

Proposed Mineral Resources (Sustainable Development) (Mineral Industries) Amendment Regulations 2022

Summary of issues raised in submissions on the Regulatory Impact Statement

Response and Statement of Reasons

Introduction

On 20 July 2022, the Minister for Resources released a Regulatory Impact Statement (RIS) and exposure draft of the proposed Mineral Resources (Sustainable Development) (Mineral Industries) Amendment Regulations 2022 (the proposed Regulations) for public consultation in accordance with section 11 of the *Subordinate Legislation Act 1994* (the SLA). The public submission period closed on 17 August 2022.

DJPR received 48 submissions on the proposed Regulations and the RIS, submitted through the Engage Victoria website from:

- Associate Professor Mohan Yellishetty, Monash University
- Brad Jessup, Senior Lecturer, University of Melbourne
- Community members (37 submissions)
- EnergyAustralia
- Environmental Justice Australia and Environment Victoria
- Friends of Latrobe Water
- Gippsland Environment Group
- Latrobe City Council
- Latrobe Valley Sustainability Group
- Victorian Farmers Federation
- Confidential submissions (two submissions).

Submissions and feedback provided during this consultation period related to:

- the specific proposed requirements for the preparation, consideration and approval of declared mine rehabilitation plans
- views on the availability of water for the purposes of mine rehabilitation
- matters that are beyond the scope of the draft Regulations.

All submissions and feedback received during consultation have been considered. While acknowledging the need for the proposed Regulations, submissions generally expressed views that the exposure draft of the proposed Regulations could better provide for meaningful engagement with stakeholders in the development, and implementation, of declared mine rehabilitation plans. The feedback reinforced the need for further guidance material to clarify how certain regulations are intended to operate, and to provide further information about how the draft Regulations fit within the broader legislative framework.

Overview of comments

Submissions and feedback in relation to the proposed Regulations can be grouped into five common themes:

1. The importance of genuine, ongoing stakeholder consultation and engagement.
2. The value in decision-makers having access to independent, expert advice.
3. The benefit of supporting guidance.
4. The need for policy certainty, especially in relation to water availability.
5. Some uncertainty about the roles and responsibilities assigned in the *Mineral Resources (Sustainable Development) Act 1990* (the Act).

A number of submissions recommended that the Government, rather than licensees, should be responsible for the preparation of declared mine rehabilitation plans and for undertaking consultation in relation to those plans. Responsibility for those activities is assigned to licensees under the Act itself, so any change is outside the scope of the proposed Regulations. What these submissions highlight is the importance of the proposed Regulations in prescribing Government's expectations – setting clear requirements for consultation and plan preparation.

Some feedback also noted a perceived lack of policy certainty in relation to water availability, with some querying whether plans could be prepared without that certainty. This matter is beyond the scope of the proposed Regulations.

Scope of the proposed Regulations

The types of matters that can be included in the proposed Regulations are limited to the matters that the Act allows to be prescribed by regulation. Section 124 of the Act provides that the Governor in Council may make regulations in relation to the specified matters, including in relation to the preparation, consideration and approval of declared mine rehabilitation plans; the preparation, consideration and approval of applications for a determination that closure criteria have been met; the registration of declared mine rehabilitation plans and declared mine land; and the determination of contributions to the Declared Mine Fund.

Changes to the proposed Regulations

Following detailed consideration of all submissions and feedback received, the changes to the proposed Regulations are:

1. Draft regulation 57A(b)(vi) has been amended to distinguish between regulatory processes that are required to be undertaken for the purposes of mine rehabilitation under the licensee's licence and any environmental audits and land contamination assessments required under prescribed legislation.
2. Draft regulation 57A(b)(vi) has been amended to require annual reports to also include a summary of the status of any environmental audits and land contamination assessments required under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
3. Draft regulation 57A(b)(x) has been amended to clarify that annual reports must include a report on the progressive rehabilitation of the declared mine land.
4. Draft regulation 64B(1)-(3) have been amended to correct a cross-reference to draft r 64A.
5. Draft regulation 64B(3) has been amended to enable the Minister to approve the preparation of a plan within a period that is up to 24 months, rather than 12 months, longer than the period prescribed by draft r 64A(a) or (b) that applies to a licensee.

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6. Draft regulation 64C(a) has been omitted so that 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 is not prescribed as a closure criteria.
7. Draft regulation 64C(c) has been amended to refer to the actions the licensee must take to achieve the long-term objective to convert the declared mine land to a sustainable as well as safe and stable condition.
8. Draft regulation 64C(l) has been amended to refer to clarify outcomes in relation to the rate and expected level of ongoing research into aspects of declared mine land and water that the licensee must achieve. That is, to resolve any deficiencies in the available data and to limit any uncertainty surrounding the state of the declared mine land and water.
9. Draft regulation 64C(n) has been omitted so that the measures the licensee must take to monitor and manage contaminants and pollution in the declared mine land is not prescribed as a closure criteria to avoid duplication of a licensee's obligations under other legislation.
10. Draft regulation 64C(p) has been amended to refer to the measures the licensee must take to enable all the expected post-closure outcomes, rather than just environmental outcomes.
11. Draft regulation 64D(b) has been amended to provide that a post-closure plan must contain information on a risk management plan for risks (rather than known and credible risks) that may continue post-closure and for the mitigation of those risks.
12. Draft regulation 64D has been amended to require a post-closure plan to include information on the plant that the declared mine licensee proposes to use to meet the closure criteria for the declared mine land and to abandon after closure, in accordance with section 114 of the Act.
13. Draft regulation 64D(c) has been amended to omit the term "as far as reasonably practicable" from the requirement for a post-closure plan to include information on who is responsible for post-closure monitoring and maintenance activities and the time and manner in which the ongoing monitoring and maintenance activities will be carried out after closure.
14. Draft regulation 64D(d) has been amended to omit the term "as far as reasonably practicable" from the requirement for a post-closure plan to include information on 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.
15. Draft regulation 64F(1)(b)(i) has been amended to require the stakeholder engagement plan included in a declared mine rehabilitation plan to identify the person or classes of persons who will be consulted on the plan, as well as those who have been consulted on the plan.
16. Draft regulation 64F(1)(b)(ii) has been amended to require the stakeholder engagement plan included in a declared mine rehabilitation plan to include milestones as well as a strategy for ongoing engagement with identified persons and classes of persons during rehabilitation and closure of the declared mine.
17. Draft regulation 64F(1)(b) has been amended to require the stakeholder engagement plan included in a declared mine rehabilitation plan to comply with any relevant guidelines issued by the Minister under section 120A of the Act.
18. Draft regulation 64F(1)(c) has been amended to require a declared mine rehabilitation plan to include the proposed outcomes for land use and proposed post-mining land use (rather than 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.
19. Draft regulation 64F(1)(d) has been amended to require a declared mine rehabilitation plan to include all the legal approvals and permissions required for the activities or outcomes (rather than the rehabilitation and closure activities or outcomes) in the declared mine rehabilitation plan.
20. Draft regulation 64F(2)(b) has been amended to require a declared mine rehabilitation plan to include information on the (rather than any) rehabilitation or closure objectives that are consistent with any relevant guidelines issued by the Minister under section 120A of the Act or information that the Department Head has approved.
21. Draft regulation 64F(2)(c) has been amended to require a declared mine rehabilitation plan to include information on the (rather than any) rehabilitation or closure milestone relevant to the ongoing monitoring, management and maintenance of declared mine land and to clarify that this requirement relates to declared mine land before the closure of a mine.

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22. Draft regulation 64F(2)(c)(i) has been amended to require a declared mine rehabilitation plan to include information on the rehabilitation or closure milestone relevant to the ongoing monitoring, management and maintenance of declared mine land including milestones necessary for the rehabilitation of land to a safe, stable and sustainable condition and to minimise the risks posed by declared mine land (rather than as far as practicable).
23. Draft regulation 64F(2)(d) has been amended to re-order the elements of this provision.
24. Draft regulation 64F(2)(d)(ii) has been amended to require a declared mine rehabilitation plan to include an identification and assessment of risks that may lead to an early or sudden cessation of operations and (rather than or) closure of the mine.
25. Draft regulation 64F(2)(e) has been amended to require a declared mine rehabilitation plan to include a risk management plan that specifies the actions the licensee will take to mitigate (rather than eliminate or minimise), as far as reasonably practicable, the risks referred to in regulation 64F(2)(d).
26. Draft regulation 64F(2)(f) has been amended to require a declared mine rehabilitation plan to include an outline of the roles and responsibilities of employees of the licensee (i.e. the qualifications that the employees hold to competently perform their role and the accountability of the employees for the implementation, management and review of the risk management plan).
27. Draft regulation 64H(1) has been amended to provide that 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 60 days (rather than 28 days), before giving the plan to the Department Head for approval.
28. Draft regulation 64H(2)(c) has been amended to provide that a notice seeking submissions on the proposed plan must state that submissions on the plan may be made to the declared mine licensee on or before a specified date, that is at least 60 days (rather than 28 days) after the date of publication of the notice in accordance with draft regulation 64H(2)(b).
29. Draft regulation 64H(2)(d)(ii) has been amended to provide that a notice seeking submissions on the proposed plan must contain the Internet site or publication in which the plan as well as information relating to the plan is published in accordance with these Regulations.
30. Draft regulation 64J(a) has been amended to provide that an application for the approval of a declared mine rehabilitation plan or the variation of a declared mine rehabilitation plan must include a report on the consultations undertaken under section 84AZU(4) of the Act that includes a copy of any written submissions received by the licensee in response to the consultations as well as sets out the matters raised within the consultations and the declared mine licensee's response to those matters.
31. Draft regulation 64K has been amended to include a requirement that the Department Head must, in considering a declared mine rehabilitation plan, consider the report on consultations under regulation 64J(a).
32. Draft regulation 64K(a)(vi) has been amended to provide that the Department Head must, in considering a declared mine rehabilitation plan, consider, in relation to the landform to be achieved on the declared mine land, that the landform minimises the fire risk so that the fire risk is, as far as reasonably practicable, not greater than any surrounding environment.
33. Draft regulation 64L(a) has been amended to include a requirement that the Department Head must, within 28 days of receiving a plan, consult any public sector body that is responsible for the authorisation or oversight of matters in the plan, on the plan.
34. Draft regulation 64L(d) has been amended to provide that the Department Head may, within 120 days (rather than 90 days) of receiving a plan, give the licensee a written notice requiring the licensee to provide specified information relating to any matter under the relevant Part of the Regulations that is necessary to enable the plan to be properly considered and to provide that specified information within a specified time.
35. Draft regulation 64M(a) has been amended to include a requirement that the Department Head must, within 28 days of receiving an application to vary a plan, consult any public sector body that is responsible for the authorisation or oversight of matters in the plan, on the plan.
36. Draft regulation 64M(d) has been amended to provide that the Department Head may, within 120 days (rather than 90 days) of receiving an application to vary a plan, give the licensee a written notice requiring the licensee to provide specified information relating to any matter under the

relevant Part of the Regulations that is necessary to enable the plan to be properly considered and to provide that specified information within a specified time.

The purpose of these changes is to strengthen stakeholder consultation and engagement in the preparation and implementation of declared mine rehabilitation plans and to clarify or improve the operation of the proposed requirements. Many other detailed issues raised in consultation will be addressed in guidance materials. There is scope under the Act to make both binding (Ministerial guidelines) and non-binding guidance as appropriate.

Comments and responses

Comments raised during consultation and responses are set out in the tables below. Each of the first eight tables focuses on a different component of the proposed Regulations, with Table 9 addressing matters related to specific provisions of the proposed Regulations.

1. Outcomes

Objectives	<ul style="list-style-type: none"> Facilitate conversion of declared mine land to a safe and stable condition. Identify ongoing monitoring and maintenance activities required to maintain declared mine land in a safe and stable condition post-closure.
Comments	<ul style="list-style-type: none"> Submissions were generally supportive and/or acknowledged application of the outcomes set out in the Act – safe, stable and sustainable. One submission suggested that the outcomes should be safe, stable, sustainable and beneficial. One submission suggested that more time would be needed to prepare and submit declared mine rehabilitation plans, while other submissions recommended that plans be required to be submitted in less time. One submission noted that there are no enforcement powers associated with the proposed Regulations.
Response	<ul style="list-style-type: none"> The proposed Regulations would be made under the Act and, under the Act, authority holders are responsible for rehabilitating their sites to achieve safe, stable and sustainable landforms. That responsibility applies automatically without the need for an express reference in the proposed Regulations. Duplicating or otherwise referencing matters in the Principal Act in the proposed Regulations may render them invalid as inconsistent with the Act. Implementation of the proposed Regulations would require significant engagement with a large number of stakeholders. It is also likely to require the development of detailed guidance materials and the establishment of policy certainty for matters relevant to mine rehabilitation. Shortening the timeframe in which plans must be prepared and submitted would jeopardise the capacity to undertake those activities. The proposed Regulations maintain the proposed prescribed period for the preparation of plans, but enable the Minister to approve an additional 24 months. Approval would require a licensee to apply to the Minister for additional time. Guidance material could be developed to provide clarity and certainty in relation to the content, submission and consideration of applications. The source of enforcement powers is the Act itself, which provides that a mining licence can be cancelled if a declared mine licensee has not complied with a declared mine rehabilitation plan.

2. Milestones

Objectives	<ul style="list-style-type: none"> Enable an iterative approach to declared mine rehabilitation plans, with plans developing and becoming more detailed over time. Facilitate the early identification of rehabilitation risks.
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Comments	<ul style="list-style-type: none"> • Some submissions were supportive of the iterative approach outlined in the regulatory impact statement. • There was little consideration of this component by most stakeholders. • One submission stated that more clarity is required to explain the way in which the proposed Regulations give effect to the iterative approach. • One stakeholder suggested that it may be beneficial for the proposed Regulations to include milestones in relation to the closing of outstanding data gaps to achieve rehabilitation objectives and closure criteria.
Response	<ul style="list-style-type: none"> • The proposed Regulations have been revised to clarify that milestones are relevant before, rather than after, mine closure and that all declared mine rehabilitation plans will include milestones relevant to the ongoing monitoring, management and maintenance of declared mine land. • The iterative approach means that submitted plans will reflect 'point in time' understanding and best practice. As such, the proposed Regulations do not need to refer to 'as far as reasonably practicable' in relation to the milestones necessary for rehabilitation and to minimise risks. • The need for clarity in relation to the role of milestones in the iterative approach is likely to require detailed, binding guidance materials to be prepared soon after the proposed Regulations commence so that they can inform the first declared mine rehabilitation plans. • Revision of the proposed Regulations to include milestones related to the level of ongoing research to be achieved by the licensee under proposed regulation 64C(k) is not required as such milestones will be required under proposed regulation 64F(2)(c)(ii).

3. Closure Criteria

Objectives	<ul style="list-style-type: none"> • Prescribe criteria to be met by a declared mine licensee for closure of a mine on declared mine land. • Enable preparation of a declared mine rehabilitation plan.
Comments	<ul style="list-style-type: none"> • Submissions either did not comment on this component of the proposed Regulations, or accepted the content of the proposed Regulations as drafted. Some feedback raised points or made suggestions addressed in other components of the proposed Regulations. • Two submissions suggested that the closure criteria should ensure pollution and contamination will not occur, or will be minimised so far as reasonably practicable, during rehabilitation and for the final landform. • Two submissions expressed the view that the standard the licensee must meet in order for the Minister for Resources to consent to the surrender of the licence that covers the declared mine land should be prescribed, or set, by Government rather than the licensee. • One submission also identified a distinction between the first of the draft closure criteria (related to the standard noted above) and the remainder of the criteria.

	<ul style="list-style-type: none"> The Department also received feedback that the closure criteria should include the measures the licensee must take to enable all the expected post-closure outcomes identified in a declared mine rehabilitation plan, rather than just the environmental outcomes.
Response	<ul style="list-style-type: none"> The proposed Regulations have been revised to remove reference to the measures the licensee must take to monitor and manage contaminants and pollution in the declared mine land. This will avoid potential regulatory duplication and unintended consequences related to obligations associated with the General Environmental Duty. Under the Act, the closure criteria are prescribed criteria to be met by the declared mine licensee for the closure of the mine on the declared mine land and that, as part of the declared mine rehabilitation plan, the criteria are subject to approval by the Department Head. The proposed Regulations have been revised to remove from the closure criteria, the standard the licensee must meet in order for the Minister for Resources to consent to the surrender of the licence that covers the declared mine land. It is unnecessary to include this in the Regulations as it is in the Act. The proposed Regulations have been revised to include the measures the licensee must take to enable all the expected post-closure outcomes identified in a declared mine rehabilitation plan, rather than just the environmental outcomes. The proposed Regulations have been revised to better align with the objectives of the Act. Proposed regulation 64C(b) refers to the actions the licensee must take to achieve the long-term objective to convert the declared mine land to a safe and stable and sustainable condition. The proposed Regulations are consistent with the existing requirement that rehabilitation plans must include a landform that will be achieved to complete rehabilitation, which must be capable of supporting proposed land uses for the land after it has been rehabilitated. The proposed Regulations have been revised to clarify the rate and expected level of ongoing research into aspects of the declared mine land that the licensee must achieve (that is, to resolve any deficiencies in the available data, and to limit any uncertainty surrounding the state of the declared mine land).

4. Post-Closure Plan

Objectives	<ul style="list-style-type: none"> Facilitate maintenance of declared mine land in a safe and stable state after closure. Enable effective “handover” of responsibility for the ongoing monitoring and maintenance of declared mine land.
Comments	<ul style="list-style-type: none"> Submissions either did not comment on this component of the proposed Regulations, or accepted the content of the proposed Regulations as drafted. Some feedback raised points or made suggestions addressed in other components of the proposed Regulations. One submission noted the benefit of a transfer of declared mine land to a single entity, already enabled by the proposed Regulations. One submission recommended that a post-closure plan should be required to include a risk management plan that identifies alternatives that could be implemented during rehabilitation to mitigate those risks.

	<ul style="list-style-type: none"> The Department also received feedback that the post-closure plan should facilitate the transfer of rehabilitation-related infrastructure to the entity responsible for the monitoring and maintenance of the declared mine land after closure.
Response	<ul style="list-style-type: none"> The proposed Regulations have been revised to clarify that the required risk management plan extends to the mitigation of risks that may continue after closure. The proposed Regulations have also been revised to require a post-closure plan to include information on the plant that the declared mine licensee proposes to use to meet the closure criteria for the declared mine land and to leave on the declared mine land to be utilised for ongoing monitoring and maintenance activities. This will not restrict the transfer of rehabilitation-related plant to the entity responsible for the ongoing monitoring and maintenance of declared mine land. References to 'known and credible' (in relation to risks that may continue post-closure) and to 'as far as reasonably practicable' (in relation to post-closure monitoring and maintenance activities and further supporting data reports and information to be provided to the Mine Land Rehabilitation Authority) have also been removed from the proposed Regulations. The iterative approach means that submitted plans will reflect 'point in time' understanding and best practice, making these references unnecessary.

5. Plan Expectations

Objectives	<ul style="list-style-type: none"> Establish a framework for the iterative development of declared mine rehabilitation plans. Provide clarity around the State's expectations for declared mine rehabilitation plans and the successful rehabilitation and closure of declared mines.
Comments	<ul style="list-style-type: none"> The submissions that considered this component emphasised the importance of genuine, ongoing stakeholder consultation and engagement. This was a common theme of feedback. Submissions suggested that the minimum period for public consultation in relation to proposed declared mine rehabilitation plans should be at least 60 days. They also recommended affected parties should have access to 'full' information about a proposed plan and that all submissions made during public consultation should be required to be provided to, and be considered by, the decision-maker. Some submissions recommended that declared mine rehabilitation plans should include, and assess, all viable options for rehabilitation of the declared mine land. Some submissions suggested that consultation on proposed plans should be undertaken by Government, rather than licensees. The Department also received feedback recommending that guidance should be developed to inform the development of stakeholder engagement plans. One stakeholder suggested that the stakeholder engagement plan included in the declared mine rehabilitation plan should be required to include milestones for ongoing engagement.

<p>Response</p>	<ul style="list-style-type: none"> • The proposed Regulations have been revised to provide a minimum period for public consultation of at least 60 days in relation to declared mine rehabilitation plans. • The proposed Regulations have been revised to ensure public access to the proposed plan as well as information relating to the plan, noting that guidance materials can be developed after the proposed Regulations commence to clarify the nature of that relation information. • The proposed Regulations have been revised to require licensees to provide the decision-maker with a copy of any written submissions received by the licensee in response to consultation related to a proposed declared mine rehabilitation plan or variation to a plan. They have also been revised to require the decision-maker to consider those submissions in making their decision. • Neither the Act nor the proposed Regulations require licensees to include, and assess, all viable options for rehabilitation. To impose such a requirement would be problematic because it may be inconsistent with the legislative obligation on declared mine licensees to prepare a plan. It would also impose a significant burden on licensees and decision-makers. The benefit or necessity of such a requirement is not clear given the Act and proposed Regulations set the outcomes for rehabilitation and that proposed plans are subject to approval by the Department Head and can be varied at the direction of the Department Head. • The proposed Regulations do not attempt to vary the legislative obligation on declared mine licensees to consult in relation to the declared mine rehabilitation plan, but they do prescribe requirements related to that obligation. • The proposed Regulations have been revised to explicitly foreshadow Ministerial guidelines for stakeholder engagement plans, to be developed after commencement of the proposed Regulations. • The proposed Regulations have been revised to require that the stakeholder engagement plan included in the declared mine rehabilitation plan include milestones as well as a strategy for ongoing engagement. • The proposed Regulations have been revised to clarify that a declared mine rehabilitation plan must include a risk management plan that specifies the actions the licensee will take to mitigate, as far as reasonably practicable, the risks identified and assessed in the plan. • The proposed Regulations have also been revised to clarify that a declared mine rehabilitation plan must include all the legal approvals and permissions required for the activities or outcomes in the plan. • The proposed Regulations have been revised to provide that a declared mine rehabilitation plan must include an outline of the roles and responsibilities of employees of the licensee, that is, the qualifications that the employees hold to competently perform their role, and the accountability of the employee for the implementation, management and review of the risk management plan.
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6. Decision-Making on Plan, Closure

<p>Objectives</p>	<ul style="list-style-type: none"> • Ensure views of relevant entities are sought. • Ensure relevant matters are considered
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<p>Comments</p>	<ul style="list-style-type: none"> • The submissions that considered this component expressed a need for decisions to be informed by submissions made during consultation and by independent, expert advice. • A number of submissions recommended that decision-makers should be required to seek and consider independent, expert advice in making decisions. • Those submissions also suggested that decision-makers should be provided with, and required to consider, any submissions made during consultation. • The Department also received feedback concerning decision-making timeframes and the distinction between iterations of, and variations to, a declared mine rehabilitation plan.
<p>Response</p>	<ul style="list-style-type: none"> • The proposed Regulations have been revised to require the Department Head to consider any written submissions received by the licensee in response to consultation in relation to a proposed declared mine rehabilitation plan or variation to a plan in making their decision. • The proposed Regulations have been revised to require the decision-maker to, in considering a proposed declared mine rehabilitation plan, also consult with any public sector body that is responsible for the authorisation or oversight of matters in the plan. • Revision of the proposed Regulations to require decision-makers to seek and consider independent, expert advice in making decisions is not required as the decision-maker is already obliged to consult with, and consider any comments received from, the Mine Land Rehabilitation Authority. • The proposed Regulations have been revised to require the decision-maker to consider, in relation to the landform to be achieved on the declared mine land, that the landform minimises the fire risk so that risk is, as far as reasonably practicable, not greater than the surrounding environment. • The proposed Regulations have been revised to allow the decision-maker to require the licensee to provide more information within 120 days of receiving a plan. This will enable the decision-maker to impose that requirement on the basis of feedback provided to the decision-maker by consulted entities. • While the proposed Regulations do include timeframes in relation to certain processes that must be undertaken in making decisions on plans and closure applications, they do not provide timeframes within which decisions must be made. The decision-maker's discretion to make decisions is provided under the Act. Revising the proposed Regulations to include a timeframe within which the decision-maker must make a decision may impose an inappropriate or unlawful constraint on that discretion. • The need for clarity in relation to the distinction between iterations of, and variations to, declared mine rehabilitation plans is likely to require the development of detailed, binding guidance materials after the proposed Regulations commence.

7. Reporting Requirements

<p>Objectives</p>	<ul style="list-style-type: none"> • Ensure regulatory oversight of implementation of declared mine rehabilitation plans.
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<p>Comments</p>	<ul style="list-style-type: none"> • The submissions that addressed this component of the proposed Regulations supported or acknowledged the need or requirement for licensees to provide annual reports in relation to their declared mine rehabilitation plans. • One submission recommended that reports should be required to include a summary of the status of any regulatory processes required under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth). • Some submissions suggested that reports should be required to include potential issues that could impact on the declared mine rehabilitation plan and/or the progressive rehabilitation of the declared mine land, the environment or the surrounding community. • One submission recommended that the report should be required to include land sales within the ‘operating licence area’. • A number of submissions suggested that there should be a requirement to make the licensee’s annual reports publicly available. • One submission suggested that annual reports are not sufficient, and that quarterly progress reports should be required.
<p>Response</p>	<ul style="list-style-type: none"> • The proposed Regulations have been revised to require reports to include a summary of the status of any regulatory processes required under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth). • The proposed Regulations have been revised to clarify that annual reports are required to include a report on the progressive rehabilitation of the declared mine land as well as a report of potential issues that exist in relation to the declared mine rehabilitation plan. • The proposed Regulations have been revised to better distinguish regulatory processes required to be undertaken for the purposes of mine rehabilitation under the licence <u>and</u> any environmental audits and land contamination assessments required under legislation. • To the extent that land sales within the ‘operating licence area’ of a declared mine licence may be permitted (i.e. subject to rehabilitation and planning controls), and are relevant to the proposed Regulations, they are expected to be captured in reports that are required to be included in annual reports under proposed regulation 57A. • The proposed Regulations do not require publication of annual reports. The Minister’s discretion to make annual reports public is provided under the Act. Revising the proposed Regulations to require publication may impose an inappropriate or unlawful constraint on that discretion. • The proposed Regulations do not require the preparation and submission of quarterly progress reports. This is consistent with rehabilitation reporting obligations under the Act. It does not mean that a licensee cannot be required to provide information (under, for example, section 116 of the Act) outside the annual report for the purpose of verifying information provided in the annual report.

8. Declared Mine Fund Contribution

<p>Objectives</p>	<ul style="list-style-type: none"> • Facilitate determination of the amount of rehabilitation bond to be paid into the declared mine fund on cancellation of a mining licence. • Ensure relevant information is considered in making that determination.
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Comments	<ul style="list-style-type: none"> • Only two submissions provided feedback on this component of the proposed Regulations and one of those raised a point that is addressed elsewhere in the proposed Regulations. • One submission recommended that further consultation is required to clarify post closure fund cost methodology and scope.
Response	<ul style="list-style-type: none"> • The proposed Regulations do not provide a complete basis for the Minister's determination of the amount of any rehabilitation bond to be paid into the declared mine fund on the cancellation of a mining licence. The benefit of providing greater clarity in this respect is noted and is likely to require the development of detailed, binding guidance materials after the proposed Regulations commence.

9. Comments on specific proposed Regulations

Regulation	Comment / detail	DJPR Response
5 Definitions	Definitions are missing from the draft regulations and RIS on objectives, criteria and outcomes. Defining this key terminology will provide greater clarity to Declared Mine Operators (operators), government and the community on how the regulatory approach will work.	<p>Accepted in principle</p> <p>As subordinate legislation, the proposed Regulations apply the objectives, criteria and outcomes as articulated in the Act. To define those terms in the proposed Regulations risks them being inconsistent with the Act. There are benefits to providing greater clarity in relation to certain terms and, as foreshadowed in the proposed Regulations, guidance materials will be prepared after the proposed Regulations commence.</p>
9 New regulation 57A – Requirements for annual reports for – declared mine rehabilitation plans	Insert the requirement to demonstrate and report progressive rehabilitation planning and works.	<p>No change</p> <p>The proposed Regulations already include a requirement to report on the progressive rehabilitation of the declared mine land (proposed regulation 57A(b)(xi)).</p>
	Insert a requirement to report land sales within the operating license [sic] area.	<p>No change</p> <p>To the extent that land sales within the 'operating licence area' of a declared mine licence may be permitted (i.e. subject to rehabilitation and planning controls), and are relevant to the proposed Regulations, they are expected to be captured in reports that are required to be included in annual reports under proposed regulation 57A.</p>

	<p>Revise regulation 57A(b)(ii) as follows: (ii) an identification and assessment of any current or anticipated future risks to the rehabilitation and post-closure management of the declared mine;</p>	<p>No change</p> <p>Proposed regulation 57A(b)(ii) already captures current or anticipated future risks. Revision may have the unintended consequence of reducing the specified information that must be included in an annual report under that proposed regulation.</p>
	<p>Include the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (the EPBC Act) in regulation 57A(b)(vi).</p>	<p>Accepted</p> <p>Proposed regulation 57A(b)(vi) has been revised to include the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth.</p>
	<p>Add regulation 57A(c) that requires ERR to upload annual reports to a publicly available website within one month of the annual report due date.</p>	<p>No change</p> <p>The proposed Regulations do not require publication of annual reports. The Minister's discretion to make annual reports public is provided under the Act. Revising the proposed Regulations to require publication may constitute an inappropriate (and unlawful) constraint of that discretion.</p>
<p>12 New Divisions 3 and 4 of Part 5 – Division 3 Declared Mine Rehabilitation</p> <p>64A Prescribed period for preparation of declared mine rehabilitation plan</p>	<p>Regulation 64A directs that: 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;</p> <p>It is noted that the Draft Central and Gippsland Sustainable Water Strategy indicates that any decision on using water from the Latrobe River system for mine rehabilitation, will need to consider availability of different water sources and a drying climate, and fully protect the rights of existing water users.</p> <p>Appreciating that the draft Sustainable Water Strategy is yet to be finalised, and that it includes a number of recommendations that must be logically completed prior to determining availability of water resources for 1, 2 or 3 of the declared mines; the proposed three-year</p>	<p>Accepted</p> <p>The proposed Regulations have been revised to enable the Minister to approve an additional 24 months for the preparation of declared mine rehabilitation plans.</p>

	timeframe in which declared mine rehabilitation plans may be problematic.	
	Reduce the timeframe in proposed regulation 64A for the submission of declared mine rehabilitation plans from 3 years to 12 months.	No change Implementation of the proposed Regulations would require significant engagement with a large number and variety of stakeholders. It is also likely to require the development of detailed guidance materials and the establishment of policy certainty in a number of areas. Shortening the timeframe in which plans must be prepared and submitted would jeopardise the capacity to undertake those activities.
	Introduce a penalty for non-compliance with the statutory timeframe for submission of a DMRP in section 84AZU(2) of the Act to incentivise compliance.	No change Penalties for non-compliance are in the Act, which enables serious action, including cancellation of a licence, to be taken in response to non-compliance with the Act or the Regulations.
12 New Divisions 3 and 4 of Part 5 – Division 3 Declared Mine Rehabilitation 64C Closure criteria	Regulation 64C(b) should require the licensee to outline the measures it must take to “address and mitigate the risks”.	No change The proposed Regulations already provide that a declared mine rehabilitation plan must include 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. They also provide that a plan must include a risk management plan for the mitigation of risks that may continue post-closure.
	Regulation 64C(c) directs that: The actions the licensee must take to achieve the long-term objective to convert the declared mine land to a safe and stable condition. Reference to ‘sustainable’ has been omitted within the Closure Criteria.	Accepted The proposed Regulations have been revised to include a reference to sustainable in this provision.
	Regulation 64C(d) the measures the licensee must take to minimise the erosion of the declared mine land; This is duplicative as it would be addressed in b) and c) above.	No change The measures the licensee must take to minimise the erosion of the declared mine land may be addressed in other closure criteria, however it has been retained in the proposed Regulations to avoid any doubt.

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	<p>Regulation 64C(f) directs that: (f) the measures the licensee must implement to assess and manage fire risks;</p> <p>Request that a reference to both 'immediate and long term' fire risk be added.</p>	<p>The proposed Regulation already captures immediate and long-term fire risk. Revision may have the unintended consequence of reducing the risks captured by this closure criteria.</p>
	<p>Regulation 64C(f) the measures the licensee must implement to assess and manage fire risks;</p> <p>This could be added to b) above rather than being a standalone clause.</p>	<p>No change</p> <p>The measures the licensee must implement to assess and manage fire risks go directly to the purpose of the proposed Regulations and so have been retained in the proposed Regulations as a standalone clause.</p>
	<p>Regulation 64C(i) the objectives that the licensee must satisfy for the proposed landform to be able to support the proposed outcomes for land use;</p> <p>It is unclear what this clause requires in practice.</p>	<p>No change</p> <p>The proposed Regulations are consistent with the existing requirement that rehabilitation plans must include a landform that will be achieved to complete rehabilitation, which must be capable of supporting proposed land uses for the land after it has been rehabilitated.</p>
	<p>Regulation 64C(p) should require the licensee to outline the measures the licensee will take to "enable the expected post-closure environmental outcomes". This term should be defined or given more precision.</p>	<p>Accepted in part</p> <p>The proposed Regulations have been revised to include the measures the licensee must take to enable all the expected post-closure outcomes identified in a declared mine rehabilitation plan (rather than just the environmental outcomes). There are benefits to providing additional guidance materials, which will be developed after the proposed Regulations commence.</p>
	<p>Add Regulation 64C(q) "The measures the licensee will take to ensure a beneficial land use for the community after rehabilitation is complete".</p>	<p>No change</p> <p>Revising the proposed Regulations as suggested may be invalid as outside the scope of the Act. Under the proposed Regulations, declared mine rehabilitation plans must include proposed outcomes for land use and proposed post-mining land use. Public consultation must be undertaken, and stakeholders (including the community) and engaged in relation to those proposals.</p>

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	<p>Request that a reference to 'beneficial' outcomes being achieved is included with the Closure criteria.</p>	<p>No change</p> <p>Revising the proposed Regulations as suggested may be invalid as outside the scope of the Act.</p> <p>Under the proposed Regulations, declared mine rehabilitation plans must include proposed outcomes for land use and proposed post-mining land use. Public consultation must be undertaken, and stakeholders (including the community) and engaged in relation to those proposals.</p>
	<p>Request that closure criteria specify instances where State Government may be expected to utilise its powers to undertake ongoing care, monitoring and maintenance.</p>	<p>No change</p> <p>Under the Act, the closure criteria must be met by the declared mine licensee. The post-closure plan will set out the monitoring and maintenance to be carried out on the closure of the mine on the declared mine land by the declared mine licensee, the Mine Land Rehabilitation Authority or the owner of the land.</p>
	<p>The proposed regulations be amended to place obligations on the licensee to meet standards set by government (rather than leaving it to the licensee to set the standards as per Regulation 64C).</p>	<p>No change</p> <p>The proposed Regulations already provide that licensees are required to list measures they will take to meet the standards set in the Act and proposed Regulations. Under the Act and proposed Regulations, these measures will be subject to Department Head approval.</p>
	<p>Proposed Regulation 64C be amended so that the licensee is required to list measures that it will take to meet the government set standards.</p>	<p>No change</p> <p>The proposed Regulations already provide that licensees are required to list measures they will take to meet the standards set in the Act and proposed Regulations. Under the Act and proposed Regulations, these measures will be subject to Department Head approval.</p>
	<p>The current closure criteria set out in Regulation 64C would benefit from further differentiation into criteria upon which a DMRP is assessed and information that must be considered in a DMRP.</p>	<p>Accepted</p> <p>The proposed Regulations have been revised to remove reference to the standard the licensee must meet for the Minister for Resources to consent to the surrender of the licence that covers the declared mine land.</p> <p>Under the Act, the closure criteria are the prescribed criteria to be met by the declared mine licensee for the closure of the mine on the declared mine land. The criteria are subject to approval by the</p>

		Department Head as part of the declared mine rehabilitation plan. Reference to the standard in this Regulation is unnecessary..
	Closure criteria should be linked to the achievement of the “safe, stable and sustainable” landform objective articulated in Regulation 64F, any site-specific closure objectives and the mitigation of risks associated with achieving these objectives.	No change As subordinate legislation, the proposed Regulations (including the closure criteria) are already entirely linked to the objectives articulated in the Act, including the achievement of a safe, stable and sustainable final landform.
	It is standard practice for mine closure to address site setting, this establishes the context for potential stability issues and potential environmental and social receptors that may be impacted by the rehabilitation. Therefore, it would be prudent to include this as a matter that must be considered within a DMRP.	No change Under the proposed Regulations, a declared mine rehabilitation plan already needs to address site setting, e.g. the proposed requirement for a plan to include an identification and assessment of risks that may lead to an early or sudden cessations of operations and closure of the mine; rehabilitation risks and hazards; and risks that may affect the rehabilitation outcomes, objectives and milestones that apply to the rehabilitation of the declared mine land.
12 New Divisions 3 and 4 of Part 5 – Division 3 Declared Mine Rehabilitation 64D Post Closure Plan	Regulation 64D directs that post closure plans must contain: (a) the ongoing monitoring and maintenance activities required to maintain the declared mine land in a safe and stable state after closure; Reference to ‘sustainable’ has been omitted.	No change The focus of this provision is on identifying the need for active maintenance – the ongoing monitoring and maintenance activities required to maintain the declared mine land in a safe and stable state after closure. The activities are what is required to ‘sustain’ the declared mine land in a safe and stable state after closure.
	Request post-closure plans describe measures to ensure land parcels, title arrangements and conditions of tenure are complimentary [sic] to and will allow the realisation of post closure outcomes. This should include the identification of locations set aside for community access.	No change This is addressed already under the proposed Regulations. A declared mine rehabilitation plan will need to include an identification and assessment of risks than may lead to an early or sudden cessations of operations and closure of the mine; rehabilitation risks and hazards; and risks that may affect the rehabilitation outcomes, objectives and milestones that apply to the rehabilitation of the declared mine land. Plans will also need to include a risk management plan that specifies the actions the licensee will take to mitigate those risks, as far as reasonably practicable.

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	<p>Request that an assessment of socio-economic benefits to community and economy resulting from final landforms be detailed.</p>	<p>Accepted in principle</p> <p>Guidance would be the most appropriate location for this information. Under the proposed Regulations, a declared mine rehabilitation plan will need to include proposed outcomes for land use and proposed post-mining land use described in a manner consistent with any relevant Ministerial guidelines issues under section 120A of the Act.</p>
	<p>Request that closure criteria include the requirement to demonstrate how opportunities for future utilisation of brown coal may be preserved.</p>	<p>No change</p> <p>This is outside the scope of the proposed Regulations.</p>
	<p>Refer Regulation 64D Post Closure plans are too minimal and generalised. Need to be much more specific such as Regulation 64C. I suggest:</p> <ul style="list-style-type: none"> • maintain pipelines regularly every 6 months, need to be checked to avoid ruptures (EPA should require this) • maintain coal ash dam linings and repair where necessary to avoid/stop contaminants leaching into the groundwater • investigate alternatives to plastic lining; we know plastic deteriorates and breaks down into micro plastics, something we need to cut back on; not contribute to the problem of • ongoing water quality monitoring, both groundwater and surface • monitoring programs must run for a few decades - at least 30 years. Programs must include plans that detail remedial action to restore groundwater to the original condition, and action in the event contamination is discovered post-closure. 	<p>No change</p> <p>Under the proposed Regulations, a post-closure plan must contain information on the ongoing monitoring and maintenance activities required to maintain the declared mine land in a safe and stable state after closure. Prescription of the activities as suggested may have the unintended consequence of reducing the information that must be included in the plan, as it could be interpreted as requiring no more than the activities listed.</p> <p>This sort of detail would be appropriate to include in guidance materials.</p>
	<p>Regulation 64D directs that: (vi) that the landform minimises the fire risk so that the fire risk is not greater than any surrounding environment.</p> <p>Reference to immediate and longer-term fire risk is considered.</p>	<p>No change</p> <p>This comment appears to refer to proposed Regulation 64K. The proposed Regulation already captures immediate and long-term fire risk. Revision may have the unintended consequence of reducing the risks captured by this closure criteria.</p>

	Amend (b) as follows: 'a risk management plan for known and credible risks that may continue post-closure and which identifies alternatives that could be implemented during rehabilitation which would mitigate those risks'.	Accepted Proposed Regulation 64D(b) has been revised to clarify that the risk management plan is for the mitigation of risks that may continue post-closure.
	Amend (d) to ensure that is not left to operator to determine what level of data, reports and information must be provided to the Rehabilitation Authority.	No change Under the proposed Regulations, plans can only approved by the Department Head after consultation with the Rehabilitation Authority. It is not left to the operator to determine that level of data, reports and information that must be provided to the Authority.
	Add '(e) an economic analysis of the likely cost of (a)'.	No change Given the potential lifespan of a mine to which the proposed Regulations will apply, it is unlikely that an economic analysis of the likely cost (of the ongoing monitoring and maintenance activities required to maintain the declared mine land in a safe and stable state after closure) that is undertaken when a declared mine rehabilitation plan is developed will be sufficiently accurate. Under the Act, authority holders are required to lodge a rehabilitation bond to cover 100 per cent of the estimated cost to rehabilitate their sites and bonds are reviewed every five years to ensure their currency.
	Add '(f) the viable post-closure land uses of the declared mine land.'	No change Under proposed Regulation 64F(1)(c), a declared mine rehabilitation plan will need to include the proposed outcomes for land use and proposed post-mining land use. This provision is consistent with existing obligations in relation to rehabilitation plans, in that it does not refer to the 'viability' of proposed post-mining land use. That does not mean that it will enable operators to propose unviable land uses. It is, however, expected that detailed, binding guidance on the application of this provision will need to be developed after the proposed Regulations commence.

<p>12 New Divisions 3 and 4 of Part 5 – Division 3 Declared Mine Rehabilitation</p> <p>64F Matters required in a declared mine rehabilitation plan</p>	<p>Request the inclusion of components within a draft mine rehabilitation plan that are considered to interact with other declared mine sites, rehabilitation planning and works.</p>	<p>No change</p> <p>The Act and the proposed Regulations establish a framework that will enable the Department Head to consider how each proposed declared mine rehabilitation plan will interact with other declared mine sites, rehabilitation planning and works.</p> <p>A declared mine licensee can only be required to include information that it would or should be reasonably expected to have in its possession.</p>
	<p>Licensees to submit new DMRPs, which include comprehensive technical detail and evidence to support the plan including an options analysis study which assesses viable alternative rehabilitation methods for the declared mine land. Licensees should identify the reasons for selecting the preferred rehabilitation method (e.g. cost, environmental impact).</p>	<p>No change</p> <p>Neither the Act nor the proposed Regulations require licensees to include, or assess, all viable options for rehabilitation. To impose such a requirement would be problematic as it may be inconsistent with the legislative obligation on declared mine licensees to prepare a plan and it would impose a significant burden on licensees and decision-makers. In addition, the benefit or necessity of such a requirement is not clear given the Act and proposed Regulations set the outcomes for rehabilitation and that proposed plans are subject to Department Head approval and can be varied at the direction of the Department Head.</p>
	<p>Licensees to submit new DMRPs, which include comprehensive technical detail and evidence to support the plan including independent geotechnical, hydrological, hydrogeological and contamination expert advice in relation to the preferred rehabilitation method.</p>	<p>No change</p> <p>Guidance materials would make clearer what is required without limiting the scope of the Regulations.</p> <p>It is expected that declared mine rehabilitation plans will need to include comprehensive technical detail and evidence to support the plan including independent geotechnical, hydrological, hydrogeological and contamination expert advice. Without this it may be difficult to show how the proposed measures or actions proposed by the licensee will satisfy each of the closure criteria.</p>
	<p>Licensees to submit new DMRPs, which include comprehensive technical detail and evidence to support the plan including an analysis of the cumulative impacts of the project, along with other proposed declared mine rehabilitation projects in the region, on environmental resources, such as water resources.</p>	<p>No change</p> <p>The Act and the proposed Regulations establish a framework that will enable the Department Head to consider the cumulative impacts of the project, along with other proposed declared mine rehabilitation projects in the region, on environmental resources, such as water resources.</p>

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		A declared mine licensee can only be required to include information that it would or should be reasonably expected to have in its possession.
	Amend the wording of Regulation 64F(1)(c) to “the viable post-mining land use” to prevent operators from proposing unviable land uses.	No change This provision is consistent with existing obligations in relation to rehabilitation plans (in that it does not refer to the ‘viability’ of proposed post-mining land use). That does not mean that it will enable operators to propose unviable land uses. Detailed, binding guidance on the application of this provision will be developed after the proposed Regulations commence.
	Amend Regulation 64F(1)(d) to “or likely required” to capture legal approvals and permissions operators may require. For example, whether operators can use groundwater allocations for the purpose of mine rehabilitation.	No change This provision is broad as drafted and would capture the type of approvals and permissions envisaged in this comment.
	Amend Regulation 64F(2)(d) to include environmental risks to surrounding environment and environment likely to be impacted by the project.	No change The proposed Regulation already captures environmental risks. Revision may have the unintended consequence of reducing the risks captured by this provision.
	Under Regulation 64F(2)(d)(iii), insert “(iv) Any alternative methods which would eliminate, mitigate or provide more beneficial outcomes for the environment, land and community regarding the risks proposed in (d).”	No change Under proposed Regulation 64F(2)(e), a declared mine rehabilitation plan will need to include a risk management plan that specifies the actions the licensee will take to mitigate, as far as reasonably practicable, the risks identified in (d). Revision of the proposed Regulations as suggested would impose a significant burden on licensees and decision-makers. The benefit or necessity of such a requirement is not clear given the Act and proposed Regulations set the outcomes for rehabilitation and that proposed plans are subject to consultation and Department Head approval and can be varied at the direction of the Department Head.

	<p>Regulation 64F(ix) should be amended as follows to avoid narrow interpretation: (ix) a report of potential issues that exist in relation to which could impact on the declared mine rehabilitation plan and/or the progressive rehabilitation of the declared mine land, the environment or the surrounding community.</p>	<p>Accepted in principle</p> <p>This comment seems to relate to proposed Regulation 57A. This provision has been revised to separately require a report of potential issues that exist in relation to the declared mine rehabilitation plan, and a report on the progressive rehabilitation of the declared mine land. This provision, as revised, will require the reports described by this comment and will avoid narrow interpretation. In fact, it is possible that the amendments suggested may have the unintended consequence of narrowing the reporting obligation.</p>
	<p>Add Regulation 64F(xi) which states “any new academic, scientific, expert or government reports or studies that could impact on the suitability or viability of the declared mine rehabilitation plan and the progressive rehabilitation of the declared mine land”.</p>	<p>Accepted in principle</p> <p>This comment seems to relate to proposed Regulation 57A. The proposed requirement to provide a report of potential issues that exist in relation to the declared mine rehabilitation plan is sufficiently broad to include any new academic, scientific, expert or government reports or studies that could impact on the suitability or viability of the declared mine rehabilitation plan and the progressive rehabilitation of the declared mine land.</p>
<p>12 New Divisions 3 and 4 of Part 5 – Division 3 Declared Mine Rehabilitation</p> <p>64G Declared mine licensee consultations with prescribed persons or class of persons</p>	<p>Revise Regulation 64G(2)(b)(c) to describe class of persons to be inclusive of all the Victorian community.</p>	<p>No change</p> <p>The effect of proposed Regulation 64H is that all the Victorian community will be able to make submissions on any proposed declared mine rehabilitation plan, it is not necessary to amend 64G to achieve this.</p>
	<p>Include independent incorporated community groups and/or not for profit organisations in the definition of ‘prescribed persons or classes of persons to be consulted.</p>	<p>No change</p> <p>Prescription of communities in the proposed Regulations is intentionally broad and could foreseeably include independent incorporated community groups and/or not for profit organisations. Aside from any difficulties associated with the prescription of entities that may need to be defined, there is a possibility that amending the proposed Regulations as suggested would have the unintended consequence of restricting the requirement for community consultation.</p>
<p>12 New Divisions 3 and 4 of Part 5 – Division 3 Declared Mine Rehabilitation</p>	<p>Regulation 64H directs that: (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</p>	<p>Accepted</p> <p>The proposed Regulations have been revised to extend the public notice period to 60 days.</p>

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<p>64H Duty for declared mine licensee to give notice of consultations</p>	<p>days, before giving the plan to the Department Head for approval. Given complexity of matters to be considered – 28 days of public notice is considered insufficient to ensuring the opportunity for meaningful community participation.</p> <p>Latrobe City Council request that the public notice period described at Section 64H be extended to 60 statutory days.</p>	
	<p>Extend the consultation timeframe to 60 days (minimum) to allow affected parties, who have many demands on their time and are, in many respects volunteer laypersons, a reasonable opportunity to analyse all the information.</p>	<p>Accepted</p> <p>The proposed Regulations have been revised to extend the public notice period to 60 days.</p>
	<p>Regulations 64H, 64K, 64L and 64M are examples where specific reference to the consideration of landholder views should be included in decision making.</p>	<p>No change</p> <p>Specific reference to the consideration of landholder views is already provided under proposed Regulation 64G.</p>
<p>12 New Divisions 3 and 4 of Part 5 – Division 3 Declared Mine Rehabilitation</p> <p>64K Department Head to consider plan for rehabilitation of declared mine land</p>	<p>Regulations 64K and 64L be amended to require the Department Head to seek and consider independent geotechnical, hydrological, hydrogeological, methodological and contamination expert advice before making a decision to approve the DMRP.</p>	<p>No change</p> <p>Under the Act and proposed Regulations as drafted the Department Head must seek and consider independent expert advice (including from the Mine Land Rehabilitation Authority and the Environment Protection Authority) before making a decision to approve the DMRP.</p>
	<p>The list of prescribed matters in Regulation 64K should be strengthened to ensure that pollution and contamination will not occur or will be minimised so far as reasonably practicable during rehabilitation and as a final landform.</p>	<p>Accepted</p> <p>The proposed Regulations have been revised to remove reference to the measures the licensee must take to monitor and manage contaminants and pollution in the declared mine land. This will avoid potential regulatory duplication and unintended consequences related to obligations associated with the General Environmental Duty.</p>
	<p>Regulations 64H, 64K, 64L and 64M are examples where specific reference to the consideration of landholder views should be included in decision making.</p>	<p>No change</p> <p>Specific reference to the consideration of landholder views is already provided under proposed Regulation 64G.</p>

<p>12 New Divisions 3 and 4 of Part 5 – Division 3 Declared Mine Rehabilitation</p> <p>64L Prescribed process – consideration of plan for rehabilitation of declared mine land by Department Head</p>	<p>Revise Regulation 64L(a) to require the Department Head to consult with independent appropriately qualified and experienced experts on the DMRP and post-closure plan.</p>	<p>No change</p> <p>Under the Act and the proposed Regulations, the Department Head is required already to consult with independent appropriately qualified and experienced experts, including the Mine Land Rehabilitation Authority and the Environment Protection Authority on the DMRP and post-closure plan.</p>
	<p>The Department Head must conduct public consultation for a period of 60 days after the Department head has consulted with agencies and bodies described in proposed Regulation 64L(a).</p>	<p>Accepted in part</p> <p>The proposed Regulations have been revised to require public consultation for a period of at least 60 days. Under the Act, consultation must be undertaken by the declared mine licensee.</p>
	<p>In its public consultation, the Department Head must make the entire DMRP publicly available including the post-closure plan, consultations with relevant and prescribed statutory authorities and public sector bodies, and independent experts that the Department Head must consult with and any expert reports produced during the government’s review of the plan.</p>	<p>Accepted in part</p> <p>The proposed Regulations have been revised to clarify that the entire declared mine rehabilitation plan must be available for consultation. The Department Head’s ability to divulge, communicate or publish information is restricted by s 119 of the Act.</p>
	<p>Submissions received during the public consultation period are a mandatory consideration in making a decision under section 84AZV(2) of the MRSD Act.</p>	<p>Accepted</p> <p>The proposed Regulations have been revised to provide that Submissions received during the public consultation period are a mandatory consideration in making a decision under section 84AZV(2) of the Act.</p>
	<p>Regulations 64H, 64K, 64L and 64M are examples where specific reference to the consideration of landholder views should be included in decision making.</p>	<p>No change</p> <p>Specific reference to the consideration of landholder views is already provided under proposed Regulation 64G.</p>
<p>12 New Divisions 3 and 4 of Part 5 – Division 3 Declared Mine Rehabilitation</p> <p>64M Prescribed process –</p>	<p>Regulations 64H, 64K, 64L and 64M are examples where specific reference to the consideration of landholder views should be included in decision making.</p>	<p>No change</p> <p>Specific reference to the consideration of landholder views is already provided under proposed Regulation 64G.</p>

<p>consideration of variation of declared mine rehabilitation plan by Department Head</p>		
<p>13 New Parts 5A and 5B inserted</p> <p>64Q Determining the amount to be paid into the Declared Mine Fund</p>	<p>Proposed Regulation 64Q regarding the declared mine fund be amended to include an independent expert review of the DMRP or post-closure plan to assess the potential cost.</p>	<p>No change</p> <p>The proposed Regulations do not provide a complete basis for the Minister's determination of the amount of any rehabilitation bond to be paid into the declared mine fund on the cancellation of a mining licence. Detailed, binding guidance materials after the proposed Regulations commence would make clearer what is expected.</p>
	<p>Further clarity is required on the intended process for calculating the contribution to the Declared Mine Fund (DMF). Currently, there is insufficient detail to enable industry to determine liability.</p>	<p>No change</p> <p>The proposed Regulations do not provide a complete basis for the Minister's determination of the amount of any rehabilitation bond to be paid into the declared mine fund on the cancellation of a mining licence. Detailed, binding guidance materials after the proposed Regulations commence would make clearer what is expected.</p>