make submissions and applications on behalf of the titleholder – and are required to register using the titleholder’s unique QR Code.

Registered users will only be given access to *Mining Act 1992* related matters. Registered users will be taken to be an **Authorised Representative** of the titleholder. Consultants will require an email from the titleholder representative to enable the approval process.

What documents will I need to lodge?

Lease holders will be required to prepare and submit to the Secretary the following for approval:

- rehabilitation objectives
- rehabilitation completion criteria
- final landform and rehabilitation plan (for large mines only).

Lease holders will also be required to prepare and submit to the Secretary an annual rehabilitation report and forward program.

How and when do I lodge documents/notifications in the Resources Regulator Portal?

Access to the new online forms relating to the new standard conditions are now available via the Resources Regulator's Portal - **Title Holder's Portal (Mining Act)**, enabling industry to meet their obligations as well as lead to more efficient regulatory oversight. On-line forms associated with the new conditions have been developed for the following:

- Register mine / multiple leases - TICON
- Nominate contact person - NCP
- Amending Reporting / Submission Dates and Extension Request - ARD
- Submit Forward Program - FWP
- Annual Rehabilitation Report - ARR
- Rehabilitation Objectives - ROBJ
- Rehabilitation Completion Criteria (Mining) - RCC

All submissions via the above on-line forms, with the exception of the Annual Rehabilitation Report and Rehabilitation Completion Criteria (Mining), must be completed by the titleholder by the end of the initial period as specified by clause 15 of Schedule 8A of the Mining Amendment (Standard Conditions of Mining Leases-Rehabilitation) Regulation 2021 being the **1 August 2022**.

When do I need to have documents published?

Mines will be required to publish the following documents on their website:

- Rehabilitation Management Plan – within 14 days after it is prepared or amended, noting that it must be prepared by the end of the initial period (1 August 2022)
- Forward Program – within 14 days after it is submitted to the Regulator or amended, noting that it must be submitted by the end of the initial period (1 August 2022)
- Annual Rehabilitation Report – within 14 days after it is submitted to the Regulator or amended
- Final landform and Rehabilitation Plan (large mines only), Rehabilitation Objectives Statement, Rehabilitation Completion Criteria Statement (collectively referred to as Rehabilitation outcome documents) – a copy of the rehabilitation outcome documents must be included in the Rehabilitation Management Plan. Where these documents are yet to be approved by the Regulator, a copy of the proposed version must be included in the Rehabilitation Management Plan

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

Troubleshooting issues with on-line forms within the Resources Regulator Portal

- If you do not have your Titleholder's QR code or require any assistance, please contact us by emailing nswresourcesregulator@service-now.com or calling 1300 814 609 (option 2, then 5).
- Titleholders should note that the application to "Register a Mine/Treat one or more mining leases as a single lease" will be assessed by the Resources Regulator prior to approval. Once approved, the applicant will be notified by email and the registered mine will be available in the drop-down list for all subsequent forms relating to the Rehabilitation Reforms. Please wait until you have received this approval email before preparing subsequent forms.

- In attempting to complete the application “Register a Mine/Treat one or more mining leases as a single lease” if it is found that a Mine name or Title number is not appearing in the drop-down fields please email the Resources Regulator at nswresourcesregulator@service-now.com. In the email we ask that you include the mine name and information that is missing so that we can assist in determining what is the cause of this error.
- If you are proposing to lodge an ARD application to amend your reporting period, you will need to select a reporting **commencement** date for the 12 months period in 2022 to ensure that the system identifies that the first Annual Rehabilitation Report will be due in 2023 (i.e. within the annual reporting period in which the first Forward Program was submitted before the end of the initial period being the 1 August 2022).

How do I lodge spatial data via the Mine Rehabilitation Portal?

The mine rehabilitation portal is an online tool that helps collect rehabilitation spatial data into a centralised geo-database. 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 mine rehabilitation portal can be accessed at the web [link](#). Detailed instruction on the registration process can be found on page 4 of the [Guideline Mine Rehabilitation Portal](#).

Currently only titleholders who are required to submit data have access to the portal. In this regard, all requests to access the Mine Rehabilitation Portal will be reviewed prior to approval and in the case of consultant(s), an email from the titleholder will be required indicating that the consultant(s) are approved to access the Mine Rehabilitation Portal on their behalf. This is usually from an Environment Manager or equivalent.

What period does my first Forward Program cover?

The first Forward Program is due to be submitted to the Secretary (Regulator) by the end of the initial period as per clause 15(1)(c) being the 1 August 2022. As an example, if the first Forward Program is submitted to the Secretary on the 15 July 2022 (i.e. within the 30 day initial period) then the first Forward Program will represent a 3 year period commencing on 15 July 2022:

- Plan 2A: Mining and Rehabilitation – Year 1 (15 July 2022 – 14 July 2023)
- Plan 2B: Mining and Rehabilitation – Year 2(15 July 2023 – 14 July 2024)
- Plan 2C: Mining and Rehabilitation – Year 3 (15 July 2024 – 14 July 2025)

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

There may be instances depending on the type of mining operation where there will be no forecast spatial data in terms of disturbance and or rehabilitation for a part of or entire 3 year Forward Program period. Where this is the case, there is no requirement to submit spatial data for the Forward Program into the Mine Rehabilitation Portal.

To enable the Forward Program to be submitted via the Resources Regulator's Portal where no spatial data is submitted into the Mine Rehabilitation Portal, titleholders are required to send an email to nswresourcesregulator@service-now.com with the following information:

- Name of mine
- Forward Program number
- Details of which year(s) of the Forward Program will have no proposed disturbance and or rehabilitation data submitted into the Mine Rehabilitation Portal

Furthermore, the titleholder will be required to provide details in the Forward Program on-line form to justify why there are no disturbance or rehabilitation activities proposed.

Once the title holder (or authorised representative) has sent the email with the required information as outlined above, the Regulator will turn off the functionality within the Forward Program on-line form that prevents the form being submitted until the spatial data has been submitted via the Mine Rehabilitation Portal. Once the Regulator has turned off this functionality, the title holder will be informed that the Forward Program on-line form can be submitted once all other mandatory sections have been completed.

Please note that title holders will not be able to utilise the above process to delay rehabilitation. The Regulator will continue to assess a titleholder's rehabilitation obligations against Schedule 8A of the Mining Amendment (Standard Conditions – Rehabilitation) Regulation 2021.

The process as outlined above is for the first Forward Program only. The Regulator is currently considering a longer-term solution to allow for these type of scenarios in subsequent Forward Program submissions.

What is my Annual Rehabilitation Report period and date and how will this align with the Forward Program period?

As per Clause 15(2)(a), the first Annual Rehabilitation Report is to be submitted to the Secretary before 60 days after the last day of the annual reporting period (as defined by clause 13(5) of the regulation), commencing with the annual reporting period in which the forward program was given to the Secretary under subclause 15(1)(c). Clause 13(5) defines the annual reporting period as the period commencing on the date on which the mining lease is granted, or as otherwise approved by the Secretary.

The subsequent Forward Program that is submitted with the Annual Rehabilitation Report in accordance with Clause 15(2) will be representative of the next 3 years aligned to the annual reporting period as per Clause 13(5) of the regulation.

As an example, if the grant anniversary date of a lease is the 31 March then:

- the first Annual Rehabilitation Report will be due no later than 30 May 2023 (i.e. before 60 days after the last day of the annual reporting period as being set from the grant anniversary date). As such the first Annual Rehabilitation Report will be representative of the period from the 31 March 2022 to 30 March 2023.
- the accompanying Forward Program (being the second Forward Program submitted under the new Regulation) will re-align with the annual reporting period and as such will include the following plans:
 - Plan 2A: Mining and Rehabilitation – Year 1 (31 March 2023 – 30 March 2024)
 - Plan 2B: Mining and Rehabilitation – Year 2(31 March 2024 – 30 March 2025)
 - Plan 2C: Mining and Rehabilitation – Year 3 (31 March 2025 – 30 March 2026)

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

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

- extend the initial period when the holder is required to do the following pursuant to clause 15(8):
 - prepare a rehabilitation management plan, and
 - prepare a rehabilitation objectives statement and, for a large mine, a final landform and rehabilitation plan and give these to the Secretary for approval, and
 - prepare a forward program and give it to the Secretary.
- amend the annual reporting period - clause 13(5),
- amend the submission date of the forward program and annual rehabilitation report – clause 15(2).
- amend the submission date of providing updated rehabilitation outcome documents to the Secretary after a non-State significant development consent is modified - clause 15(4).

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

Applications to amending dates/reporting periods are generally acceptable where titleholders seek to align their annual reporting period and submission dates associated with business reporting requirements or other statutory instruments. An example being the Annual Review required for State significant development consents.

The Regulator will **not** approve an extension to the initial period beyond December 2022, except under exceptional circumstances.

When does a rehabilitation cost estimate need to be submitted?

The department uses the rehabilitation cost estimate to help determine the amount of the security deposit held for each mine. The rehabilitation cost estimate is an estimate of the rehabilitation costs in relation to any land or water, prepared and calculated in accordance with guidelines approved by the Secretary.

A rehabilitation cost estimate is currently required under the Mining Regulation 2016 as prescribed information in the following circumstances for mining activities:

- renewal of mining leases
- transfer of authorities.

In addition to the existing regulatory requirements set out above, under the new arrangements, lease holders will be required to:

- submit a rehabilitation cost estimate as part of the forward program, including the first forward program to be submitted by the end of the initial period (1 August 2022)
- resubmit a rehabilitation cost estimate as directed by the Secretary.

Following an assessment, if the rehabilitation cost estimate is determined to be inadequate, it will be rejected and either the lease holder will be asked to submit a revised rehabilitation cost estimate, or the Secretary will determine the security amount.

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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