

Rehabilitation Bond Policy for the Latrobe Valley Coal Mines

2025 update

1. Introduction

This Rehabilitation Bond Policy for the Latrobe Valley Coal Mines sets out the Victorian Government's policy on the assessment of rehabilitation liabilities and rehabilitation bonds required to be provided under the Mineral Resources (Sustainable Development) Act 1990 (the Act) by the relevant authority holder for the Hazelwood, Yallourn and Loy Yang coal mines.

Communities and government expect that the full costs of mine rehabilitation are borne by the mine authority holder. To this end, the Act allows the Minister for Resources to require an authority holder to provide rehabilitation bonds in favour of the State to secure the performance of their rehabilitation obligations.

Rehabilitation bonds should encourage successful progressive and final rehabilitation and improved rehabilitation planning by an authority holder.

The Act and the Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019 (Regulations) require an authority holder to:

- rehabilitate land that has been mined in accordance with an approved rehabilitation plan and any approved Declared Mine Rehabilitation Plan (DMRP) in line with the requirements under the Act and Regulations
- enter into a rehabilitation bond and any further rehabilitation bond for an amount to be determined by the Minister for Resources.

As the Latrobe Valley mine authority holders have already entered into rehabilitation bonds, this policy applies to the review of the existing rehabilitation bonds and the Minister for Resources decisions about whether a rehabilitation liability assessment and further rehabilitation bond is required.

The Minister for Resources assessment of the rehabilitation liability and the amount of any further rehabilitation bond required to be provided by an authority holder will be considered on a case-by-case basis and consider the circumstances of each approved rehabilitation plan, any approved DMRP and the authority holder.

This policy is not a legislative instrument and is not binding. It provides guidance only as to how the Minister for Resources' decisions may be made.

References in this policy to the Minister for Resources include the Minister and their delegate. Earth Resources Regulator (ERR) supports the Minister for Resources to administer the Act and the Regulations.

2. Objectives

The objectives of this policy are to:

- clarify the processes that the ERR, in supporting the decision making of the Minister for Resources, may undertake to assess an authority holder's rehabilitation liability
- outline the statutory requirements that apply to the Minister for Resources in reviewing the amount of a rehabilitation bond entered into by the authority holder under section 80 of the Act
- clarify the preferred financial assurance instruments for securing a further rehabilitation bond
- outline circumstances in which alternatives to the preferred financial assurance instrument may be considered.

3. Assessing rehabilitation liability

The Minister for Resources, with the assistance of ERR, may assess the rehabilitation liability of an authority holder at any time to inform further rehabilitation bond decisions under the Act.

For the purposes of reviewing the need for, and amount of, a further rehabilitation bond to be provided by an authority holder, the Minister for Resources may require the authority holder under section 79A of the Act to:

- undertake a self-assessment of the costs of rehabilitation
- engage an auditor to certify that the liability assessment has been prepared in accordance with the statutory requirements and is accurate.

Any auditor engaged to certify the liability assessment should be independent of the authority holder.

In assessing an authority holder's rehabilitation liabilities under an approved rehabilitation plan and any approved DMRP, the Minister for Resources will consider the outcome of any self-assessment and any independent auditor's certification of the rehabilitation liability. The Minister for Resources may consider any other information it considers to be relevant to assessing the costs to meet an authority holder's statutory rehabilitation obligations including:

- publicly available information that is relevant to determining the costs to undertake rehabilitation in accordance with an approved rehabilitation plan and any approved DMRP
- an assessment of the rehabilitation liability undertaken by ERR with advice from an appropriately qualified independent third party engaged by ERR
- expert reports and advice prepared by ERR or the authority holder in relation to rehabilitation liabilities relevant to an approved rehabilitation plan and any approved DMRP
- advice provided by the Mine Land Rehabilitation Authority relevant to an approved rehabilitation plan and any approved DMRP.

In assessing an authority holder's rehabilitation liability, the Minister for Resources may consider the costs associated with meeting the authority holder's rehabilitation obligations under an approved rehabilitation plan and any approved DMRP based on the cost to the government at the time of the assessment in present value terms, should the Minister for Resources be required to undertake that rehabilitation on behalf of the authority holder in accordance with section 83 of the Act. That is, in the event that the authority holder fails to comply with its rehabilitation obligations.

4. Determining the amount of any further rehabilitation bond

An authority holder must, under section 80(4) of the Act, enter into a further rehabilitation bond for an amount determined by the Minister for Resources.

In considering whether an existing rehabilitation bond is insufficient and, if so, determining the amount of any further rehabilitation bond that may be required, the Minister for Resources will consider:

- the approved rehabilitation plan and any approved DMRP
- any rehabilitation liability self-assessment and auditor's certification undertaken in accordance with the requirements of section 79A of the Act
- if the relevant land is private land, the outcomes of consultation with the local Council and landowner
- compatibility with human rights protected under the Charter of Human Rights and Responsibilities Act 2006 (Vic).

The Minister for Resources may also consider any other information (including publicly available information) the Minister considers to be relevant to determining the amount of the further rehabilitation bond required to secure the authority holder's performance of its rehabilitation obligations including the matters set out in section 3 of this policy and:

- the principles of sustainable development set out in section 2A of the Act
- consideration of risks to the environment in the event of failure to meet rehabilitation liabilities under an approved rehabilitation plan and any approved DMRP
- the Latrobe Valley Regional Rehabilitation Strategy as amended from time to time

- the outcomes of any consultation undertaken by the Minister for Resources (in addition to required Council and landowner consultation)
- relevant commercial considerations regarding the authority holder
- relevant government policy
- climate change considerations under the Climate Change Act 2017 (Vic).

Before deciding whether the amount of any further rehabilitation bond required, the Minister for Resources will consult with the relevant authority holder.

The Minister for Resources will publish a statement of reasons on the Resources Victoria website that outlines the matters considered in determining a bond or further bond.

5. Frequency of rehabilitation bond review

The sufficiency of an existing rehabilitation bond provided by an authority holder is to be assessed by the Minister at least every five years.

The sufficiency of an existing rehabilitation bond provided by an authority holder may also be assessed by the Minister for Resources in response to an approved variation to a rehabilitation plan and any approved DMRP or following a request by the Minister (including as a result of any liability assessment undertaken by ERR in line with this policy).

More frequent assessments of an authority holder's rehabilitation liability and review of the sufficiency of the existing rehabilitation bond reflects that the State's expectation that:

- a further rehabilitation bond can encourage an authority holder to improve rehabilitation planning, reduce uncertainty in the liability assessment and ultimately, bring down liability estimates
- liability assessments can reflect progressive and closure rehabilitation works that have been successfully completed up to that point in time and this may be able to be reflected in a reduction in the bond.

6. Form of further rehabilitation bond (financial assurance instrument)

In most cases, a further rehabilitation bond will be required to be provided in the form of a bank guarantee that meets conditions approved by the Minister for Resources.

The preferred conditions for acceptance of a bank guarantee are outlined in Attachment 1 to this policy.

The Minister for Resources may consider alternative security instruments including rehabilitation bonds in a hybrid form, such as where the bank guarantee is complemented by a portion of the value of the rehabilitation bond being secured by a parent company guarantee (PCG) from an entity acceptable to the State. This form of security may be accepted where:

- the value of rehabilitation liability secured by the PCG is no more than 20 per cent of the total further rehabilitation bond
- the terms and conditions of the PCG are determined by the Minister for Resources and satisfy the following minimum conditions:
 - all costs associated with establishing and maintaining the PCG are borne by the relevant authority holder
 - the guarantee is secured against an appropriately rated entity (at least Standard and Poor's BBB or Moody's Baa2 with a positive trading outlook)
 - the entity has sufficient assets domiciled in Australia to conservatively cover any potential liability under the PCG
 - the PCG is governed under Australian law
 - the PCG is irrevocable and unconditional.

The Minister for Resources may consider alternative security instruments to satisfy an authority holder's obligation to provide a further rehabilitation bond. In assessing alternative security instruments, the Minister may consider whether the instrument aligns with the objectives of this policy and whether the instrument represents an unreasonable increase in risk or financial exposure to the State.

Conditions for the acceptance of a bank guarantee

A bank guarantee must:

1. be from a recognised OECD financial institution (bank, building society or credit union) with a risk rating of at least A- or A3 for Standard and Poor's and Moody's respectively
2. be payable immediately at an office of the issuer in an Australian capital city on any business day
3. be in favour of the Minister for Resources
4. continue to be in force until:
 - a. the financial institution pays the Minister for Resources the full amount payable under the guarantee, or
 - b. the Minister for Resources notifies the financial institution in writing that the guarantee is no longer required, or
 - c. the time at which the total of all payment under the guarantee as the Minister for Resources may demand from time to time in aggregated equal the maximum amount that can be claimed under the guarantee, or
 - d. the authority holder delivers a replacement financial assurance on the same terms as the existing bank guarantee from a financial institution acceptable to the Minister for Resources in its absolute discretion and for an amount no less than the maximum amount.
5. state the name of the authority holder
6. state the mine authority type and number
7. relate to a single mine authority only (i.e. each mine authority must have a separate bond, and therefore separate bank guarantee)
8. be on the financial institution's letterhead or have a recognised stamp to indicate authenticity
9. be an original document
10. be signed and dated by an authorised officer of the financial institution.