

Transitional arrangements

Purpose

To provide guidance on transitional arrangements for authorised mining activities under the *Mining Management Act 2001* (MMA) to the *Environment Protection Act 2019* (EP Act).

Background

The Environment Protection Legislation Amendment Act 2023 (Amendment Act) introduces a new environmental (mining) licence framework (framework) for managing environmental impacts of mining.

The new laws commence on 1 July 2024 and apply to all mining activities including exploration and extraction. The MMA will be repealed at this time.

An environmental (mining) licence will be required when the activity involves substantial disturbance of the mining site. Regulation 233R in the Amendment Act identifies the types of activities that may cause substantial disturbance.

Transitional arrangements in the Amendment Act ensure activities authorised under the MMA will continue under the new framework. The arrangements balance the need to ensure that we do not have two regulatory regimes in operation for an extended period of time with the need to provide certainty to mining operators that transition does not undermine an existing mining authorisation.

The transitional arrangements are administrative in nature to facilitate a smooth and certain transition from the current regulatory system under the MMA to the new environmental licensing regime under the EP Act.

The transitional arrangements apply for four years from the commencement of the Amendment Act (i.e. 1 July 2024 – 30 June 2028).

Scope

This factsheet applies to mining operators that have a mining authorisation under the MMA, and mining operators who have submitted an application for a mining authorisation under the MMA which has not been determined by 1 July 2024.

Transitional arrangements

The transitional provisions are set out in Part 15 of the Amendment Act.

Mining operators with an existing authorisation – ‘deemed licence’

All existing operators that hold a mining authorisation and approved Mining Management Plan (MMP) on 1 July 2024 are automatically deemed to hold an environmental (mining) licence under the EP Act. This is referred to as a ‘deemed licence’.

The ‘deemed licence’ is made up of the Authorisation and approved MMP and will effectively operate as an ‘environmental (mining) licence’ under the EP Act (i.e. compliance and enforcement instruments under the EP Act apply).

Existing operators are not required to take any steps to obtain the deemed licence as this is an automatic process that occurs upon commencement of the Amendment Act (section 304). Operators may continue to conduct mining activities in accordance with requirements of the deemed licence (i.e. the terms and conditions imposed under the Authorisation and any commitments, obligations or other requirements identified in the MMP).

An actual 'licence' will not be issued for deemed mining licences. The actual MMA's mining Authorisation and approved MMP make up the deemed licence and the terms and conditions of the mining Authorisation and approved MMP will continue to apply.

There is no requirement for public review of existing authorisations to obtain a deemed licence.

The deemed licence will remain valid for a period of 4 years (i.e. until 30 June 2028), unless it is first cancelled, revoked or replaced.

Mining operators with an application for authorisation under the MMA pending determination – 'deemed licence'

An application for a mining authorisation or approval of a MMP that has been submitted under the MMA and a decision is pending at 1 July 2024 will continue to be assessed under the MMA.

A decision on an application must be made within 2 years of the commencement of the new framework (i.e. by 30 June 2026). The Environment Minister will be the responsible decision maker.

There is no requirement for public review of applications for authorisation submitted before 1 July 2024.

If the application is granted (authorisation) or approved (MMP) it will be taken to be a deemed licence under the EP Act and the transition arrangements for a deemed licence apply.

Variation and transfer of a deemed licence

A deemed licence can only be varied in the following circumstances:

- through the process of a revision of a document, report or plan, or mining security, as required under the terms and conditions of the authorisation or MMP that make up the deemed licence.
- as a result of the assessment and approval of an application to vary the authorisation or MMP that was made under the MMA before 1 July 2024.
- if the Minister adds new conditions requiring monitoring and reporting.

These variations are not considered to be substantially different to what is currently authorised and do not trigger the need for an application for a new environmental (mining) licence.

A change in ownership of mining activities authorised under a deemed licence will require an operator to apply for a new environmental (mining) licence (i.e. a deemed licence cannot be transferred).

Cessation of a deemed licence

A deemed licence will cease to have effect in the following circumstances (whichever is sooner):

- at the end date specified in the Authorisation or MMP
- on the grant of a replacement environmental (mining) licence

- on the grant or refusal of a new environmental (mining) licence
- if the deemed licence is cancelled or revoked, or
- at the end of the four year transitional period.

Mining activities specific to a deemed licence will cease to be authorised activities once the deemed licence ceases to have effect unless the activities specific to the deemed licence are the subject of a replacement licence or an application for a replacement licence at the time of cessation.

Mining operators with a deemed licence – transition to a ‘replacement licence’

At the end of the 4 year transition period (i.e. by 30 June 2028) all existing operators who hold a deemed licence must have obtained, or have commenced the process to obtain, a replacement environmental (mining) licence (replacement licence) for the mining activities authorised under the deemed licence.

A mining operator who holds a deemed licence may apply for a replacement licence at any time during the four year transition period.

If an application for a replacement licence is made prior to the end of the 4 year transition period, the deemed licence remains in force until a replacement licence is issued.

An application for a replacement licence is not subject to a public consultation process.

The Minister may also commence the process to grant a replacement licence for a deemed licence at any time during the four year transition period. If the Minister decides to commence the process themselves, they must inform the licence holder of their intention to do so.

The Minister must grant a replacement licence for a deemed licence where an application has been submitted or the Minister has initiated the process of granting a replacement licence.

The application for a replacement licence may relate to:

- a single mining activity on a single mining site
- more than one mining activity or kind of mining activity on a single mining site
- a single kind of mining activity on more than one mining site
- more than one kind of mining activity on more than one mining site.

A replacement licence will be issued in place of the deemed mining licence, and the category of licence issued depends on whether the risk criteria and standard conditions for a licence can be met. The replacement licence may be a standard condition licence, modified condition licence or tailored condition licence, refer to the [environmental \(mining\) licence fact sheet](#)¹.

Replacement licences are to be granted on substantially the same terms and conditions as those that applied to the related deemed licence. The Minister may include conditions requiring monitoring and reporting, and the publication of certain reports (even if these requirements were not applicable under the previous MMA authorisation/deemed licence).

¹ https://depws.nt.gov.au/_data/assets/pdf_file/0010/1326997/environmental-mining-license-fact-sheet.pdf

The Minister may include in a replacement tailored or modified condition licence conditions related to other authorisations for the relevant mining activity that have not previously been regulated by the MMA but which are required to enable the mining activity to occur (e.g. waste discharge licence requirements under the *Water Act 1992*).

A mining operator may apply to the Minister to amend conditions of a replacement licence. The Minister may grant a modified or tailored condition licence under section 313 of the Amendment Act with the amended conditions.

All replacement licences will be published.

A mining operator must obtain a new environmental (mining) licence if the operator seeks to conduct a new mining activity that is not included in the deemed licence or replacement licence, or seeks to amend an existing activity so as to substantially change its environmental impacts or risks, or the location or extent of the activity.

Waste Discharge Licences

A waste discharge licence (WDL) granted under the *Water Act 1992* will continue to have effect for the duration of the transitional period, i.e. until 30 June 2028 or until a replacement or new mining licence is granted.

If necessary, a WDL can be granted or renewed within the transition period for mining activities authorised under a deemed licence.

The mining operator may apply to the Controller of Water Resources to amend a WDL under the *Water Act 1992* during the transition period.

Where the Environment Minister has made a decision after commencement of the Amendment Act on a pending application under the MMA and a deemed licence is issued, the mining operator may apply for a WDL under the *Water Act 1992* during the transition period if it is needed to support the mining activities specific to the deemed licence.

An existing WDL will cease to have effect on the commencement of a replacement or new licence, if that licence authorises the discharge activities authorised under the existing WDL.

All wastewater discharge activities for mining activities after the transition period will be managed under a replacement or new licence.

Further information

Further information on the environmental licensing framework for mining activities is available at [Environment | Department of Environment, Parks and Water Security](https://depws.nt.gov.au/environment-information)²

Enquiries can be emailed to environment.policy@nt.gov.au

² <https://depws.nt.gov.au/environment-information>