# Mineral Resources (Sustainable Development) (Mineral Industries) Amendment Regulations 2022 – Draft 2

The Governor in Council makes the following Regulations:

Dated:

Responsible Minister:

JAALA PULFORD

Minister for Resources

Clerk of the Executive Council

# Part 1—Preliminary

### 1 Objectives

The objectives of these Regulations are to amend the Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019—

1. to provide for matters consequential to the commencement of the **Mineral Resources (Sustainable Development) Amendment Act 2019**; and
2. to make other minor and technical amendments.

### 2 Authorising provision

These Regulations are made under section 124 of the **Mineral Resources (Sustainable Development) Act 1990**.

### 3 Commencement

These Regulations come into operation on 30 September 2022.

### 4 Principal Regulations

In these Regulations, the Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019[[1]](#footnote-2) are called the Principal Regulations.

### 5 Definitions

In regulation 4 of the Principal Regulations **insert** the following definitions—

***“Environment Protection Authority*** has the same meaning ***Authority*** has in the **Environment Protection Act 2017**;

***rehabilitation or closure milestone***, in relation to a declared minerehabilitation plan, means a rehabilitation or closure milestone included in that plan in accordance with regulation 64F(2)(c).”.

# Part 2—Licences

### 6 Additional information requirements—retention licence applications

For regulation 17(1)(c) of the Principal Regulations **substitute**—

“(c) a map of 1:25 000 scale that indicates the land applied for and shows the boundaries of private and Crown land;”.

### 7 Information required in work plans—rehabilitation plans

After regulation 43(4) of the Principal Regulations **insert**—

“(4A) Subregulations (2) and (4) do not apply to a declared mine rehabilitation plan.”.

### 8 Annual reporting requirements

In regulation 53(4) of the Principal Regulations—

(a) in paragraph (b)(ii), for “regulation 57.” **substitute** “regulation 57; and”;

(b) after paragraph (b) **insert**—

“(c) if the licence relates to a declared mine, an annual report that—

1. complies with requirements specified in regulation 57A; and
2. contains information specified in regulation 57A.”.

### 9 New regulation 57A inserted

After regulation 57 of the Principal Regulations **insert**—

“**57A** **Requirements for** **annual reports for—declared mine rehabilitation plans**

For the purposes of regulation 53(4)(c)—

(a) the specified requirements are that an annual report in relation to a declared mine rehabilitation plan must comply with any relevant guidelines issued by the Minister under section 120A of the Act; and

(b) the specified information is—

(i) details of the progress on components of the declared mine rehabilitation plan that require the submission of additional information; and

(ii) an identification and assessment of any risks to the rehabilitation and post-closure management of the declared mine; and

(iii) the reasons for any non-compliance with rehabilitation or closure milestones; and

(iv) the remedial action that will be undertaken in respect of any non-compliance with rehabilitation or closure milestones; and

(v) details of any technical and economic studies (including details of expenditure on those studies) carried out under the licence during the reporting period that relate to—

(A) the development of the mineral resource in accordance with principles of sustainable development; and

(B) demonstrating the economic viability of the mineral resource; and

(vi) a summary of the status ofthe regulatory processes that are required to be undertaken for the purposes of mine rehabilitation under the licence, including any environmental audits and land contamination assessments required under the Act, the **Water Act 1989**, the **Environment Protection Act 2017** and the **Environment Effects Act 1978**; and

(vii) a summary of community engagement programs focused on rehabilitation, including the feedback and outcomes resulting from the engagement; and

(viii) a summary of any reportable event, within the meaning of section 41AC of the Act, that has occurred; and

(ix) a report of potential issues that exist in relation to the declared mine rehabilitation plan and the progressive rehabilitation of the declared mine land.”.

# Part 3—Requirements for declared mines

### 10 New heading to Division 1 of Part 5 inserted

**Insert** the following heading before regulation 60 of the Principal Regulations—

“**Division 1—Mine stability levy**”.

### 11 New heading to Division 2 of Part 5 inserted

**Insert** the following heading before regulation 64 of the Principal Regulations—

“**Division 2—Reporting**”.

### 12 New Divisions 3 and 4 of Part 5 inserted

At the end of Part 5 of the Principal Regulations **insert**—

“**Division 3—Declared mine rehabilitation**

**64A** **Prescribed period for preparation of declared mine rehabilitation plan**

For the purposes of section 84AZU(2) of the Act the following period is prescribed—

(a) in the case of a Latrobe Valley region coal mine within the meaning of section 38AAA of the Act, the period of 3 years beginning on 1 October 2022; or

(b) in the case of a declared mine other than a Latrobe Valley region coal mine, the period of 12 months beginning on the date the Order made under section 7C of the Act in relation to that declared mine is published in the Government Gazette; or

(c) if the Minister approves a period under regulation 64B, that period.

**64B** **Minister may approve a longer period to prepare a declared mine rehabilitation plan**

(1) A declared mine licensee may apply to the Minister for approval to prepare a declared mine rehabilitation plan within a period up to 12 months longer than the period prescribed by regulation 64A(1)(a) or (b) that applies to the licensee.

(2) An application must be made to the Minister at least 28 days before the end of the period prescribed by regulation 64A(1)(a) or (b) that applies to the licensee.

(3) The Minister may approve or refuse to approve the preparation of a plan within a period that is up to 12 months longer than a period prescribed by regulation 64A(1)(a) or (b) that applies to a licensee.

**64C** **Closure criteria**

For the purposes of section 84AZU(3)(b) of the Act, the prescribed criteria (***closure criteria***) are——

(a) the standard the licensee must meet in order for the Minister to consent to the surrender of the licence that covers the declared mine land;

(b) the measures the licensee must take to address the risks to public health and safety, the environment and infrastructure posed by the geotechnical, hydrogeological, water quality or hydrological status of declared mine land covered by the licence;

(c) the actions the licensee must take to achieve the long-term objective to convert the declared mine land to a safe and stable condition;

(d) the measures the licensee must take to minimise the erosion of the declared mine land;

(e) the measures the licensee must take to revegetate the declared mine land;

(f) the measures the licensee must implement to assess and manage fire risks;

(g) the actions that the licensee must take to manage the physical attributes of the declared mine land;

(h) the measures the licensee must take to mitigate the limits or constraints on rehabilitation of the declared mine land;

(i) the objectives that the licensee must satisfy for the proposed landform to be able to support the proposed outcomes for land use;

(j) the actions that the licensee must take to ensure the compatibility of the proposed final landform with the surrounding areas;

(k) the milestones that the licensee must meet on the progress of the rehabilitation, the rate of mining and the nature of the mining operation;

(l) the rate and expected level of ongoing research into aspects of the declared mine land and water that the licensee must achieve;

(m) the measures the licensee must take to manage aspects of water that includes water quality, water availability for rehabilitation, water balance, any impacts on the broader water system;

(n) the measures the licensee must take to monitor and manage contaminants and pollution in the declared mine land;

(o) the use that the licensee must make of appropriate technologies to mitigate negative impacts on the declared mine land;

(p) the measures the licensee must take to enable the expected post-closure environmental outcomes.

**64D** **Post-closure plan**

For the purposes of section 84AZU(3)(c) of the Act, a post-closure plan must contain information on the following matters—

(a) the ongoing monitoring and maintenance activities required to maintain the declared mine land in a safe and stable state after closure;

(b) a risk management plan for known and credible risks that may continue post-closure;

(c) as far as reasonably practicable—

(i) who is responsible for post-closure monitoring and maintenance activities; and

(ii) the time and manner in which the ongoing monitoring and maintenance activities will be carried out after closure;

(d) as far as reasonably practicable, any further supporting data, reports and information that must be provided to the Rehabilitation Authority after the post-closure plan is registered, for the purposes of monitoring and evaluating the rehabilitation planning activities.

**64E** **Form and procedure undertaking to pay registration amount**

An undertaking given under section 84AZU(3)(d) of the Act must be given—

(a) in the form approved by the Department Head; and

(b) in accordance with the procedure approved by the Department Head.

**64F** **Matters required in a declared mine rehabilitation plan**

(1) For the purposes of section 84AZU(3)(f) of the Act, the following are prescribed matters—

(a) the information relating to rehabilitation specified in subregulation (2); and

(b) a stakeholder engagement plan that—

(i) identifies the persons or classes of persons who will be consulted on the draft declared mine rehabilitation plan, including the persons or classes of persons prescribed by regulation 64G; and

(ii) includes a strategy for ongoing engagement with those persons and classes of persons during rehabilitation and closure of the declared mine; and

(c) the post-mining land use, including any land that is not able to be rehabilitated to a stable condition described in a manner consistent with any relevant guidelines issued by the Minister under section 120A of the Act; and

(d) all the legal approvals and permissions required for the rehabilitation and closure activities or outcomes in the declared mine rehabilitation plan; and

(e) the components of the plan in relation to which additional detail must be provided annually in accordance with regulation 57A(b)(i).

(2) For the purposes of subregulation (1)(a), the following information is specified—

(a) any use of passive controls to maximise the rehabilitation outcome that any landforms are to be safe, stable and sustainable;

(b) any rehabilitation or closure objectives that are consistent with—

(i) any relevant guidelines issued by the Minister under section 120A of the Act; or

(ii) information that the Department Head has approved;

(c) any rehabilitation or closure milestone relevant to the ongoing monitoring, management and maintenance of declared mine land after the closure of a mine including—

(i) milestones necessary for the rehabilitation of land to a safe, stable and sustainable condition and to minimise the risks posed by declared mine land as far as practicable; and

(ii) milestones required to meet the closure criteria set out in regulation 64C; and

(iii) milestones for obtaining the relevant legal approvals and permissions required for the rehabilitation of the mine, the closure of the mine and post-closure of the mine under regulation 64F(1)(d);

(d) an identification and assessment of—

(i) rehabilitation risks and hazards; and

(ii) risks that may lead to an early or sudden cessation of operations or closure of the mine; and

(iii) risks that may affect the rehabilitation outcomes, objectives and milestones that apply to the rehabilitation of the declared mine land;

(e) a risk management plan that specifies the actions the licensee will take to eliminate or minimise, as far as reasonably practicable, the risks referred to in paragraph (d), including—

(i) the performance standards to be achieved by either individual measures or a combination of measures; and

(ii) the management systems, practices and procedures the licensee will apply to monitor and manage risks and to comply with performance standards;

(f) an outline of the roles and responsibilities of employees of the licensee who are accountable for the implementation, management and review of the risk management plan.

**Note:** See section 84AZU(3) of the Act for other matters that must be included in a declared mine rehabilitation plan.

**64G** **Declared mine licensee consultations with prescribed persons or class of persons**

(1) For the purposes of section 84AZU(4) of the Act, the following persons are prescribed—

(a) the Rehabilitation Authority;

(b) the Minister responsible for administering the **Environment Effects Act 1978**;

(c) in the case of declared mine land that is Crown land, the Crown land Minister;

(d) any responsible authority, within the meaning given by section 13 of the **Planning and Environment Act 1987**, for the area in which the declared mine land is located;

(e) any public sector body that is responsible for the authorisation or oversight of a matter in the declared mine rehabilitation plan.

(2) For the purposes of section 84AZU(4) of the Act, the following classes of persons are prescribed—

(a) in the case of a declared mine on private land—

(i) the owner and occupier of the declared mine land affected by the declared mine rehabilitation plan; and

(ii) the owner and occupier of land directly adjacent to the declared mine land affected by the declared mine rehabilitation plan; and

(iii) a traditional owner group or traditional owner group entity (within the meaning of the **Traditional Owner Settlement Act 2010**) in the area in which the declared mine land is located;

(b) in the case of a declared mine located in the Latrobe Valley region—

(i) the communities in the Gippsland Region set out in Column 2 of Schedule 2 to the **Regional Development Victoria Act 2002**; and

(ii) a traditional owner group or traditional owner group entity (within the meaning of the **Traditional Owner Settlement Act 2010**);

(c) in the case of a declared mine that is not located in the Latrobe Valley region—

(i) the communities in the Region set out in Column 2 of Schedule 2 of the **Regional Development Victoria Act 2002** that is the Region in which the declared mine is located in whole or part; and

(ii) the communities in a municipal district within the meaning of the **Local Government Act 2020** that are within one kilometre of the declared mine; and

(iii) a traditional owner group or traditional owner group entity (within the meaning of the **Traditional Owner Settlement** **Act 2010**).

**64H** **Duty for declared mine licensee to give notice of consultations**

(1) A declared mine licensee who is required to consult under section 84AZU(4) of the Act must publish a notice seeking submissions on the proposed plan at least 28 days, before giving the plan to the Department Head for approval.

(2) The notice must—

(a) be published—

(i) in a newspaper that has circulation in all localities, that the declared mine to which the plan relates is located; or

(ii) in a newspaper that has circulation generally in Victoria; or

(iii) by a method approved by the Department Head; and

(b) be published on an Internet site maintained by the declared mine licensee for at least 21 days after the day on which the plan is given to the Department Head; and

(c) state that submissions on the plan may be made to the declared mine licensee on or before a specified date, that is at least 28 days after the date of publication of the notice; and

(d) contain the following matters—

(i) the name of the declared mine licensee;

(ii) the Internet site or publication in which the information relating to the plan is published in accordance with these Regulations;

(iii) a description of the declared mine land that is covered by the licence, including a map of that land;

(iv) the key elements of the plan—

(A) as set out in any relevant guidelines issued by the Minister under section 120A of the Act; or

(B) as approved by the Department Head; and

(v) the declared mine licensee’s system for managing the impacts of the plan on the community including landowners and occupiers, and the environment;

(vi) the declared mine licensee’s plan for carrying out the duty under section 39A of the Act to consult the community including landowners and occupiers, throughout the period of the licence.

(3) The declared mine licensee must consider any submissions that are received on or before the date specified in subregulation (2)(c).

(4) Any method approved by the Department Head for the purposes of subregulation (2)(a)(iii) for the publication of a notice is taken to be approved on the date specified in a notice published in the Government Gazette.

(5) A declared mine licensee, within 7 days after the publication of a notice in accordance with this regulation, must give a copy of that notice to the Department Head.

**64I** **Approved form of declared mine rehabilitation plan**

For the purposes of section 84AZU of the Act, a declared mine rehabilitation plan must—

(a) be in the form approved by the Department Head; and

(b) be submitted in accordance with the process approved by the Department Head.

**64J** **Matters to be included in a declared mine rehabilitation plan or a variation to a plan for consideration of the Department Head**

An application for the approval of a declared mine rehabilitation plan or the variation of a declared mine rehabilitation plan must include the following—

(a) a report on the consultations undertaken under section 84AZU(4) of the Act, that sets out the matters raised within the consultations and the declared mine licensee’s response to those matters;

(b) an assessment of how the plan will meet the rehabilitation outcomes identified in the plan.

**Division 4—Approval and variation of declared mine rehabilitation**  **plans**

**64K** **Department Head to consider plan for rehabilitation of declared mine land**

For the purposes of section 84AZV(1)(c) of the Act, the prescribed matters are—

(a) in relation to the landform to be achieved on the declared mine land—

(i) the physical safety of humans and animals; and

(ii) the geotechnical and hydrogeological stability of the land; and

(iii) the maintenance of hydrological regimes, the quality and quantity of groundwater and surface water to the extent that any existing or proposed uses, including ecosystem maintenance, will be protected; and

(iv) that the landform does not cause any pollution or contamination; and

(v) that the landform protects the land use and infrastructure of adjacent areas; and

(vi) that the landform minimises the fire risk so that the fire risk is not greater than any surrounding environment; and

(vii) that the landform is resilient to climate change; and

(viii) the landform promotes ecological integrity so that the post-closure ecosystems are stable or are developing to be regenerative,,self-sustaining and biodiversity is protected; and

(ix) the landform minimises the need for ongoing active monitoring, maintenance or management to a level that is acceptable; and

(b) in relation to rehabilitation outcomes identified in the plan and the post-closure plan—

(i) that the benefits to the wellbeing and prosperity of the community are promoted; and

(ii) the views of the community and Aboriginal persons are taken into account; and

(iii) that the knowledge, rights and aspirations of traditional owner groups in caring for country is acknowledged.

**64L** **Prescribed process—consideration of plan for rehabilitation of declared mine land by Department Head**

For the purposes of section 84AZV(1)(d) of the Act, the prescribed process is—

(a) the Department Head must, within 28 days of receiving a plan, consult the following persons on the plan—

(i) the Environment Protection Authority;

(ii) the responsible authority, within the meaning given by section 13 of the **Planning and Environment Act 1987**, for the declared mine land covered by the plan;

(iii) in the case of a plan that is subject to an environment effects statement, the Minister responsible for the **Environment Effects Act 1978**;

(iv) any public sector body that performs functions relevant to the plan;

(v) any referral authority within the meaning of section 77TA of the Act that performs functions relevant to the plan; and

(b) a person referred to in paragraph (a) may provide comments on the plan to the Department Head within 90 days after being consulted on the plan; and

(c) the Department Head must consider any comments received in accordance with paragraph (b); and

(d) the Department Head may, within 90 days of receiving a plan, give the declared mine licensee a written notice requiring the licensee—

(i) to provide specified information relating to any matter under this Part that is necessary to enable the plan to be properly considered; and

(ii) to provide that specified information within a specified time; and

(e) the Department Head may extend the specified time within which a declared mine licensee must comply with a notice given under paragraph (d).

**64M** **Prescribed process—consideration of variation of declared mine rehabilitation plan by Department Head**

For the purposes of section 84AZW(2)(c) of the Act, the prescribed process is—

(a) the Department Head must, within 28 days of receiving a declared mine rehabilitation plan, consult the following persons on the plan—

(i) the Environment Protection Authority;

(ii) the responsible authority, within the meaning given by section 13 of the **Planning and Environment Act 1987**, for the declared mine land covered by the plan;

(iii) in the case of a plan that is subject to an environment effects statement, the Minister responsible for the **Environment Effects Act 1978**;

(iv) any public sector body that performs functions relevant to the plan;

(v) any referral authority within the meaning of section 77TA of the Act that performs functions relevant to the plan; and

(b) a person referred to in paragraph (a) may provide comments on the declared mine rehabilitation plan to the Department Head within 90 days after being consulted on the plan; and

(c) the Department Head must consider any comments received in accordance with paragraph (b); and

(d) the Department Head may, within 90 days after receiving a declared mine rehabilitation plan, give the declared mine licensee a written notice requiring the licensee—

(i) to provide specified information relating to any matter under this Part that is necessary to enable the plan to be properly considered; and

(ii) to provide that specified information within a specified time; and

(e) the Department Head may extend the specified time within which a declared mine licensee must comply with a notice given under paragraph (d).”.

# Part 4—Closure determinations, Declared Mine Fund and register of declared mine land

### 13 New Parts 5A and 5B inserted

After Part 5 of the Principal Regulations **insert**—

**“Part 5A— Closure determinations and Declared Mine Fund**

**Division 1 — Closure determinations**

**64N** **Application for closure determination**

For the purposes of section 84AZY(2)(a) of the Act, the prescribed information is—

1. an assessment of whether the closure criteria has been met, including evidence to support that assessment;
2. an assessment of community and stakeholder engagement, including evidence to support that assessment;
3. information to enable the Minister to determine the amount, if any, that the declared mine licensee must contribute to the Declared Mine Fund including—
   * 1. an estimate of the present value of the future costs associated with the monitoring and maintenance obligations under the post-closure plan for the declared mine land; and
     2. definitions and calculations of the costs of rehabilitating the declared mine land after an adverse event; and
     3. information relating to the declared mine land required to be recorded by the Rehabilitation Authority on the Declared Mine Land Register under section 84AZZL of the Act, if the Minister determines that the declared mine licensee has met the closure criteria under section 84AZZA(2)(a) of the Act.

**64O Matters to be taken into account by the Minister**

For the purposes of section 84AZZ(1)(c) of the Act, the prescribed matters are—

1. the information set out in regulation 64N; or
2. any comments received in response to requests or consultation under section 84AZZ of the Act or regulation 64P(2).

**64P Consultation by the Minister on an application for closure**  **determination**

1. For the purposes of section 84AZZ(1)(d) of the Act, the prescribed process is the process set out in this regulation.
2. The Minister must, within 28 days after receiving an application made under section 84AZY of the Act, give notice and a copy of the application to the following—
   1. if the declared mine rehabilitation plan is the subject of an Environment Effects Statement prepared under the **Environment Effects Act 1978**, the Minister responsible for administering the **Environment Effects Act 1978**;
   2. the Environment Protection Authority;
   3. the responsible authorities for the area in which the declared mine land subject to the declared mine rehabilitation plan under the **Planning and Environment Act 1987;**
   4. any other referral authority under section 77TA of the Act or public sector body under section 84AA of the Act responsible for authorisation or oversight of matters in the application that the Minister considers should be consulted on the application;
   5. any traditional owner group or traditional owner group entity within the meaning of the **Traditional Owner Settlement Act 2010** in the area in which the declared mine land subject to the application is located;
   6. if the declared mine land is private land, the owner and occupier of the declared mine land affected by the declared mine rehabilitation plan;
   7. any other person that the Minister considers appropriate.
3. The Minister may provide any accompanying documents in addition to the copy of the application to the persons specified in subregulation (2).
4. Persons specified in subregulation (2) may provide comments in response to the application for closure determination within 90 days after the date on which a copy of the application for closure is provided by the Minister.
5. The Minister may extend the period by which comments may be made under subregulation (4).
6. The Minister may request the persons notified under subregulation (2) to provide information relevant to determining the application as the Minister considers appropriate.
7. The Department Head must consider any comments made under subregulation (4) or (6).

**Note:** Section 84AZZ(1)(b) of the Act requires the Minister to consult with specified Ministers and section 84AZZ(2) requires the Minister to provide a copy of an application for closure determination and any accompanying documents to the Rehabilitation Authority and each minister referred to in section 84AZZ(1)(b).

**Division 2 — Declared Mine Fund**

**64Q** **Determining the amount to be paid into the Declared Mine Fund**

In determining the amount of any rehabilitation bond to be paid into the Declared Mine Fund on the cancellation of the mining licence of a declared mine licensee, the Minister must consider—

(a) information submitted by the declared mine licensee in an application for a determination that closure criteria have been met relating to the value of the future costs associated with the monitoring and maintenance obligations under the post-closure plan for the declared mine land; and

(b) information submitted by the declared mine licensee in the application relating to the cost of rehabilitating the declared mine land after an adverse event.

**Part 5B—Register of declared mine land**

**64R** **Registration of declared mine land**

For the purposes of section 84AZZL(3)(b)(iii) of the Act, the following matters are prescribed—

1. a description of the location of the declared mine land;
2. a map of the declared mine land that—

(i) is of 1:25 000 scale or of a scale that provides more detail; and

(ii) shows the boundaries of private and Crown land;

1. a description of the mine located on the registered declared mine land including the activities that were conducted on that land under the mining licence;
2. the identity of the current landowner or land manager of the declared mine land;
3. a map of the location of the key structural features of the declared mine land in relation to the boundaries of the declared mine land; and
4. in the case of a declared mine licence cancelled under section 38(1B)(ab) of the Act for failure to comply with a declared mine rehabilitation plan, details of the instrument of cancellation.”.

1. Reg. 4: S.R. No. 48/2019 as amended by S.R. Nos 138/2019 and 56/2020. [↑](#footnote-ref-2)