

OPERATIONAL REHABILITATION REFORMS

Public consultation - response to submissions

Mining Amendment (Standard Conditions of Mining Leases – Rehabilitation) Regulation

Public consultation on the draft Mining Amendment (Standard Conditions of Mining Leases – Rehabilitation) Regulation took place in late 2020. We received 21 submissions through the public consultation process. The submissions have been published on the Resources Regulator's [Operational Rehabilitation Reforms](#) webpage.

We have examined the submissions received and considered the issues raised and we are now finalising the Regulation, Form and Way documents and guidance material for approval and commencement in the first half of 2021.

Changes to the Regulation

In response to feedback received, the Department of Regional NSW is proposing to make the following changes to the draft Regulation:

- the prepared rehabilitation management plan, forward program and annual report will be made available within 14 days of a written request where the leaseholder does not have a website
- the clause relating to reporting the causes of non-compliance will be amended to enable the lease holder to report 'likely' causes of the non-compliance if the causes are not confirmed
- the timing for the preparation and submission for approval of rehabilitation completion criteria will be clarified

- the clauses around final land use will be clarified to ensure that the final land use is consistent with the rehabilitation objectives and rehabilitation completion criteria (and for large mines, the final landform and rehabilitation plan)
- the Regulation will clarify that a lease holder can amend and submit a revised document following a modification to the development consent.

A review of the Regulation will take place as part of the automatic repeal process under the *Subordinate Legislation Act 1989*.

Changes to the Form and Way documents

The Form and Way documents provide:

- the requirement for what needs to be included in the Rehabilitation Management Plan, Annual Report and Forward Program and Final Landform and Rehabilitation Plan
- how the documents should be structured
- how they need to be submitted.

Most issues raised in the submissions will be addressed through updates to the Form and Way documents as well as providing additional guidance. In addition to making specific corrections and clarifications raised through the submissions, the documents will be reviewed and streamlined where possible. Updates include providing more clarity about requirements to report biodiversity offset agreement where relevant to rehabilitation, more detail on soil profile development potential, planning studies and research and risk assessments.

Clarifications will be made about the scalability of the documents to ensure that the requirements are commensurate with the risk. For example, if a particular section is not relevant to the leaseholder, they can provide a reason why it is not applicable.

Form and Way documents will be updated if required after transition.

Additional guidance

Guidelines and fact sheets will be provided to assist the leaseholder to fulfill their obligations outlined in the conditions and form and way documents. The guidance material does not provide additional mandatory requirements – it will identify ways in which the leaseholder can work towards fulfilling their obligations.

Templates and example reports will be included with the guidance, as suggested through the feedback. Further guidance will be provided regarding the scalability of the reforms, so smaller operations that fit into the large mine category will understand their obligations under the Form and Way documents, as appropriate for the risks that the operations present.

A fact sheet on the concepts of ‘reasonably practicable’ and ‘reasonably foreseeable’ will be published to clarify the department’s expectations about compliance with the regulatory obligations. Guidance will also be provided on the transition and the process for amending existing leases.

As requested in several submissions, leaseholders will be contacted to advise how to align reporting dates with the reporting dates required by other agencies. Workshops will also support the implementation of the reforms for industry.

Other issues

Suggestions in some submissions to adopt more prescriptive requirements for rehabilitation in the regulation have not been adopted. The draft Regulation sets out the obligations required to achieve rehabilitation as required by the *Mining Act 1992* - including consultation with relevant stakeholders - and how leaseholders must demonstrate compliance on an ongoing basis. The Resources Regulator’s proactive compliance and enforcement approach will ensure leaseholders are meeting those obligations.

Several matters raised are out of scope of the Regulation amendment process and these matters will be dealt with separately. One key issue is the ongoing discussions with other government agencies to streamline the regulation of development consents and mining leases. Inconsistencies with development consents granted by councils will also be considered separately. The Department will work with other agencies and organisations to streamline and align processes and address specific concerns.

Other issues that will be dealt with separately include the final voids and care and maintenance policies that are currently in development. The implementation and regulation of rehabilitation conditions in Lightning Ridge will be considered through a separate strategy developed collaboratively by Mining Exploration and Geoscience and the Resources Regulator.

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