

**Extractive Areas Rehabilitation Fund  
Policy 003**

**December 2020**

## Introduction

This policy outlines the framework for the operation of the Extractive Areas Rehabilitation Fund (EARF), in line with section 63 of the *Mining Act 1971* (the Act). It sets out the circumstances in which rehabilitation of extractive mineral operation projects may be funded. It also explains the criteria applied by the Department for Energy and Mining (the department) for deciding whether to use funds from the EARF.

This policy applies to:

- owners of land that was disturbed by extractive minerals mining, where the tenement holder has not met their rehabilitation obligations
- holders of a mining lease for recovering extractive minerals (EML) who do not have the financial capacity to meet their rehabilitation obligations - eg due to insolvency, administration, liquidation or bankruptcy
- proprietors or operators of private extractive minerals mines who do not have the financial capacity to meet their rehabilitation obligations - eg due to insolvency, administration, liquidation or bankruptcy; or
- suitably qualified experts, academics or students who want to research mining engineering and practice relating to environmental impact reduction for operations involving the recovery of extractive minerals.

This policy is consistent with the regulatory approaches incorporated in the regulator's overarching policy for [Regulation of minerals and mining](#), including:

- minimising liability for both government and community
- applying a whole-of-mine-life approach throughout the exploration, pre-production, production and post-production phases, including mine closure and completion
- applying a risk-based approach to determining what impacts must be managed
- clear accountability for the tenement holder to achieve community and government expectations.

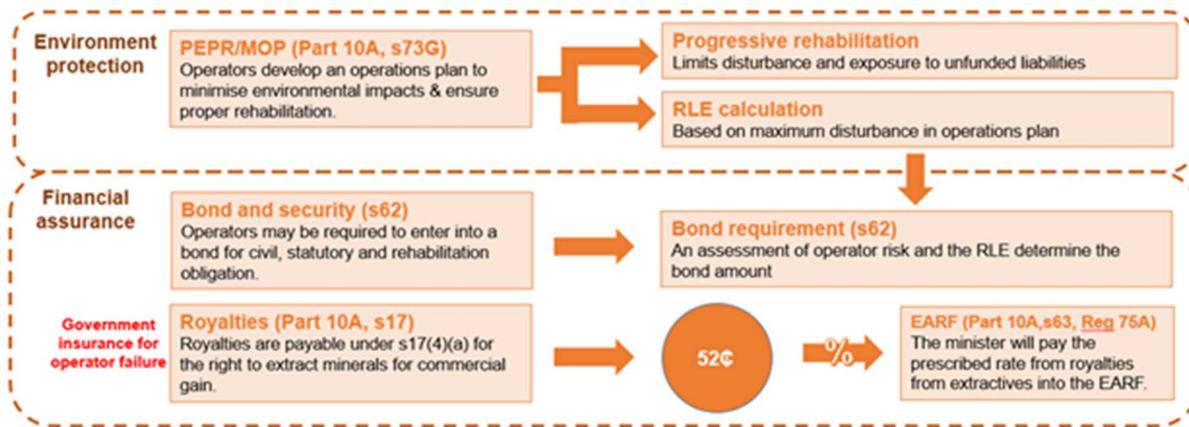
## Objectives

The purpose of this policy is to:

- explain the operation of the EARF, including the collection and disbursement of funds by the department to meet the cost of rehabilitation for authorised operations recovering extractive minerals - where the holder of an EML or private mine proprietor or operator that recovers extractive minerals does not have the capacity to meet their rehabilitation outcomes after all other enforcement measures have been exhausted
- clearly outline the regulator's powers and the parameters for using EARF funds in accordance with the Act
- clarify that extractive mineral tenement holders and proprietors or operators of private mines are responsible for meeting their rehabilitation obligations.

## Regulatory framework

The Act provides a framework for environment protection and final assurance to safeguard the environment and the State, as shown in Figure 1 below:



The tenement holder is responsible for the rehabilitation of land disturbed by an authorised operation and this principle forms the foundation of this framework.

Authorised mining operations are regulated by Part 10A – Programs for environment protection and rehabilitation of the Act, or relevant provisions under Part 11B – Private mines. Before mining operations can take place, tenement holders must hold an approved program for environment protection and rehabilitation (PEPR) or mine operations plan (MOP) that emphasises the importance of progressive rehabilitation and closure operations during the life of the mine to achieve appropriate mine completion outcomes.

Rehabilitation outcomes may also be incorporated into the conditions of individual mining leases, either when it is granted by the department or at any other point in the life of a mine.

The department may direct any person involved in authorised mineral tenement operations, including a former mineral tenement, to rehabilitate land in accordance with the requirements of PEPR or to comply with a mineral tenement condition under section 70F of the Act.

The department may also direct any person involved in authorised operations at an extractive private mine to meet the requirements of a MOP under sections 73I and 73J of the Act.

The EARF falls within this regulatory framework and applies to authorised operations that recover extractive minerals.

Section 63 of the Act establishes the EARF and states when funds may be allocated by the department. Specifically, section 63(3) of the Act provides that funding from the EARF may be used to meet the cost of:

- a. rehabilitation of land disturbed by authorised operations for recovering extractive minerals, or any costs associated with ensuring that land is rehabilitated in accordance with the requirements of the Act
- b. implementing measures designed to prevent or limit damage to, or impairment of, any aspect of the environment by authorised operations to recover extractive minerals, or any costs associated with ensuring that these measures are implemented or monitored
- c. promotion of research into methods of mining engineering and practice to reduce environmental damage or impairment resulting from authorised operations for extractive minerals recovery.

Funds from the EARF can only be used for rehabilitation works for extractive mineral operations if a tenement holder or private mine proprietor does not have the financial capacity to meet their rehabilitation obligations and all other enforcement measures have been exhausted.

## Financial assurance and the EARF

The Act provides financial assurance mechanisms to protect the state from taking on post-mining rehabilitation liabilities, including a bond that can be set under section 62 and the establishment of the EARF

under section 63. These provide surety for when tenement holders fail to meet their legal rehabilitation obligations in line with agreed environmental outcomes, including for mine closure and completion.

Under section 62 of the Act, tenement holders, other than for extractive minerals tenements, are generally required to provide a bond, in a manner and form determined by the department, to ensure present and future land rehabilitation obligations are fulfilled.

While the EARF can, at the department's discretion, provide funds for rehabilitation, the department may also consider on a case-by-case basis whether a bond should be set. This usually happens if the Minister determines that the rehabilitation liability poses a disproportionate risk to the state. The department does not generally require a bond for an EML.

Under the Act, the tenement holder is still required to meet their legal obligations for rehabilitating disturbed land even if there is a bond or EARF in place.

In this way, the EARF provides a royalty financed scheme that protects the state against operators who cannot meet their rehabilitation obligations due to voluntary administration or liquidation, acting as a low-cost financial assurance model for industry where financial security is generally not required.

## Fund income

Income from the EARF is assigned by the regulator from the royalties received from or recovered on extractive minerals.

Under section 17(4)(a) of the Act and regulation 9 of the Mining Regulations, royalties must be paid to the government for the right to extract minerals for commercial gain.

The prescribed rate under section 63(5) of the Act will be paid into the EARF, or a lesser amount, as may be prescribed by regulation 61 of the Mining Regulations.

An actuarial assessment of the fund is completed when required to ensure the balance of the fund adequately protects the state from the risk of unfunded rehabilitation liabilities, and to inform the setting of the prescribed rate of hypothecation into the fund.

## Expenditure of funds from the EARF

The Act provides the department with absolute discretion on whether to pay out any portion of the EARF for any of the prescribed purposes contained in section 63(3) of the Act.

The final decision on how funds are paid out is made on a case-by-case basis at the department's discretion, in line with the objects of the Act and this policy. The department may also apply conditions to any funding from the EARF.

Potential recipients of funding include:

- owners of land that was disturbed by the mining of extractive minerals where the tenement holder has not met their rehabilitation obligations
- holders of a mining lease for the recovery of extractive minerals
- proprietors or operators of private mines from which extractive minerals are recovered
- suitably qualified experts, academics or students who want to research mining engineering and practice relating to environmental impact reduction for operations involving the recovery of extractive minerals.

Potential recipients should email the department at [DEM.MiningRegRehab@sa.gov.au](mailto:DEM.MiningRegRehab@sa.gov.au) to determine if they meet the requisite eligibility criteria for funding, as outlined below.

## Eligibility criteria

The following eligibility criteria will be applied when deciding whether funds from the EARF will be paid out.

### For EMLs or extractive private mines

#### *Existing EMLs or extractive private mines*

- Funding for rehabilitation of an existing EML or an existing extractive private mine will only be considered if the tenement holder can clearly demonstrate they do not have the financial capacity to meet their rehabilitation obligations under the Act or the agreed environmental outcomes in an approved PEPR or MOP, and all other avenues to enforce obligations under the Act are exhausted. In these circumstances, the tenement holder or private mine proprietor should email the department at [DEM.MiningRegRehab@sa.gov.au](mailto:DEM.MiningRegRehab@sa.gov.au) to determine if the proposed rehabilitation project is eligible for funding.
- This funding will be limited to preventing significant damage to the environment and ensuring mine completion outcomes are achieved as specified in either the approved PEPR or MOP.
- If rehabilitation and environmental requirements have not been met, changes in ownership of a tenement become a liability of the new owner.

#### *Former EMLs or extractive private mines*

- Funding will be considered if all reasonable efforts to have the former lease holder, mine proprietor or operator do the work are exhausted.
- Landowners, who were not the holder of an EML or an extractive private mine, should email the department at [DEM.MiningRegRehab@sa.gov.au](mailto:DEM.MiningRegRehab@sa.gov.au) to provide notification of their intention to seek funding from the EARF to undertake this rehabilitation and determine if they meet the eligibility criteria. Any such funding will be limited to preventing significant damage to the environment.

### For research

Funding for research projects consistent with subsection 63(3)(c) of the Act will be considered where the:

- application is made by a suitably qualified expert, or academic or student in a mining engineering and practice field
- topic is of a broad interest to the government or the industry or both
- research will be completed and provided to the government by a specified date
- researcher agrees the completed research will be publicly available.

Applications for research projects should be submitted to the regulator via email at [DEM.MiningRegRehab@sa.gov.au](mailto:DEM.MiningRegRehab@sa.gov.au).

### For the regulation of extractive mines and EARF administration

Monies from the EARF can be allocated to the department to fund the regulation of EMLs and PMs, and EARF administration costs.

This includes costs associated with providing ongoing compliance and monitoring services related to ensuring appropriate environmental outcomes are achieved during operations and at mine completion.

## Eligible rehabilitation costs

EARF funds may be used for the following eligible rehabilitation project costs:

- The costs associated with the actual undertaking of the work as approved.
- Contingencies for unexpected events that are substantiated and verified for up to 10 per cent of the value of the project.

- Maintenance costs for 12 months from the date of completion of a project that are included in the project plan and approved along with the project.
- Project supervision costs for approved projects.

## Roles and responsibilities

### The Department for Energy and Mining

The department is responsible for establishing the EARF and paying the portion of mineral royalties prescribed by the Act and Regulations into the EARF.

The department may also approve expenditure from the EARF in accordance with the Act.

The department is responsible for ensuring land is rehabilitated in accordance with the requirements under the Act, and for administering the EARF.

The department is responsible for accounting for funds received into the EARF and expended, and reporting on it publicly in annual reports.

### Holder of an EML or the operator of an extractive private mine

The holder of an EML or operator of a private mine recovering extractive minerals is responsible for development of, and compliance with, rehabilitation and environment protection outcomes, including for closure and completion, as set out in the PEPR or MOP.

The holder of an EML or operator of a private mine recovering extractive minerals is responsible for paying royalties.

The holder of an EML is responsible for payment of any bond, if required, in compliance with the conditions of the lease and approved outcomes in the PEPR for that operation.

### Recipients of EARF research funding

Recipients of EARF research funding are responsible for completing the funded research and making it available to the regulator and the public.

## Glossary

**The Act.** Means the *Mining Act 1971*.

**The Regulations.** Means the *Mining Regulations 2020*.

**Authorised Operations.** Section 6 of the Act states that authorised operations include mining operations. Mining operations are further defined as including operations carried out in the course of prospecting, exploring or mining for minerals, or operations carried out at a private mine.

**Environment.** Section 6(4) of the Act states that the environment includes –

- a. land, air, water (including both surface and underground water and sea water), organisms, ecosystems, native fauna and other features or elements of the natural environment; and
- b. buildings, structures and other forms of infrastructure, and cultural artefacts; and
- c. existing or permissible land use; and
- d. public health, safety or amenity; and
- e. the geological heritage values of an area; and
- f. the aesthetic or cultural values of an area.

Note: for the purposes of the Act, the environment does not include worker safety which is regulated in accordance with the *Work Health and Safety Act 2012*.

Note: as prescribed by section 73C(1) of the Act, the definition of environment for private mines differs and does not include (c) existing or permissible land use, (e) the geological heritage values of an area or (f) the aesthetic or cultural values of an area.

**EML.** Means a mining lease for the recovery of extractive minerals.

**Extractive minerals.** Section 6(1) of the Act states that extractive minerals means sand, gravel, stone, shell, shale or clay, but does not include –

- a. any such minerals that are mined for a prescribed purpose; or
- b. fire clay, bentonite or kaolin; or
- c. proppant sand.

**Former mine.** A mine where an authorised operation for the recovery of extractive minerals or private mine no longer exists and responsibility for rehabilitation cannot be allocated to any individual, company or organisation responsible for the original mining operations.

**Land.** Means land which, or part of which, has been disturbed by authorised operations for the recovery of extractive minerals.

**Mine closure.** A whole-of-mine-life process, which typically culminates in tenement relinquishment. It includes decommissioning and rehabilitation.

**Mine completion.** The goal of mine closure. A completed mine has reached a state where mining lease ownership can be relinquished, and responsibility accepted by the next land user.

**MOP.** Means a mine operations plan.

**PEPR.** Means a program for environment protection and rehabilitation.

**PM.** Means a private mine.

## Useful documents

### Forms

Extractive Areas Rehabilitation Fund (EARF): Research application

### Associated Guidance

[MG6 Guideline for miners: preparation of a program for environment protection and rehabilitation \(PEPR\) for extractive mineral operations in South Australia](#)

[MG23 Preparation of a mining proposal and program for environment protection and rehabilitation for quarries in South Australia with defined impacts](#)

[MG30 Development of environmental outcomes for quarrying and mining](#)

Extractives program for environment protection and rehabilitation checklist

Mine operation plans checklist