



New South Wales

Mining Amendment (Standard Conditions of Mining Leases—Rehabilitation) Regulation 2021

under the

Mining Act 1992

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Mining Act 1992*.

JOHN BARILARO, MP

Deputy Premier, Minister for Regional New South Wales, Industry and Trade

Explanatory note

The object of this Regulation is to prescribe standard conditions of mining leases granted under the *Mining Act 1992*. The conditions broadly relate to environmental management, protection and rehabilitation of land that is or may be affected by activities under mining leases.

The conditions include requirements relating to the following—

- (a) preventing or minimising harm to the environment,
- (b) ensuring rehabilitation occurs promptly and achieves the final land use,
- (c) carrying out rehabilitation risk assessments,
- (d) preparing documents relating to rehabilitation and having some of them approved,
- (e) keeping records of compliance and reporting on non-compliance,
- (f) nominating contact persons,
- (g) giving notice in relation to development applications and modifications of development consent.

This Regulation is made under the *Mining Act 1992*, including section 388, the general regulation-making power, Schedule 1B, Part 3, clauses 7–7B, and Schedule 4, clauses 2 and 9.

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1 Name of Regulation

This Regulation is the *Mining Amendment (Standard Conditions of Mining Leases—Rehabilitation) Regulation 2021*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Mining Regulation 2016

[1] Clause 31A

Insert after clause 31—

31A Standard conditions of mining leases

- (1) For the purposes of the Act, Schedule 1B, clause 7, the provisions of Schedule 8A, Part 2 are prescribed as conditions of a mining lease.

Note— A contravention of a condition of a mining lease by a person—

- (a) constitutes an offence under the Act, section 378D by each holder of the lease, and
- (b) if committed by a corporation, constitutes an executive liability offence, and
- (c) is grounds for cancellation of the lease under the Act, section 125.
- (2) The conditions do not apply to a mining lease that is in force on the commencement day—
- (a) for a large mine—until the day that is 12 months after the commencement day, or
- (b) for a small mine—until the day that is 24 months after the commencement day.

- (3) In this clause—

commencement day means the day on which the *Mining Amendment (Standard Conditions of Mining Leases—Rehabilitation) Regulation 2021* commences

large mine and *small mine* have the same meanings as in Schedule 8A.

[2] Schedule 8A

Insert after Schedule 8—

Schedule 8A Standard conditions of mining leases

clause 31A

Part 1 Preliminary

1 Definitions

In this Schedule—

activities under a mining lease includes ancillary mining activities under the mining lease.

Note— The Act, Schedule 1B, clause 7B(3) restricts the extent to which a condition may regulate the carrying out of an ancillary mining activity on land that is outside the mining area.

annual rehabilitation report—see clause 13(2).

annual reporting period—see clause 13(5).

final land use—see clause 6.

final landform and rehabilitation plan—see clause 12(1)(c).

forward program—see clause 13(1).

large mine means a mine the subject of one or more mining leases, the carrying out of activities under at least one of which requires an environment

protection licence under the *Protection of the Environment Operations Act 1997*.

mining area includes, for a mining lease that does not include the surface of land, the part of the surface of land on which the holder of the mining lease is authorised, in accordance with the Act, section 81, to carry out activities.

Note—This definition extends the definition of **mining area** included in the Act, Dictionary.

rehabilitation completion criteria statement—see clause 12(1)(b).

rehabilitation management plan—see clause 10(1).

rehabilitation objectives statement—see clause 12(1)(a).

rehabilitation outcome documents—see clause 12(1).

small mine means a mine that is not a large mine.

2 Functions of Secretary—approval of rehabilitation outcome documents

- (1) In deciding whether to approve a rehabilitation outcome document under clause 13, the Secretary must take into account—
 - (a) the extent to which the document is consistent with the final land use for the mining area, and
 - (b) any other matters the Secretary considers relevant.
- (2) If the Secretary does not approve the document, the Secretary must give written notice to the holder of the mining lease of the following—
 - (a) the refusal,
 - (b) the reasons for the refusal,
 - (c) the time within which a revised document must be given to the Secretary for approval.

3 Assessments and documents may relate to more than 1 mining lease

- (1) The Secretary may, on application by a person (the **applicant**), approve multiple mining leases relating to the same mine being treated as a single lease for the purposes of Part 2 if—
 - (a) the applicant is the holder of all the mining leases, or
 - (b) the applicant—
 - (i) is the holder of 1 or more of the mining leases, and
 - (ii) has obtained the written consent of the holders of the other mining leases authorising the applicant to exercise the functions of the other holder under Part 2 on their behalf.
- (2) This clause does not remove any liability from the holder of a mining lease if the applicant fails to comply with a requirement of Part 2.
- (3) An application under this clause must be in the form approved by the Secretary.

Part 2 Standard conditions

Note—The conditions in this Part prevail over conditions imposed under the Act by the relevant decision-maker to the extent of any inconsistency between them—see the Act, Schedule 1B, clause 7(4).

Division 1 Protection of the environment and rehabilitation

4 Must prevent or minimise harm to environment

- (1) The holder of a mining lease must take all reasonable measures to prevent, or if that is not reasonably practicable, to minimise, harm to the environment caused by activities under the mining lease.
- (2) In this clause—
harm to the environment has the same meaning as in the *Protection of the Environment Operations Act 1997*.

5 Rehabilitation to occur as soon as reasonably practicable after disturbance

The holder of a mining lease must rehabilitate land and water in the mining area that is disturbed by activities under the mining lease as soon as reasonably practicable after the disturbance occurs.

6 Rehabilitation must achieve final land use

- (1) The holder of a mining lease must ensure that rehabilitation of the mining area achieves the final land use for the mining area.
- (2) The holder of the mining lease must ensure any planning approval has been obtained that is necessary to enable the holder to comply with subclause (1).
- (3) The holder of the mining lease must identify and record any reasonably foreseeable hazard that presents a risk to the holder's ability to comply with subclause (1).

Note— Clause 7 requires a rehabilitation risk assessment to be conducted whenever a hazard is identified under this subclause.

- (4) In this clause—
final land use for the mining area means the final landform and land uses to be achieved for the mining area—
 - (a) as set out in the rehabilitation objectives statement and rehabilitation completion criteria statement, and
 - (b) for a large mine—as spatially depicted in the final landform and rehabilitation plan, and
 - (c) if the final land use for the mining area is required by a condition of development consent for activities under the mining lease—as stated in the condition.

planning approval means—

- (a) a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
- (b) an approval under that Act, Division 5.1.

Division 2 Risk assessment

7 Rehabilitation risk assessment

- (1) The holder of a mining lease must conduct a risk assessment (a *rehabilitation risk assessment*) that—
 - (a) identifies, assesses and evaluates the risks that need to be addressed to achieve the following in relation to the mining lease—
 - (i) the rehabilitation objectives,
 - (ii) the rehabilitation completion criteria,

- (iii) for large mines—the final land use as spatially depicted in the final landform and rehabilitation plan, and
 - (b) identifies the measures that need to be implemented to eliminate, minimise or mitigate the risks.
- (2) The holder of the mining lease must implement the measures identified.
- (3) The holder of a mining lease must conduct a rehabilitation risk assessment—
 - (a) for a large mine—before preparing a rehabilitation management plan, and
 - (b) for a small mine—before preparing the rehabilitation outcome documents for the mine, and
 - (c) whenever a hazard is identified under clause 6(3)—as soon as reasonably practicable after it is identified, and
 - (d) whenever given a written direction to do so by the Secretary.

Division 3 Rehabilitation documents

8 Application of Division

This Division does not apply to a mining lease unless—

- (a) the security deposit required under the mining lease is greater than the minimum deposit prescribed under the Act, section 261BF in relation to that type of mining lease, or
- (b) the Secretary gives a written direction to the holder of the mining lease that this Division, or a provision of this Division, applies to the mining lease.

9 General requirements for documents

A document required to be prepared under this Division must—

- (a) be in a form approved by the Secretary, and
Note— The approved forms are available on the Department's website.
- (b) include any matter required to be included by the form, and
- (c) if required to be given to the Secretary—be given in a way approved by the Secretary.

10 Rehabilitation management plans for large mines

- (1) The holder of a mining lease relating to a large mine must prepare a plan (a *rehabilitation management plan*) for the mining lease that includes the following—
 - (a) a description of how the holder proposes to manage all aspects of the rehabilitation of the mining area,
 - (b) a description of the steps and actions the holder proposes to take to comply with the conditions of the mining lease that relate to rehabilitation,
 - (c) a summary of rehabilitation risk assessments conducted by the holder,
 - (d) the risk control measures identified in the rehabilitation risk assessments,
 - (e) the rehabilitation outcome documents for the mining lease,

- (f) a statement of the performance outcomes for the matters addressed by the rehabilitation outcome documents and the ways in which those outcomes are to be measured and monitored.
- (2) If a rehabilitation outcome document has not been approved by the Secretary, the holder of the mining lease must include a proposed version of the document.
- (3) A rehabilitation management plan is not required to be given to the Secretary for approval.
- (4) The holder of the mining lease—
 - (a) must implement the matters set out in the rehabilitation management plan, and
 - (b) if the forward program specifies timeframes for the implementation of the matters—must implement the matters within those timeframes.

11 Amendment of rehabilitation management plans

The holder of a mining lease must amend the rehabilitation management plan for the mining lease as follows—

- (a) to substitute the proposed version of a rehabilitation outcome document with the version approved by the Secretary—within 30 days after the document is approved,
- (b) as a consequence of an amendment made under clause 14 to a rehabilitation outcome document—within 30 days after the amendment is made,
- (c) to reflect any changes to the risk control measures in the prepared plan that are identified in a rehabilitation risk assessment—as soon as practicable after the rehabilitation risk assessment is conducted,
- (d) whenever given a written direction to do so by the Secretary—in accordance with the direction.

12 Rehabilitation outcome documents

- (1) The holder of a mining lease must prepare the following documents (the *rehabilitation outcome documents*) for the mining lease and give them to the Secretary for approval—
 - (a) the *rehabilitation objectives statement*, which sets out the rehabilitation objectives required to achieve the final land use for the mining area,
 - (b) the *rehabilitation completion criteria statement*, which sets out criteria, the completion of which will demonstrate the achievement of the rehabilitation objectives,
 - (c) for a large mine, the *final landform and rehabilitation plan*, showing a spatial depiction of the final land use.
- (2) If the final land use for the mining area is required by a condition of development consent for activities under the mining lease, the holder of the mining lease must ensure the rehabilitation outcome documents are consistent with that condition.

13 Forward program and annual rehabilitation report

- (1) The holder of a mining lease must prepare a program (a *forward program*) for the mining lease that includes the following—
 - (a) a schedule of mining activities for the mining area for the next 3 years,

- (b) a summary of the spatial progression of rehabilitation through its various phases for the next 3 years,
 - (c) a requirement that the rehabilitation of land and water disturbed by mining activities under the mining lease must occur as soon as reasonably practicable after the disturbance occurs.
- (2) The holder of a mining lease must prepare a report (an ***annual rehabilitation report***) for the mining lease that includes—
- (a) a description of the rehabilitation undertaken over the annual reporting period,
 - (b) a report demonstrating the progress made through the phases of rehabilitation provided for in the forward program applying to the reporting period,
 - (c) a report demonstrating progress made towards the achievement of the following—
 - (i) the objectives set out in the rehabilitation objectives statement,
 - (ii) the criteria set out in the rehabilitation completion criteria statement,
 - (iii) for large mines—the final land use as spatially depicted in the final landform and rehabilitation plan.
- (3) If a rehabilitation outcome document has not been approved by the Secretary, the holder of the mining lease must rely on a proposed version of the document.
- (4) The holder of the mining lease must give the forward program and annual rehabilitation report to the Secretary.
- (5) In this clause—
annual reporting period means each period of 12 months commencing on—
- (a) the date on which the mining lease is granted, or
 - (b) if the Secretary approves another date in relation to the mining lease—the other date.

14 Amendment of rehabilitation outcome documents and forward program

- (1) This clause applies to—
- (a) a rehabilitation outcome document if it has been approved by the Secretary, and
 - (b) a forward program if it has been given to the Secretary.
- (2) The holder of a mining lease must not amend a document to which this clause applies that relates to the mining lease unless—
- (a) the Secretary gives the holder a written direction to do so, or
 - (b) the Secretary, on written application by the holder, gives a written approval of the amendment.
- (3) The holder of the mining lease must amend the document in accordance with the Secretary's direction or approval.
- (4) Nothing in this clause prevents the holder of a mining lease preparing a draft amendment for submission to the Secretary for approval.

15 Times at which documents must be prepared and given

- (1) The holder of a mining lease must do the following before the end of the initial period—
 - (a) prepare a rehabilitation management plan, and
 - (b) prepare rehabilitation outcome documents and give them, other than the rehabilitation completion criteria statement, to the Secretary for approval, and
 - (c) prepare a forward program and give it to the Secretary.
- (2) The holder of the mining lease must prepare a forward program and annual rehabilitation report and give them to the Secretary before—
 - (a) 60 days after the last day of each annual reporting period, commencing with the annual reporting period in which the forward program was given to Secretary under subclause (1)(c), or
 - (b) a later date approved by the Secretary.
- (3) A rehabilitation completion criteria statement relating to completion of rehabilitation during a period covered by a forward program must be given to the Secretary for approval when the forward program is required to be given to the Secretary.
- (4) The holder of the mining lease must prepare updated rehabilitation outcome documents for the mining lease and give them to the Secretary for approval before—
 - (a) 60 days after a development consent is modified following an application referred to in clause 20(1)(b), or
 - (b) a later date approved by the Secretary.
- (5) A rehabilitation completion criteria statement is not required to be given to the Secretary under subclause (4) unless a rehabilitation completion criteria statement has already been given to the Secretary under subclause (3).
- (6) The Secretary may, by written notice, direct the holder of a mining lease to prepare, or give to the Secretary, a document required to be prepared under this Division at a time other than that specified in this clause.
- (7) The holder of the mining lease must comply with the direction.
- (8) In this clause—

initial period means the period commencing when the mining lease is granted and ending—

 - (a) 30 days, or other period approved by the Secretary, after this Division first applies to the mining lease, or
 - (b) if this Division applies to the mining lease because of an increase in the required security deposit—
 - (i) when the surface of the mining area is disturbed by activities under the mining lease, or
 - (ii) at a later date approved by the Secretary.

16 Certain documents to be publicly available

- (1) This clause applies to the following documents—
 - (a) a rehabilitation management plan,
 - (b) a forward program,

- (c) an annual rehabilitation report.
- (2) The holder of a mining lease must make a document to which this clause applies publicly available by—
 - (a) publishing it on its website in a prominent position, or
 - (b) if the holder does not have a website— providing a copy of it to a person—
 - (i) on the written request of a person, and
 - (ii) without charge, and
 - (iii) within 14 days after the request is received.
- (3) If a document is published on the website of the holder of the mining lease, the holder must ensure that it is published—
 - (a) for a rehabilitation management plan—within 14 days after it is prepared or amended, or
 - (b) for a forward program or an annual rehabilitation report—within 14 days after it is given to the Secretary or amended,
- (4) Personal information within the meaning of the *Privacy and Personal Information Protection Act 1998* is not required to be included in a document made available to a person under this clause.

Division 4 Records, reporting and notification

17 Records demonstrating compliance

The holder of a mining lease must create and maintain records of all actions taken that demonstrate compliance with each of the conditions set out in this Part.

Note— The Act, sections 163D and 163E provide for the form in which records must be kept and the period for which they must be retained.

18 Report on non-compliance

- (1) The holder of a mining lease must provide the Minister with a written report detailing any non-compliance with—
 - (a) a condition of the mining lease, or

Note— The Act, section 364A contains provisions relating to the use and disclosure of information provided under this condition.

 - (b) a requirement of the Act or this Regulation relating to activities under the mining lease.
- (2) The holder of the mining lease must provide the report within 7 days after becoming aware of the non-compliance.
- (3) The holder of the mining lease must ensure the report—
 - (a) identifies the condition of the mining lease, or the requirement of the Act or this Regulation, to which the non-compliance relates, and
 - (b) describes the non-compliance and specifies the date or dates on which, or the period during which, the non-compliance occurred, and
 - (c) describes the causes or likely causes of the non-compliance, and
 - (d) describes the action that has been taken, or will be taken, to mitigate the effects, and to prevent any recurrence, of the non-compliance.

19 Nominated contact person

- (1) The holder of a mining lease must nominate a natural person to be the contact person with whom the Secretary can communicate in relation to the mining lease for the purposes of the Act.
Note— The Act, section 383 sets out the ways in which notices or other documents may be issued or given to, or served on, a person for the purposes of the Act.
- (2) The holder of the mining lease must give written notice to the Secretary of—
 - (a) the full name and contact details of the nominated person—within 28 days after the date on which the standard conditions apply to the mining lease under clause 31A of this Regulation, and
 - (b) any change in nomination or in the nominated person’s contact details—within 28 days after the change occurs.
- (3) The holder of the mining lease must ensure that the contact details for the nominated person include the person’s phone number and postal and email addresses.

Division 5 Applications relating to development consent

20 Additional requirements—application for or to modify development consent

- (1) The holder of a mining lease must give written notice to the Secretary within 10 days after—
 - (a) making an application for development consent that relates to the mining area, or
 - (b) making an application for modification of a development consent—
 - (i) under the *Environmental Planning and Assessment Act 1979*, section 4.55(2), and
 - (ii) that proposes to modify a condition of the consent that relates to rehabilitation of the mining area in a way that may affect an obligation under the mining lease relating to rehabilitation of the mining area.
- (2) This clause does not apply if the development is State significant development.